AGREEMENT ESTABLISHING THE ASEAN – AUSTRALIA – NEW ZEALAND – FREE TRADE AREA

(AND ASSOCIATED INSTRUMENTS)

NATIONAL INTEREST ANALYSIS

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CONTENTS

EXECUTIVE SUMMARY

Background

In late November 2004, leaders from ASEAN (Association of Southeast Asian Nations), Australia and New Zealand agreed to launch negotiations for a Free Trade Agreement (FTA) involving the 10 countries of ASEAN,[1] as well as Australia and New Zealand – to be known as the ASEAN – Australia – New Zealand Free Trade Area (AANZFTA). At that time, the leaders agreed that the AANZFTA would be comprehensive, covering trade in goods, services and investment. Negotiations began in early 2005 and, after 16 rounds of negotiations, were substantively concluded in late August 2008. The Agreement was signed in Hua Hin, Thailand on 27 February, 2009.

Together, the 12 countries involved have a combined population of over 566 million people and an estimated GDP exceeding US$700 billion. Agreement to move to FTA negotiations followed four years of economic and technical cooperation under the AFTA-CER Closer Economic Partnership which had been agreed in 2000.

In conjunction with the AANZFTA negotiations, New Zealand has also concluded bilateral treaties, Memoranda of Agreement (MOAs) with the Philippines covering labour and environmental cooperation. They constitute further concrete contributions towards strengthening the growing bilateral economic and political relationships with the Philippines. They also supplement existing labour and environment instruments New Zealand has with other key ASEAN partners (Brunei, Singapore and Thailand) and are expected to be supplemented by additional instruments in these areas with Malaysia in the context of New Zealand's ongoing bilateral negotiations for an FTA.

This National Interest Analysis (NIA) assesses AANZFTA, as well as the MOAs with the Philippines, from the perspective of their impact on New Zealand and New Zealanders. The MOAs will be considered as part of this NIA given that they are treaty-level documents negotiated in the broader context of the AANZFTA. The NIA does not seek to address the impact of such instruments on any of the other Parties.

Reasons for New Zealand becoming a Party

The main reasons for New Zealand entering into AANZFTA and associated instruments are that they:

- Expand opportunities available to New Zealand exporters by removing barriers to trade and establishing sound frameworks under which trade (in goods and services) and investment can flourish.
- Provide additional incentives to utilise New Zealand materials by way of the incorporation of the cumulation principle in the rules of origin (ROO) which allows originating goods to be cumulated between the Parties and used in the production of further goods.
- Provide greater certainty and transparency for New Zealand businesses wishing to operate in the ASEAN markets by way of a range of mechanisms which enhance regulatory cooperation to facilitate trade and reduce associated transactions costs in both goods and services trade.

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1 The Members of ASEAN are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

- Provide greater security for New Zealand investors in the ASEAN markets, including through the potential for recourse to binding investor-state arbitration procedures.
- Assist in raising the commercial profile of New Zealand companies in ASEAN markets.
- Enhance New Zealand's strategic engagement with the ASEAN region and broader regional integration processes which are central to New Zealand's future economic prosperity and security.
- Provide frameworks (by way of the MOAs) for more effectively discussing and cooperating on labour and environmental issues with the Philippines. These outcomes supplement existing instruments on labour and environment with other ASEAN Parties (Thailand, Brunei and Singapore) and a similar outcome is being sought with Malaysia in the context of ongoing bilateral FTA negotiations.

Advantages and disadvantages to New Zealand of the treaty actions

Advantages

New Zealand will benefit from the eventual elimination of tariffs on 99 percent of New Zealand's current exports to the four key markets of Indonesia, Malaysia, the Philippines and Viet Nam, which on full implementation will equate to an annual duty saving of approximately $50 million based on current trade.

On the basis that AANZFTA will enter into force on 1 July 2009, this tariff elimination will deliver significant benefits to exporters, including the removal of tariffs:

- in 2010 on over $429 million of current exports to Indonesia, Malaysia and the Philippines encompassing, in some markets, butter, milk powder, cheese, wool, kiwifruit, apples and some manufactured products. This covers 28 percent of total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. When the exports that already enter these markets duty free are taken into account, 70 percent of New Zealand's total current exports will enter these markets duty free in 2010.
- between 2011-2015 on $60 million of current exports to Indonesia, Malaysia and the Philippines encompassing, in some markets, beef, wine, kiwifruit, apples, onions, aluminium, certain iron and steel products and some manufactured products. This covers 4 percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. By 2015, 74 percent of total current exports to these markets will be duty free.
- in 2016 on $137 million of current exports to Viet Nam encompassing milk powder, some paper and wood products, apples, kiwifruit and sheep meat. This accounts for 9 percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. By 2016, 83 percent of total current exports to these markets will be duty free.
- The removal of tariffs between 2017-2020 on $238 million of current exports to Indonesia, Malaysia, the Philippines and Viet Nam encompassing, in some markets, butter, liquid milk and cream, frozen French fries, beef and beef offal. This covers 16 percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. By 2020, 99 percent of total current exports to these markets will be duty free.
- The removal of tariffs on other lines accounting for less than $1 million of current exports by 2025 encompassing juice, jam and some manufactured products.

The inclusion of robust regional rules of origin (ROO) will allow New Zealand exporters to effectively take advantage of the preferential conditions offered under AANZFTA for trade in goods, without undue compliance costs.

AANZFTA does not provide for any special agricultural safeguard. This sets a positive precedent for future FTAs that New Zealand may undertake.

New Zealand will also benefit from:

- Improved commitments in services, particularly in the context of education services.
- Enhanced investment protection provisions, including by way of investor-state dispute settlement provisions.
- Provisions to facilitate the movement of business people in the ASEAN region.

AANZFTA contains a range of mechanisms relating to, amongst other things, customs procedures and cooperation, sanitary and phytosanitary (SPS) measures, standards, technical regulations and conformity assessment procedures (STRACAP), electronic commerce and intellectual property (IP). These are all designed to reduce barriers to doing business in ASEAN, as well as to improve dialogue and cooperation between New Zealand and the ASEAN member countries.

AANZFTA also establishes an overarching framework for cooperation to enhance the benefits of the Agreement, with the objective of building on the existing relationships and creating new opportunities.

The treaties on labour and environmental cooperation with the Philippines include the "core" trade and labour and trade and environment provisions. They will also enhance communication and cooperation on these issues and assist in meeting the shared objectives of raising working standards and improving environmental protection in the respective countries. These treaties will supplement similar instruments negotiated previously with other ASEAN Partners (Thailand, Brunei and Singapore) and those being sought with Malaysia in the context of the ongoing bilateral FTA negotiations with that country.

Finally, the temporary employment entry arrangements and undertakings to enter into negotiations on working holiday schemes in relation to the Philippines and Viet Nam, which while not part of AANZFTA itself, may assist in modestly easing domestic labour shortages.

Disadvantages

A more ambitious outcome on the elimination of tariffs was preferred, but was simply not possible. Up to 10 percent of tariff lines in the tariff schedules of major markets will remain subject to tariffs. Such lines, however, constitute only around one percent of New Zealand's current exports to the major markets of Indonesia, Malaysia, the Philippines and Viet Nam (which are valued at around $15 million).

The removal of tariffs on products imported into New Zealand can result in negative adjustment effects for import-competing sectors. AANZFTA does, however, attempt to mitigate these impacts by delaying tariff elimination on imports of acute sensitivity to particular New Zealand industries and through various contingent protections.

There is no commitment to clear imported goods within defined timeframes. In this respect, AANZFTA differs from the FTA with China. Given the range of countries which comprise ASEAN, it was never likely that ASEAN as a group would have been prepared to commit to time-bound clearance outcomes.

As with many FTAs, AANZFTA includes a safeguard mechanism under which ASEAN member countries might be able to impose additional duties on New Zealand products if the exports under AANZFTA are causing serious injury to domestic industry. Given the small size of New Zealand's exports in relation to the domestic production and consumption of most ASEAN member countries, however, the effect of the mechanism is likely to be limited.

AANZFTA's services commitments were not made on the basis of a negative list,[2] nor will they be subject to a Most Favoured Nation (MFN)[3] obligation. Viet Nam has, however, provided an MFN commitment for "Mode 1" higher education services (a sector of key commercial interest to New Zealand). This is discussed in more detail below. At the same time, it was not possible to secure a more substantial improvement over ASEAN member countries' GATS commitments. There is, however, a review clause that requires the Parties to renegotiate services commitments with the aim of further improving commitments within three years of entry into force of AANZFTA. In addition, AANZFTA includes a separate "trigger" for obligatory negotiations on improving services commitments if ASEAN concludes an agreement on trade in services at some stage in the future with a third country that secures better commitments than are in AANZFTA. (Similarly New Zealand will also "trigger" such negotiations if New Zealand offers better services commitments to a third country under a future agreement).

Finally, there are no up-front commitments on investment market access. Such commitments will be negotiated and enter into force within five years of the entry into force of AANZFTA. There is also no MFN provision for investment, though this will also be the subject of future negotiation.

Legal obligations under AANZFTA and the associated instruments

The key new obligations for New Zealand include:

- The reduction and/or eventual elimination of tariffs on all goods originating from ASEAN member countries, with longer transitional periods for some goods.
- Using either a change of tariff classification (CTC) or a regional value content (RVC) approach for the rules of origin (ROO) relating to goods entering New Zealand under an AANZFTA preferential tariff.
- Certificate of origin system for exports obtaining preferential treatment under AANZFTA.
- Establishment of a safeguard mechanism under AANZFTA to address situations of serious injury to a New Zealand industry caused by increased imports as a result of tariff reductions under the Agreement by either suspending further tariff reductions or reverting to higher tariffs for a certain period.

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2 A negative list approach is where all sectors and measures will be free from barriers and/or restrictions unless otherwise listed. In other words, the negative list contains all of the reservations that might apply to a Party's services commitments. This is in contrast to the positive list approach where the Party concerned explicitly lists those sectors in which it is undertaking commitments.

3 MFN treatment means all Parties would receive the benefits of additional liberalisation in trade in services contained in future trade agreements concluded with third parties.

- Market access and national treatment commitments in a range of services sectors that go beyond New Zealand's existing WTO commitments.
- Commitments on the temporary entry of ASEAN business visitors which go beyond New Zealand's existing WTO commitments.
- Investment protection disciplines.
- Frameworks to enhance economic cooperation generally, as well as cooperation in customs procedures, SPS measures, STRACAP, electronic commerce, intellectual property, and competition.

Obligations in the majority of areas of AANZFTA are consistent with existing New Zealand law and practice. In addition, AANZFTA does not prevent New Zealand from taking measures it deems necessary to fulfil its obligations to Māori under the Treaty of Waitangi, or to support creative arts of national value.

In conjunction with the AANZFTA negotiations, but not as part of AANZFTA itself, New Zealand has also made some arrangements on the temporary employment entry of a very limited number of specified workers from the Philippines and Viet Nam. New Zealand has also reached a joint understanding to enter into negotiations on reciprocal working holiday schemes with these two countries.

Finally, the MOAs on labour and environmental cooperation with the Philippines require New Zealand to commit to further cooperation on labour and environment issues, including establishing a cooperation programme, seeking funding for cooperation activities and holding regular meetings between senior officials in these areas.

Economic, social, cultural and environmental effects

Economic effects

AANZFTA is expected to make a net positive contribution to the New Zealand economy through:

- Expansion of trade in goods and services as a result of the reductions in tariff barriers with duty savings and new opportunities for New Zealand exporters.
- Enhanced regional integration, including the expansion and facilitation of improved investor and business links, which will trigger further factor productivity gains.
- Improvements in productivity as a result of dynamic effects, including the potential for enhanced levels of investment and greater innovation and competition.
- The overall outcome of AANZFTA will be strengthened economic ties with the ASEAN economies. This will further contribute to New Zealand's wider objective of enhanced integration into the region as well as contribute to efforts to improve skills, innovation, competition and technology levels in New Zealand.
- The bulk of these gains are estimated to result from the trade in goods area.

Social effects

AANZFTA and the associated documents, including the MOAs that have been concluded with the Philippines, are not expected to have any discernible negative social effects in New Zealand. New Zealand's commitments on movement of natural persons and the separate temporary employment entry arrangements and the arrangements to negotiate working holiday scheme made outside the AANZFTA to the Philippines and Viet Nam, contain a range of safeguards designed to mitigate as far as possible any negative impacts on New Zealand employment.

Cultural effects

AANZFTA contains safeguards to ensure that there are no adverse effects on New Zealand cultural values, including Māori interests in relation to the Treaty of Waitangi. There is explicit recognition in the AANZFTA of the importance of supporting creative arts of national value.

Environmental effects

AANZFTA, as well as the MOA on environmental cooperation with the Philippines, can contribute to positive outcomes for New Zealand on the environment and sustainable development. The MOA supports the objective of harmonising and ensuring the mutual supportiveness of trade and environment. It will also provide opportunities to enhance capacity in the Philippines and New Zealand for improved environmental management and may assist in promoting trade in goods and services that benefit the environment. The MOA with the Philippines supplements similar instruments with other ASEAN Partners (Thailand, Brunei and Singapore) and is expected to be supplemented by a similar instrument being negotiated with Malaysia in the context of ongoing bilateral FTA negotiations. In this way, the MOA further enhances the prospects for broader engagement by New Zealand on these issues over time in the region. Finally, New Zealand has sufficiently robust environmental legal and regulatory frameworks, as well as policies and practices, to effectively manage any potential negative environmental impacts of AANZFTA.

Costs

In 2005, the revenue collected on imports from the ASEAN economies was $26.3 million. As tariffs are phased out over time under AANZFTA, the New Zealand Customs Service will progressively collect less revenue from duty payments from ASEAN member countries. The exact amount of duty collected will be influenced by the pattern of actual imports and the proportion that qualify for preference under the applicable rules of origin.

One-off costs associated with implementing AANZFTA are estimated to amount to $582,000 for promotion and outreach activities, as well as capacity building. There will also be ongoing costs of meeting New Zealand's obligations under AANZFTA, including staffing, establishment of new institutions, developing implementing arrangements, and technical assistance and implementation costs. These costs will be calculated by key agencies going forward.

Subsequent Protocols and/or amendments to the treaty

There is general provision for review and amendment, subject to the agreement of the Parties. There are also a number of specific areas which contain future work programmes, as well as the possibility of review.

New Zealand would consider proposed amendments on a case-by-case basis. Any decision to accept an amendment would be subject to New Zealand's normal domestic approvals and procedures for such matters.

The MOAs with the Philippines similarly have scope for amendment, as agreed by the Parties.

Implementation

Legislative and regulatory amendments are required to align New Zealand's domestic regime with the rights and obligations created by AANZFTA, particularly those relating to tariffs and the rules of origin.

There are no legislative or regulatory amendments required for New Zealand to implement the MOAs.

Consultation

The study, preparation and negotiating phases of AANZFTA and associated instruments involved extensive consultation between government agencies and with non-government stakeholders throughout New Zealand. A communication and outreach programme kept stakeholders informed of progress throughout the negotiations and provided regular and numerous opportunities for input.

1 NATURE AND TIMING OF PROPOSED TREATY ACTIONS

The Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area (AANZFTA) was signed by New Zealand in February 2009. AANZFTA will enter into force on 1 July 2009 provided that New Zealand, Australia and at least four ASEAN countries have notified the completion of necessary domestic procedures by that date. If AANZFTA does not enter into force on 1 July 2009, it will enter into force 60 days after the date by which New Zealand, Australia and at least four ASEAN countries have made such notifications.

The Memoranda of Agreement (MOAs) with the Philippines on Labour Cooperation and Environmental Cooperation were signed before the AANZFTA and will enter into force following an exchange of notes indicating completion of the relevant domestic requirements for such instruments.

2 REASONS FOR NEW ZEALAND BECOMING A PARTY TO THE TREATIES

2.1 Background

In late November 2004, leaders from ASEAN (Association of Southeast Asian Nations), Australia and New Zealand were gathered in Vientiane, Laos for the ASEAN, Australia and New Zealand Commemorative Summit. During this meeting, the leaders agreed to launch negotiations for a Free Trade Agreement (FTA) involving the 10 countries of ASEAN, as well as Australia and New Zealand. At that time, the leaders agreed that the FTA would be comprehensive, covering trade in goods, services and investment.[4] Negotiations began in early 2005 and, after 16 rounds of negotiations, were substantively concluded in late August 2008. The Agreement was signed in February 2009.

In conjunction with the AANZFTA negotiations, New Zealand has also concluded bilateral instruments with the Philippines covering labour and environmental cooperation which are in the form of legally binding intergovernmental MOAs. They are not explicitly linked with AANZFTA, but they have been concluded in the context of AANZFTA. They constitute further substantive contributions towards strengthening the growing bilateral economic and political relationship with the Philippines. These outcomes also supplement existing labour and environment instruments with other key ASEAN partners (Brunei, Singapore and Thailand) and instruments being sought with Malaysia in the context of the Malaysia and New Zealand FTA.

2.2 Benefits from enhanced trade and economic links

This section sets out the direct and indirect benefits of AANZFTA in each key area.

2.2.1 Direct benefits from enhanced trade and economic links with ASEAN

A core objective of New Zealand trade policy is to broaden and deepen the opportunities available to exporters by removing and reducing barriers to trade and investment, as well as to establish frameworks through which trade and investment linkages can evolve and expand. Concluding agreements with a group of key trading partners to remove trade and investment barriers is one way of achieving this objective.

AANZFTA is expected to contribute to New Zealand's economic performance. Specifically, it will promote the flow of goods, services, capital, people, knowledge and technology on a "New Zealand Inc" basis.

AANZFTA also contributes to the objectives enumerated in the Ministry of Foreign Affairs and Trade's Statement of Intent that "New Zealand's international connections support transformation of the New Zealand economy and sustainable economic growth through increased trade and through improved flows of investment, skills and technology".[5]

4 See the Report of the High-Level Task Force on the AFTA-CER Free Trade Area (the Angkor Agenda), Executive Summary, paragraph 9.

5 See Ministry of Foreign Affairs and Trade's Statement of Intent 2007-2010 Intermediate Outcome II. The Statement of Intent is available on the MFAT website (www.mfat.govt.nz).

The ASEAN economies represent a market of more than 566 million people, accounting for more than US$1,400 billion in global trade, and are an increasingly important destination for New Zealand goods, service suppliers and outward investment.

This importance is reflected in the high rate of growth in trade between New Zealand and the ASEAN economies. New Zealand exports to the ASEAN countries have increased 121 percent since 2000 to around $4.6 billion in 2008. Over the same period, imports from the ASEAN countries have increased 244 percent to almost $7.6 billion in 2008.

The elimination of tariffs and other barriers to trade under AANZFTA will open up further opportunities for New Zealand exporters throughout the ASEAN markets. Indeed, as a result of the ASEAN member countries' commitments under AANZFTA, tariffs will be eliminated on all key products of trade interest in major markets within twelve years. Significant commercial benefits are provided to exporters through the elimination of tariffs on about 99 percent of New Zealand's exports to priority markets.[6] Moreover, unlike in previous FTAs there are no special safeguards for agricultural products.

Rules of Origin (ROO) are an essential feature of the AANZFTA – they set the criteria for determining which goods qualify for preferential tariff treatment (i.e. they determine which products count as "Australian", "New Zealand", "Indonesian", "Malaysian", "Vietnamese" etc) and prevent goods from parties outside the AANZFTA from accessing those benefits "through the back door". In AANZFTA, the ROO will allow originating goods to be cumulated between the Parties and used in the production of further goods. The cumulation principle - applied in the multi-party setting of AANZFTA – means that New Zealand inputs, as long as they meet the originating criteria, not only gain preferential treatment when exported to another party, but those goods can be counted as part of the qualifying content for goods produced and traded between all the Parties. This provides further incentives within the region to utilise New Zealand materials and helps improve New Zealand's interaction in the dynamic ASEAN region.

Beyond market access for goods, AANZFTA will provide more opportunities, and greater certainty and transparency, for New Zealand businesses wishing to operate in the ASEAN markets.

New Zealand's services trade into ASEAN has expanded in recent years, particularly in the sectors of tourism and education. In 2007, almost 87,000 ASEAN tourists visited New Zealand, making it one of New Zealand's larger tourism markets. In the area of education, ASEAN student numbers studying in New Zealand have grown to over 7,800 in 2007. AANZFTA therefore provides a strong base from which to further build services trade, particularly in those services sectors where New Zealand has rapidly growing commercial interest and relative comparative advantage, as ASEAN economies continue to develop and open further to foreign service providers.

In 2007, New Zealand investment in the ASEAN region totalled a little over $3.76 billion. New Zealand's total investment in the ASEAN region has grown 61 percent since 2003. Singapore, Malaysia, Thailand and Indonesia are all among New Zealand's top 25 total investment destinations.

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6 The priority countries for New Zealand in the context of the AANZFTA negotiations have generally been those major ASEAN economies with which New Zealand does not have an FTA at present – namely, Indonesia, Malaysia, the Philippines and Viet Nam. It should, however, be noted that the outcomes with Malaysia were not as ambitious as New Zealand would have hoped for. The ongoing bilateral negotiations for an FTA with Malaysia are therefore expected to deliver a better overall outcome than AANZFTA.

Investment from ASEAN member countries in the same period into New Zealand totalled almost $8.22 billion (constituting 3.2 percent of total foreign investment in New Zealand), with almost $1.64 billion being inward foreign direct investment. Singapore is New Zealand's fourth largest source of total investment, and has a direct investment stock of almost $1.64 billion.

Reflecting this growing investment relationship between New Zealand and the ASEAN economies, AANZFTA will also provide greater security for New Zealand investors and investments in these markets, including through the potential for recourse to binding investor-state arbitration procedures.

AANZFTA also contains a range of mechanisms which provide a platform for enhanced regulatory cooperation to facilitate trade and reduce associated transaction costs in both goods and services trade. This includes frameworks for customs procedures, standards, technical regulations and conformity assessment procedures (STRACAP) and sanitary and phytosanitary (SPS) measures and for cooperating on a range of other trade-related issues such as competition and the protection of intellectual property (IP) rights.

The economic cooperation components of AANZFTA constitute an important subset of wider economic cooperation between New Zealand and ASEAN, contributing directly to New Zealand's strategic engagement with the ASEAN region and broader regional integration processes central to New Zealand's future economic prosperity and security.

With the increasing number of preferential trade agreements being concluded internationally, avoiding disadvantage in key export markets relative to competitors from third countries under such agreements is another important reason for New Zealand's pursuit of FTAs. AANZFTA therefore assists in addressing our defensive commercial interests of preserving and enhancing existing levels of competitiveness.

More generally, ASEAN is active in negotiating FTAs with other countries. It has agreements with China, Japan, Republic of Korea, and has recently concluded a goods-only agreement with India. ASEAN is also negotiating with a range of countries, including the EU. Protecting New Zealand exporters' competitive position in ASEAN vis-à-vis these competitors was therefore another key objective for the negotiations.

2.2.2 Indirect benefits from enhanced trade and economic links with ASEAN

As well as offering direct economic benefits, AANZFTA advances a number of New Zealand's broader strategic interests.

New Zealand and ASEAN[7] are members of the World Trade Organization (WTO). Trade reform and liberalisation through negotiations at the WTO remains New Zealand's primary trade policy objective. Entering into a comprehensive FTA with ASEAN is expected to help maintain momentum towards New Zealand's wider goal of multilateral trade liberalisation. New Zealand and a number of ASEAN member countries also work together on trade and economic issues in a range of other multilateral organisations.

[7] All ASEAN countries are members of the WTO with the exception of Laos, which has observer status and is undertaking accession negotiations.

At the regional level, along with New Zealand, seven ASEAN countries[8] are also members of Asia Pacific Economic Cooperation (APEC). APEC continues to make progress in facilitating trade and opening markets in member economies with a view to achieving free and open trade and investment in the Asia-Pacific region, with work now being undertaken on the possibility of a Free Trade Agreement of the Asia-Pacific (FTAAP). Additionally, New Zealand and the ASEAN countries are all involved in the East Asia Summit (EAS) process. Within the EAS, a Comprehensive Economic Partnership for East Asia (CEPEA) is proposed.

With more than 70 percent of New Zealand's trade and investment occurring in the Asia-Pacific region, the potential contribution to broader regional integration initiatives that flows from entering into a comprehensive FTA with ASEAN is also expected to be significant.

2.3 Benefits of closer cooperation with the Philippines on labour and environment

As set out in the Government's 2001 policy framework on integrating labour issues into FTAs and the Government's 2001 policy framework on integrating environmental issues into FTAs,[9] New Zealand believes that pursuing labour and environment objectives in the context of FTAs can contribute to sustainable development. Sustainable development is, after all, about an integrated approach to the goals of economic, social, environmental and cultural development. FTAs contribute across all of these components.

New Zealand initially sought to include labour and environment outcomes within the AANZFTA framework, but met with resistance from its negotiating partners. In addition, New Zealand already had instruments on labour and environment with some ASEAN members (Brunei, Singapore and Thailand) and the ongoing negotiations for a bilateral FTA with Malaysia include both issues. In such circumstances, and to avoid unnecessary duplication, it was determined that a targeted bilateral approach was more appropriate. New Zealand has therefore concluded two treaties with the Philippines (in the form of MOAs) on labour and environmental cooperation.

These instruments are consistent with the Government's 2001 policy frameworks. These treaties have been concluded in the context of AANZFTA and are seen as a way of strengthening the growing bilateral economic and political relationship with the Philippines. Together, these two instruments will help to reinforce the shared objectives of raising working standards and improving environmental protections in each country.

The MOAs with the Philippines have broadly similar structures and provisions to the labour and environment outcomes negotiated with other FTA partners, including Thailand (through the CEP), Brunei Darussalam, Chile and Singapore (under the framework of the Trans-Pacific SEP); and China (in the China-New Zealand FTA). They reaffirm both countries shared commitment to the "core" trade and labour and trade and environment principles. They also establish mechanisms for ongoing cooperation and dialogue, and for addressing any issues that may arise in these areas.

The MOAs also provide an opportunity for the New Zealand Government to seek input on implementation from union representatives and relevant non-government organisations, as well as making provision for public participation in cooperation activities.

8 The seven country members of both ASEAN and APEC are Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam. Cambodia, Laos and Myanmar are not members of APEC.

9 The Government's 2001 Policy Frameworks can be found at: (http://mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/index.php).

3 ADVANTAGES AND DISADVANTAGES TO NEW ZEALAND OF THE TREATY ACTIONS

3.1 Advantages to New Zealand in entering into the AANZFTA

3.1.1 General

The AANZFTA:

- Expands upon the trade benefits that already flow to New Zealand from ASEAN's existing WTO commitments across a wide range of areas.
- Maintains and reinforces New Zealand's existing rights and obligations under the various WTO Agreements.
- Provides for additional mechanisms for bilateral and plurilateral cooperation.

3.1.2 Trade in goods

ASEAN is New Zealand's third largest market for goods, taking $3.7 billion of New Zealand products in 2007. There are four major ASEAN markets with which New Zealand does not have an existing FTA: Indonesia, Malaysia, the Philippines and Viet Nam. New Zealand's exports to these four countries are valued at around $1.5 billion, with duties paid estimated to be approximately $50 million.

The AANZFTA commits all Parties to, at a minimum, bind their current applied tariffs and goes on to provide for eventual elimination of tariffs on 99 percent of New Zealand's exports to these four countries, which on full implementation will equate to an annual duty saving of $48 million based on current trade.

This tariff elimination will deliver significant benefits to exporters including:

- The removal of tariffs in 2010 on $429 million of current exports to Indonesia, Malaysia and the Philippines encompassing, in some markets, butter, milk powder, cheese, wool, kiwifruit, apples and some manufactured products. This covers 28 percent of total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. When the exports that already enter these markets duty free are taken into account, 70 percent of New Zealand's total current exports will enter these markets duty free in 2010.
- The removal of tariffs between 2011-2015 on $60 million of current exports to Indonesia, Malaysia and the Philippines encompassing, in some markets, beef, wine, kiwifruit, apples, onions, aluminium, certain iron and steel products and some manufactured products. This covers 4 percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. By 2015, 74 percent of total current exports to these markets will be duty free.
- The removal of tariffs in 2016 on $137 million of current exports to Viet Nam encompassing milk powder, some paper and wood products, apples, kiwifruit and sheep meat. This accounts for 9 percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. By 2016, 83 percent of total current exports to these markets will be duty free.

- The removal of tariffs between 2017-2020 on $238 million of current exports to Indonesia, Malaysia, the Philippines and Viet Nam encompassing, in some markets, butter, chocolate, liquid milk and cream, frozen French fries, beef and beef offal. This covers 16 percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam. By 2020, 99 percent of total current exports to these markets will be duty free.
- The removal of tariffs on other lines accounting for less than $1 million by 2025 encompassing juice and jam and some manufactured products. One percent of New Zealand's total current exports to Indonesia, Malaysia, the Philippines and Viet Nam will remain subject to tariffs in 2025.

The phase-out of tariffs on New Zealand imports also has advantages for New Zealand. New Zealand's economy is dependent on imports in order to supply a range of goods and services. Consumers will benefit directly from cheaper products. Cheaper imports of equipment and machinery, which account for 31 percent of New Zealand's imports from ASEAN, is expected to have benefits for New Zealand manufacturers, including through reductions in prices and enhanced competition with other imported products (eg from China).

Key Outcomes in Priority Markets for Major Goods Exports to ASEAN

Dairy: Tariffs on key products will be eliminated at various stages between 2010 and 2020. Examples of exports on which tariffs will be eliminated by 2010 are whole milk powder, butter and cheese in Indonesia; and casein, milk powder, cheese and butter milk in the Philippines. These products face tariffs of up to 5 percent. Examples of products with later elimination dates include unsweetened skim milk powder in Indonesia; casein, butter milk, and butter oil in Viet Nam; liquid milk, butter and some cheese in the Philippines. New Zealand's current duty free access to Malaysia for milk powder, liquid cream, whey and casein is now locked in and protected meaning that Malaysia cannot now legally raise the tariffs. Malaysia's tariffs in butter and cheese will be eliminated once the agreement enters into force and those on ice cream will be eliminated in 2010. Unlike with other FTA New Zealand has concluded, no special safeguards apply for dairy.

Meat and Wool: Tariffs on key beef exports will be eliminated between 2012 (Philippines) and 2020 (Indonesia). Tariffs on sheep meat will be eliminated in 2010 for Philippines, 2016 for Viet Nam; whereas the prevailing tariff rate will apply for some sheep meat in Indonesia. Tariffs on wool will be eliminated in 2010 (the Philippines and Indonesia) and 2016 (Viet Nam). New Zealand's existing duty free access for meat and wool exports to Malaysia is also now "locked in", i.e. Malaysia cannot now legally increase those tariff levels. Unlike with other recent FTAs, these are no special safeguards on New Zealand's meat or wool exports through AANZFTA.

Forestry: Tariffs on key products will be eliminated at various points between 2010 and 2020. Examples of products that will be eliminated by 2010 include fibreboard and some paper for Indonesia and less processed wood products for the Philippines. Tariffs on these items are up to 5 percent. Examples of products that will be subject to later tariff elimination include plywood and major paper exports to the Philippines (where tariffs will be eliminated in 2017), newsprint for Malaysia (where tariffs will be eliminated in 2020) and some paper and particle board items for Viet Nam (where tariffs will be eliminated in 2020).

Horticulture: Tariffs are eliminated on a wide variety of horticulture products, with some globally significant exports subject to early elimination. Tariffs on apples and kiwifruit for instance will be in eliminated in 2010 (Indonesia, Malaysia – apples), 2011 (Philippines), 2012 (Malaysia – kiwifruit) and 2016 (Viet Nam). Tariffs on onions will be eliminated by 2010 for Indonesia, and will be reduced from 40 percent to 5 percent in the Philippines, by 2018.

Manufactured Goods: A key advantage of AANZFTA for manufacturers is that rules of origin can be met on a regional basis. This means that New Zealand manufacturers will benefit through both improved direct access and also through the ability to include New Zealand materials in the origin assessment of goods manufactured and traded within the region by Australia and ASEAN manufacturers and exporters. This will allow New Zealand manufacturers to better integrate their operations into regional supply chains. Examples of manufactured products subject to relatively early elimination include navigational equipment, electrical static converters, air conditioners, commercial refrigerators, toys, road sign equipment and switch board equipment. Tariffs on these products (which can be as high as 15 percent) will be reduced and eliminated between 2010 and 2013, in one or more of New Zealand's key markets (Indonesia, Philippines, Viet Nam and Malaysia).

3.1.3 Rules of origin (ROO)

The objectives for ROO in the context of AANZFTA were the assurance that:

- New Zealand exporters would be able to effectively take advantage of the preferential conditions offered under AANZFTA, do so without undue compliance costs.
- The rules would stand the test of time as businesses evolve their production models in the face of increasing global competition.

This set of objectives has been achieved. As in any FTA, products must meet the relevant ROO criteria in order to qualify for preferential tariff treatment. This prevents goods from other sources accessing the benefits of the Agreement by entering "through the back door".

The AANZFTA ROO provides "co-equal" or alternative rules for the majority of product lines. This means that manufacturers/exporters can choose between either a change of tariff classification (CTC) approach or a regional value content (RVC) approach with a 40 percent free on board (FOB) threshold, depending on which approach best suits their business model. This outcome reflects both ASEAN's preference for (and familiarity with) an RVC based approach, as well as New Zealand's and Australia's move towards the CTC approach in their most recently concluded FTAs. Significantly, the CTC approach under AANZFTA represents the most extensive use of this approach that ASEAN has agreed in any of its FTAs.

The inclusion of the CTC approach will ensure consistency in approach for New Zealand exporters. Further, the CTC approach is generally considered to:

- provide greater certainty as to origin (once qualify, always qualify);
- reduce the need for costly "red tape" (i.e. records and accounting systems);
- facilitate access to global supply chains;
- facilitate changes to manufacturing processes as new technologies develop; and
- simplify border administration and verification.

The inclusion of the RVC approach ensures that in areas of particular sensitivity, such as iron and steel, where the CTC approach is comparatively restrictive, New Zealand exporters can still claim preferential treatment through meeting the 40 percent RVC threshold. The provision of optional CTC and RVC rules means that New Zealand exporters should have no difficulty in meeting origin requirements across any product line and thereby qualify for preferential tariff treatment under AANZFTA.

Under AANZFTA, the ROO also provide a mechanism through which originating goods can be cumulated across the Parties. The export opportunities under AANZFTA are therefore expanded not only through direct access for New Zealand goods to ASEAN markets, but also through the ability to include New Zealand materials in the origin assessment of goods manufactured and traded within the region by Australia and the ASEAN manufacturers and exporters. In this way, AANZFTA provides 12 manufacturing bases from which to source input materials, thus enabling New Zealand manufacturers/exporters to make more optimal choices in sourcing their inputs in order to remain internationally competitive.

AANZFTA also provides for export certification of origin (minor exceptions apply), which generally resembles the certification outcome under the China-New Zealand FTA with one difference:

- AANZFTA makes no provision for traded goods covered by an “advance ruling” on origin from the importing customs administration to be exempt from the requirement to submit a certificate of origin.

The certificates of origin system are an essential mechanism for accessing the benefits of the tariff preferences under AANZFTA.

3.1.4 Customs procedures

AANZFTA will help to improve logistical performance and permit trade between New Zealand and the other Parties to take place in a far more timely manner and at lower cost than before AANZFTA. The provisions on customs procedures are intended to improve predictability, consistency and transparency in the application of customs laws and administrative procedures so as to ensure more efficient administration, as well as faster clearance of goods in order to facilitate trade.

The cooperation dimension, which sits alongside the various trade facilitation initiatives contained in the provisions relating to customs procedures, is another important feature of AANZFTA. Each Party may, as deemed appropriate and to the extent permitted by its domestic law, assist the customs administrations of each other Party in relation to a wide range of activities, including simplifying and harmonising customs procedures and providing, where possible, capacity-building assistance and prior notice of changes to relevant laws, regulations, procedures and guidelines. This will give New Zealand the opportunity to consult other Parties on significant issues such as valuation of imports for duty-liability purposes. It will also help to pre-empt customs-related problems (and limit their likely incidence) as well as offering the opportunity to resolve any difficulties efficiently and effectively.

3.1.5 Sanitary and phytosanitary (SPS) measures

AANZFTA establishes a range of mechanisms – such as regular meetings and working groups on specific issues – for regulators, other officials and technical experts to work together more effectively to address barriers to trade in the SPS area.

The overall objective is to better facilitate trade in goods by ensuring that SPS measures are no more restrictive than necessary, and to provide a means to improve transparency, communication and consultation on SPS issues.

3.1.6 Standards, technical regulations and conformity assessment procedures (STRACAP)

The cost of complying with STRACAP-related matters can sometimes constitute significant barriers to trade in goods. Without formal arrangements or mechanisms, it is difficult to engage with other countries at the technical/regulatory level in a way that will produce tangible solutions to the adverse impacts that STRACAP can have on trade flows.

AANZFTA establishes a platform for enhanced regulatory co-operation to better facilitate trade and reduce associated transaction costs for trade in goods between the Parties. The mechanisms include exchange of information, cooperation, regular meetings and working groups on specific issues for regulators, other officials and technical experts. In addition, there are provisions for greater transparency and information sharing which are designed to facilitate trade, reduce transaction costs for people doing business between the Parties and strengthen risk management systems.

3.1.7 Trade remedies

New Zealand has retained the ability to take trade remedy actions under WTO rules. AANZFTA also has a safeguard mechanism under which any Party can either temporarily suspend tariff reductions or increase the tariff rate if there have been increased imports of a product as a result of the tariff reductions being carried out under AANZFTA and such increases have caused serious injury to a domestic industry. The purpose of the mechanism is to allow a domestic industry some time to adjust to increased import competition arising from the implementation of AANZFTA. Whilst it is unlikely that a New Zealand industry would seek to use this mechanism, it is available if required.

3.1.8 Trade in services

AANZFTA will assist in the expansion of services trade between New Zealand, Australia and ASEAN member countries.

In terms of specific commitments, 8 of the 10 ASEAN countries have made services commitments that expand on their commitments in the WTO General Agreement on Trade in Services (GATS).[10] Such "GATS-plus" commitments are in the following sectors:[11]

BUSINESS SERVICES

- Professional services
  - Legal services (Indonesia, Viet Nam);
  - Accounting services (Malaysia, Myanmar, the Philippines);
  - Taxation services (Malaysia);
  - Architectural services (Brunei[12], Indonesia, Malaysia, Myanmar);
  - Engineering services (Indonesia, Malaysia, Myanmar, the Philippines, Thailand);
  - Urban planning services (Indonesia, Malaysia, Thailand);

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10 The two that have not are Cambodia (which has only recently acceded to the WTO and therefore did not offer improvements over and above those it has recently agreed with WTO members) and Laos (which is not currently a WTO member and does not therefore have any existing GATS commitments).

11 The commitments, as set out below, are clustered according to the WTO's Services Sectoral Classification List MTN.GNS/W/120, 10 July 1991.

12 Brunei is a party to the Trans-Pacific Strategic Economic Partnership Agreement, but was given an extension to complete its services schedules. These have not yet been agreed, and so for the time being Brunei's GATS-plus commitments in AANZFTA represent a benefit to New Zealand.

- Landscape architectural services (Malaysia, Myanmar, Thailand, the Philippines);
- Veterinary services (Malaysia); and
- Interior design services (the Philippines).

- Computer and related services (Indonesia, Malaysia, Myanmar, Thailand).
- Research and development services (Indonesia).
- Other business services
  - Advertising services (Malaysia, Myanmar);
  - Management consulting services (Myanmar);
  - Technical testing and analysis services (Indonesia);
  - Services incidental to manufacturing (Indonesia);
  - Services incidental to mining (the Philippines);
  - Project management services (Indonesia);
  - Maintenance and repair of equipment (Indonesia);
  - Translation services (Myanmar); and
  - Printing and publishing services (Myanmar).

COMMUNICATION SERVICES

- Telecommunication services (Brunei, Indonesia, Malaysia, the Philippines, Thailand);
- Audiovisual services (Myanmar).

CONSTRUCTION AND RELATED ENGINEERING SERVICES

- Construction services (Brunei, Indonesia, Malaysia, Myanmar, the Philippines).

EDUCATIONAL SERVICES

- Education services (Indonesia, Malaysia, Myanmar, the Philippines, Thailand, Viet Nam).

ENVIRONMENTAL SERVICES

- Environmental services (the Philippines).

FINANCIAL SERVICES

- Financial services (Indonesia, Malaysia, Singapore[13], the Philippines).

HEALTH RELATED AND SOCIAL SERVICES

- Health services (Indonesia, Malaysia).

TOURISM AND TRAVEL RELATED SERVICES

- Tourism services (Brunei, Indonesia, Malaysia, the Philippines, Thailand).

[13] Singapore has made a number of GATS-plus commitments in AANZFTA, however only those that relate to financial services go beyond what it has already committed in the New Zealand–Singapore CEP or the Trans-Pacific SEP.

TRANSPORT SERVICES

- Maritime transport services (Brunei, Indonesia, Myanmar);
- Air transport services (Indonesia, Myanmar, the Philippines, Thailand); and
- Pipeline transport (the Philippines).

OTHER SERVICES

- Energy services, including services related to the energy sector (Indonesia, the Philippines, Thailand).

Laos is not yet a member of the WTO. As such, New Zealand does not currently benefit from any commitments with Laos. In that sense, all of Laos' services commitments in AANZFTA are a benefit to New Zealand. Laos made commitments in the following sectors:

- Accounting services;
- Landscape architectural services;
- Integrated engineering services;
- Computers and related services;
- Telecommunication services;
- Construction services;
- Education services;
- Tourism services;
- Environmental services; and
- Financial services.

Indonesia and Malaysia also made GATS-plus commitments on the establishment of commercial presence (Mode 3)[14] that will apply to all sectors in their respective schedules.

There are also a number of GATS-plus outcomes in the rules that apply to trade in services between New Zealand and the ASEAN countries. Some of the key improvements relate to:

- **Domestic regulation**, where the focus is on accelerating authorisation and licensing processes, as well as limiting the extent to which such processes can be used as informal barriers to New Zealand service suppliers.
- **Transparency**, particularly in the context of any new laws and regulations (or changes to existing ones) which might impact on New Zealand services suppliers.
- **Qualifications recognition**, where the Parties will encourage their competent bodies to enter into discussions on qualifications recognition.
- **Investment protections**, where the protections for investment that have been established under the Investment Chapter also apply for any specific commitments in Mode 3 (Commercial Presence).

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[14] There are four "modes" of supply associated with trade in services: *Mode 1: Cross-Border Trade*, where the service is supplied by a provider physically located in one country (eg by way of the Internet), to a consumer in another; *Mode 2: Consumption Abroad*, where a customer travels to another country to consume a service; *Mode 3: Commercial Presence*, where a foreign service supplier establishes a presence in another country to provide a service, through incorporation, branch office, joint venture or some other form of business entity; and *Mode 4: Movement of Natural Persons*, which covers the temporary movement of a person into a country in order to supply a service directly.

- **Review**, where the Parties will renegotiate services commitments within three years. There are also 'built-in agendas' on air transport services, domestic regulation and subsidies with the intention that any new developments in the WTO in those areas will be brought into AANZFTA. These provisions help to ensure that AANZFTA keeps up with developments in the WTO and that, as ASEAN countries' services sectors grow and open further to foreign competition, AANZFTA can evolve to take advantage of this.
- **Parity**, where there is an additional "trigger" for negotiations on improving services commitments if ASEAN concludes an agreement on services in the future with a third country that has better commitments than are in AANZFTA. If this was to occur, ASEAN must enter into negotiations with New Zealand and Australia with a view to bringing those additional commitments into AANZFTA. (Similarly New Zealand will also "trigger" such negotiations if New Zealand offers better services commitments to third country under a future agreement). Further to this trigger for negotiations Viet Nam has provided MFN for mode 1 higher education services (ie distance learning, mostly internet-based). This means that any improvements Viet Nam provides to a future partner in an FTA (involving ASEAN) in this area will be extended to New Zealand as well.
- **Telecommunications**, where an Annex provides New Zealand exporters of telecommunications services with greater certainty that telecommunications regulation in ASEAN countries will be transparent, objective and non-discriminatory. It will help to ensure that ASEAN member countries restrain major telecommunications suppliers from anti-competitive use of their market power. It will also encourage regulatory frameworks that promote open and competitive markets in telecommunications. This not only benefits New Zealand exporters of telecommunications services, but also New Zealand businesses that operate in these markets that wish to use and purchase telecommunications services from other providers.
- **Financial services**, where an Annex provides New Zealand financial service suppliers with more transparency and certainty regarding access to ASEAN markets. Like telecommunications, financial services are an important underlying service that is essential for all international trade and investment. The additional transparency and certainty provided by the Annex on Financial Services therefore benefits New Zealand businesses that operate in ASEAN markets and use financial services.

Education Services

As with the FTA with China, securing improvements in access for the education services sector was New Zealand's highest priority for the services negotiations for AANZFTA. New Zealand's interests in education services in the negotiations were concentrated on two specific modes of delivery – distance education (Mode 1) and presence of natural persons (Mode 4). This is due to the relatively small size of many New Zealand education exporters. Mode 3 (commercial presence) requires the investment of significant resources which carries more risk than Modes 1 and 4, although this is an area that is expected to become more important for New Zealand exporters in the future as the export education sector further develops.

AANZFTA contains a range of GATS-plus outcomes for education services. This includes commitments in the sector by Indonesia, Malaysia, the Philippines, Thailand and Viet Nam.[15] Whilst such outcomes did not necessarily represent new market access because they were commitments to bind existing levels of openness in education services for these countries, these outcomes do provide valuable gains in terms of transparency and certainty (i.e., that access conditions cannot be made worse than current commitments). This is a benefit education exporters from other countries will not have in ASEAN markets. This certainty and transparency is very important as it gives New Zealand education exporters greater confidence to enter these markets and invest (in terms of resources and effort) in building a market presence in ASEAN countries. This in turn helps enhance New Zealand's business and economic integration with the region.

3.1.9 Movement of natural persons

AANZFTA will facilitate the movement of business people engaged in trade and investment and establish streamlined and transparent procedures for applications for immigration documents and processes for business people.

AANZFTA obliges ASEAN member countries to publish all relevant information about their immigration requirements in respect of the categories of business people and service suppliers covered by their respective schedules of commitments. Any changes to these regulations must also be published promptly. There is a requirement that fees for processing immigration formalities be reasonable and the Parties must provide business people and service suppliers that apply for temporary entry to their countries with detailed information on the status of their applications.

The availability of clear and up-to-date information about the requirements and conditions for temporary entry for business visitors, combined with a reasonably expeditious process for processing immigration documents and applications, will facilitate the movement of business people, investors and traders around the region. It will also ensure that business people are able to make the most of the trade and investment commitments contained in AANZFTA.

Like the Services Chapter, the rules relating to movement of natural persons includes a schedule of specific commitments from each of the Parties. These schedules contain commitments on the temporary entry and stay of particular categories of business people, investors and service suppliers. Some of the key improvements are:

- Extension of stay (or new commitments) for business visitors in sectors listed in the Party's schedule (Indonesia, Laos, the Philippines[16], Thailand).
- Extension of stay (or new commitments) for intra-corporate transferees in sectors listed in the Party's schedule (Indonesia, Laos, Malaysia, the Philippines, Singapore[17], Thailand).
- New commitments in Mode 4 in a range of services sectors (Indonesia, Malaysia, Myanmar, the Philippines, Thailand).
- New commitments on investors (the Philippines).
- New commitments on installers/maintainers (Malaysia).

[15] As noted above, Laos is not a member of the WTO and, as such, New Zealand does not benefit from any services commitments from Laos. This means that any commitments Laos makes in AANZFTA represent a gain for New Zealand. In this regard, Laos has – amongst other things – made commitments in distance education, 'consumption abroad' and commercial presence (Modes 1-3) in Secondary, Higher, Adult and 'Other' Education.

[16] The Philippines commitments on business visitors also apply to goods sellers.

[17] Singapore's commitments on intra-corporate transferees apply to all services sectors, not just those listed in its services schedule.

3.1.10 Electronic commerce

Electronic commerce plays an important and growing role in trade and investment activities, including by way of internet delivery of services, online purchasing, online monitoring, and electronic documentation.

Given their relative stages of economic development, however, some ASEAN member countries do not have the necessary legal frameworks for electronic commerce. Accordingly, AANZFTA takes a cooperative approach to this issue. Over the medium term, this will help improve transparency (through information sharing requirements), reduce transaction costs (through promotion of paperless trading) and promote greater certainty and predictability (through personal data protection).

3.1.11 Investment

Up until now, New Zealand has only had FTAs containing Investment Chapters with two ASEAN member countries – namely, Singapore and Thailand. For the remaining eight ASEAN members, no treaty-level framework has existed to effectively safeguard New Zealand investors' interests. At a time when New Zealand is increasingly focused on the potential gains to the wider economy of increased outward investment, AANZFTA provides a credible regional legal framework for New Zealand investors and their investments.

AANZFTA contains a range of investment protection provisions. Such provisions apply to both citizens and permanent residents of the Parties. This is an improvement on the scope of the Thailand CEP, which does not cover permanent residents, and on the Singapore CEP, which, while covering permanent residents, does not contain all the protection elements that the AANZFTA does (for example, around expropriation of investments).

Some of the key benefits to New Zealand include:

- Provisions that enable the free transfer of all payments relating to an investment, including capital necessary for establishing the investment, and the returns generated from that investment, between ASEAN countries and Australia and New Zealand. These are a significant addition to existing protections available to current and prospective investors.
- Commitments to provide protection from arbitrary expropriation. This significantly builds on existing rules in the region. Neither party may expropriate or nationalise the investments of investors of the other Party, unless such an action is done for a public purpose; in a non-discriminatory manner; on payment of compensation; and in accordance with due process of law. Importantly, the provisions also ensure that any compensation paid must be equivalent to the fair market value of an expropriated investment, and must be paid without delay, and rendered in an effectively realisable and freely transferable currency, with appropriate interest.[18] Such expropriation provisions are a key protection for New Zealand investors. They minimise the risk of arbitrary government action to expropriate established investments, and ensure that any expropriation actions are appropriately compensated in the event that they occur.

[18] There is a limited exception for Singapore and Viet Nam in relation to expropriation relating to land.

- Provisions to enhance the transparency of investment regimes, including by requiring the publication of a country's international investment agreements and domestic investment measures. Access to such information, and communications between the Parties on any matter covered by the Investment Chapter, is facilitated by a provision that requires each Party to designate specific contact points. This will be a useful mechanism for keeping New Zealand (and New Zealand investors) abreast of developments in investment policy in the other Parties, particularly those countries where gaining information on policy settings has – in the past – been difficult.

The FTA provides for the compulsory settlement of disputes between foreign investors and the country in which the investment is made. Compulsory Investor/State Dispute Settlement (CISDS) enhances the protections for New Zealand investments in ASEAN by giving investors recourse to international procedures beyond the domestic legal system. These procedures can be accessed only if a dispute cannot be settled through consultation and negotiation, and unless the parties to the dispute agree otherwise. There are also safeguards to preserve the government's regulatory prerogatives and to minimise the government's exposure to inappropriate expropriation claims. As AANZFTA is the first ASEAN-wide FTA to include a chapter on investment, New Zealand (and Australia) investors will also be the first to benefit from standardised CISDS provisions across the region.

3.1.12 Economic cooperation

AANZFTA establishes a framework for trade and investment economic cooperation designed to directly support implementation of the Agreement and to enable maximum commercial benefit to be derived from it. The objective is to complement existing economic partnerships between New Zealand and other Parties to AANZFTA thereby contributing directly to New Zealand's strategic engagement with the ASEAN region as well as create new opportunities in areas of mutual interest.

An *Implementing Arrangement for a Work Programme of Economic Cooperation Projects* has been developed to help operationalise the framework. The programme focuses on the provision of implementation support and capacity building in eight mutually agreed areas as follows:

- Rules of Origin and other Aspects of Implementation of Tariff Commitments;
- Sanitary and Phytosanitary Measures;
- Standards, Technical Regulations and Conformity Assessment Procedures;
- Services;
- Investment;
- Intellectual Property;
- Sectoral Integration; and
- Customs.

While precise details regarding implementation of the Economic Cooperation Work Programme have yet to be fully finalized by the Parties, New Zealand has agreed to take the lead on the following projects:

- "SPS Assessments" – specific funding for the processing in New Zealand of import health standards (IHS)-related requests from ASEAN member countries.
- "SPS support" – to increase the capacity of ASEAN member countries to prepare products and documentation for HIS-related assessment.
- "Dairy Industry Development" – to assist the development of dairy industries in ASEAN member countries, beginning with a study.
- "Regulatory Infrastructural Analysis for the Dairy and Meat Industry" – review of the legislative underpinning, resourcing and existing administrative systems and procedures associated with the provision of food safety and animal health certification.

New Zealand's funding contribution to the AANZFTA Economic Cooperation Programme is expected to be $4.6 million over 3-5 years.

3.1.13 Intellectual property

New Zealand's exports currently face – to varying degrees – uncertain IP protection and enforcement in the ASEAN region. AANZFTA can help address this uncertainty by providing a platform for enhanced cooperation and capacity building in the IP arena. Its aim is to develop an environment that allows for effective protection and enforcement of IP rights in the ASEAN region over time. This will provide greater certainty for New Zealand businesses over the adequate provision and enforcement of intellectual property rights and will facilitate trade and investment flows.

AANZFTA includes commitments around the protection and enforcement of copyright, government use of legitimate software, and the protection of trade marks and geographical indications. It promotes cooperation in supporting accession to international IP–related treaties and introduces measures that facilitate dialogue and cooperation between the Parties on IP matters. It also includes commitments relating to greater transparency in the Parties' domestic regimes.

3.1.14 Competition

AANZFTA recognises the importance of cooperation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices. This is consistent with New Zealand's view that competition policy is an important area for economic cooperation.

AANZFTA's inclusion of a Competition Chapter is important because it will allow Australia and New Zealand to contribute to the development of competition policies and institutions in ASEAN countries. Over time, the development of competition policies, laws and institutions should help develop a more stable and predictable regulatory environment under which trade can take place. This should also help to ensure that the benefits from AANZFTA, particularly in terms of trade liberalization, are not undermined by anti-competitive behaviour.

3.1.15 Other outcomes of AANZFTA

Consistent with New Zealand's previous FTAs, AANZFTA:

- Maintains New Zealand's ability to take measures it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi;
- Does not preclude New Zealand from taking measures necessary to protect national treasures or specific sites of historical or archaeological value or to support creative arts of national value; and
- Includes robust and transparent dispute settlement provisions.

3.2 Advantages to New Zealand in entering into the instruments on labour and environment cooperation with the Philippines

The instruments provide a basis for New Zealand to advance its objectives for environmental protection, labour standards and building stronger economic and political relationships with our trade partners. The instruments are not explicitly linked to AANZFTA but have been concluded in the context of AANZFTA.

3.2.1 Advantages to New Zealand in entering into the MOA on labour cooperation with the Philippines

This is not the first set of labour cooperation outcomes that the Philippines has concluded, but they are the most comprehensive that it has negotiated in the context of an FTA and which include a specific reference to the relationship between trade and labour.

This treaty enumerates a set of shared commitments which include recognition that it is inappropriate to set or use labour laws, regulations, policies and practices for trade protectionist purposes, and that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws, regulations, policies and practices (Article 2). Issues that may arise that touch on these, or any other commitments, can be consulted on with a view to their resolution. A timeframe of 90 days is established for a meeting to "assist in the resolution of any such matters". The MOA also allows for the possibility of Ministers being involved in resolving any issues.

The MOA represents an opportunity for New Zealand to improve dialogue and conduct cooperative activities with the Philippines in the following areas (Article 3):

- Labour laws and practices, including the promotion of labour rights and obligations and decent work;
- Information, compliance and enforcement systems;
- Sound labour relations, including labour management consultation, cooperation and labour dispute settlement;
- Occupational safety and health;
- Human capital development, training, and employability; and
- Human resource development initiatives including sharing of labour market trends, skills development, building mutual capacity, and the promotion and protection of employment rights and obligations of migrant workers.

In addition to this indicative list of the types of activities that might be undertaken, an Annex to the MOA provides some examples of potential projects for possible cooperation. Each Party may, as appropriate, invite the participation of its unions and employers and/or other persons and organisations in identifying potential areas for cooperation and in undertaking cooperative activities.

A Labour Committee will also be established to oversee the implementation and operation of the MOA. The Labour Committee may consult with or invite the participation of members of the public or relevant sectors over any matters relating to the operation of the MOA.

3.2.2 Advantages to New Zealand in entering into the MOA on environmental cooperation with the Philippines

This instrument is the most comprehensive outcome on environmental cooperation that the Philippines has undertaken to date in the broad context of an FTA.

This treaty includes specific reference to the relationship between trade and the environment. To this end, the MOA establishes a set of shared commitments which include recognition that it is inappropriate to set or use environmental laws, regulations, policies and practices for trade protectionist purposes and that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws, regulations, policies and practices (Article 2). As with the MOA on labour cooperation, there is provision for either Party to consult with the other on any issues that may arise in relation to the operation of the Memorandum with a view to their resolution. A timeframe of 90 days is established for a meeting to “assist in the resolution of any such matters”. The MOA also allows for the possibility of Ministers being involved in resolving any issues.

Taking account of their national priorities and available resources, New Zealand and the Philippines have undertaken to cooperate on mutually agreed environmental issues including concerns such as:

- Sustainable management of the environment;
- Air quality management;
- Water quality management;
- Toxic chemicals and hazardous and solid wastes management;
- Restoration of degraded watershed, river basins and wetlands;
- Conduct of research dealing with major river basins; and
- Concerns affecting or dealing with climate change.

This is not an exhaustive list and other items may be added to the cooperative programme. The non-government sector and other organisations may also be invited to participate in identifying potential areas for cooperation and in conducting cooperative activities.

An Environment Committee will be established to oversee a programme of cooperative activities, serve as a channel for dialogue on matters of mutual interest, review the operation and outcomes of the MOA, and provide a forum for resolving differences. Each Party may consult or seek the advice of relevant stakeholders and provide them with an opportunity to submit views or advice to it on matters relating to the operation of the MOA.

3.3 Advantages to New Zealand in entering into the bilateral temporary employment entry and working holiday scheme arrangements

In conjunction with the AANZFTA negotiations, but not as part of AANZFTA itself, New Zealand has also made some limited arrangements of less than treaty status on temporary employment entry and reached an understanding to enter into negotiations on reciprocal working holiday schemes, also of less than treaty status.

The temporary employment entry arrangements are for a limited number of skilled workers from the Philippines and Viet Nam (the specific numbers are provided below). Although involving only very limited numbers, these arrangements may assist in easing labour shortages in, for example, engineering. Should the labour market in New Zealand contract in the future, the requirement that such workers hold a *bona fide* job offer will protect employment opportunities and conditions for New Zealanders.

The understanding to enter into negotiations on reciprocal working holiday schemes similarly relate to the Philippines and Viet Nam.

3.4 Disadvantages to New Zealand entering into the AANZFTA

3.4.1 Trade in goods

Market Access – Exports

New Zealand would have preferred more ambitious outcomes on goods, including through the swifter elimination of tariffs on a larger number of products. Under the AANZFTA, up to 10 percent of tariff lines in the tariff schedules of major markets will remain subject to tariffs. In other words, while the AANZFTA provides for the elimination of tariffs on key New Zealand exports to major markets, some products that account for a small value of exports to these markets will remain subject to duties. These include some horticulture, wine, seafood, meat, dairy and steel products which are exported in significant quantities to other (non-ASEAN) markets. Collectively, exports of these products are, however, just one percent of New Zealand's exports to the major markets of Indonesia, Malaysia, the Philippines and Viet Nam. Current exports in this category are valued at around $15 million. More ambitious outcomes would have been beneficial both for the direct benefit of exports, and also in terms of precedents for other negotiations, but were simply not possible in the context of the negotiations, which involved eleven other Parties with varying levels of ambition for FTAs.

Market Access – Imports

Any trade agreement involving reciprocal tariff removal can create – at the same time as export-focused sectors secure improved access to offshore markets – negative adjustment effects for domestic producers in the domestic market as a result of increased exposure to foreign suppliers.

In order to help mitigate the potential for any negative adjustment effects, AANZFTA includes longer phase-out periods for import sensitive sectors in New Zealand, such as, clothing, footwear, carpets, some textiles and some manufactured products such as steel and plasterboard. These phase-outs for import-sensitive sectors are, in general, longer in AANZFTA than in other FTAs that New Zealand has negotiated (including the China-New Zealand FTA).

3.4.2 Customs procedures

There is no commitment in AANZFTA to clear imported goods within defined timeframes. In this respect, it differs from the FTA with China. Given the range of countries which comprise ASEAN, however, it was never likely that ASEAN would have been prepared to commit to a single time-bound clearance timeframe which would apply across all of its member countries.

3.4.3 Trade remedies

Given the relatively low level of New Zealand's tariffs and the small size of New Zealand's exports in relation to the domestic production and consumption of most ASEAN member countries, New Zealand did not generally consider the inclusion of a safeguard mechanism as being necessary for AANZFTA. If anything, it was considered that New Zealand firms – notwithstanding their relatively small size – could be disadvantaged through their exports being subject to a safeguard measure. The inclusion of a safeguard mechanism became necessary, however, in order to secure ASEAN agreement to more ambitious tariff commitments. In such circumstances, New Zealand focused on ensuring that the mechanism contained a number of protections designed to minimise its use in an overly protectionist manner, including limits on the overall period during which safeguard action can be taken and on the maximum length of time for which a measure can be imposed. These protections were secured.

3.4.4 Trade in services

New Zealand would have preferred AANZFTA to have included a Most Favoured Nation (MFN) provision,[19] more substantial improvements on ASEAN member countries' GATS commitments, and for services commitments to have been made on a negative list basis. A negative list generally provides greater legal certainty and transparency about the barriers that exist to services trade and its dynamic nature renders it better capable of capturing changes in the regulatory environment. ASEAN has, however, not completed a negative list services outcome with any trade partner and New Zealand was similarly unable to secure a negative list in its FTA with China.

AANZFTA does, however, include a review clause that requires the Parties to renegotiate services commitments with the aim of further improving commitments within three years of entry into force. It also includes an additional "trigger" for negotiations on improving services commitments if ASEAN concludes a trade in services agreement at some stage in the future with a third country that has better commitments than are in AANZFTA. In such circumstances, ASEAN must enter into negotiations with New Zealand (and Australia) with a view to bringing those additional commitments into AANZFTA. (Similarly New Zealand will also "trigger" such negotiations if New Zealand offers better services commitments to third country under a future agreement).

While AANZFTA generally applies to both citizens and permanent residents of the Parties, Thailand, the Philippines, Viet Nam and Myanmar have included specific reservations against the inclusion of permanent residents in their schedules of reservations. This means they do not have an obligation to provide the benefits of AANZFTA to New Zealand's permanent residents where they are supplying a service.

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[19] As noted earlier, Viet Nam has, however, provided an MFN commitment for Mode 1 higher education services.

AANZFTA also includes a provision relating to a services safeguard. New Zealand would have preferred not to have included such a provision. This provision does not, however, constitute a full safeguard mechanism. Rather, it refers to the work that is mandated in the GATS to consider the question of a services safeguard and commits the Parties to discuss bringing any such mechanism into AANZFTA if it has been agreed in the WTO context. If this has not occurred within three years of entry into force, the Parties are to commence discussions on bringing such a safeguard into AANZFTA. In the meantime, the provision enables a Party to request consultations if it considers the implementation of AANZFTA to have caused a substantial adverse impact on its domestic services sector. If New Zealand received such a request, it would be able to determine the scope of the consultations. In any case, no safeguard measure may be taken unless the Parties concerned agree. In other words, the provision will have no practical effect on New Zealand's services exporters unless New Zealand agreed that a safeguard measure could be imposed.

3.4.5 Investment

AANZFTA does not contain any up-front commitments on market access. These commitments will be negotiated and enter into force within five years of the entry into force of AANZFTA. Although core language on National Treatment has been agreed, the provisions of the Article shall not apply until such time as all 12 Parties have agreed to the schedules of reservations to that language. Similarly, the Investment Chapter does not contain an MFN provision, with this also being the subject of future negotiation.

3.5 Disadvantages to New Zealand entering into the instruments on labour and environmental cooperation with the Philippines

No disadvantages have been identified to New Zealand entering into these instruments.

3.6 Disadvantages to New Zealand in entering into the bilateral temporary employment entry arrangement

The conditions attached to the temporary entry arrangements – including the limitation on numbers, skill level requirements and the requirement that the jobs meet New Zealand labour market conditions – are specifically designed to mitigate any potential negative impacts on New Zealand employment.

4 LEGAL OBLIGATIONS WHICH WOULD BE IMPOSED ON NEW ZEALAND BY THE TREATY ACTIONS AND AN OUTLINE OF THE DISPUTE SETTLEMENT MECHANISM

AANZFTA provides for the liberalisation of trade between ASEAN, Australia and New Zealand with the objective of serving as an important building block towards regional economic integration and sustainable economic development.

The specific obligations that New Zealand will assume in each Chapter of the AANZFTA are set out below in the sequence in which they appear in AANZFTA. Also included in this Section are the obligations arising from the associated documents and instruments, including the MOAs with the Philippines. (Although not part of AANZFTA, the understandings relating to temporary employment entry and working holiday schemes reached separately with the Philippines and Viet Nam are also set out below. It should, however, be noted that these understandings do not constitute treaties and are not directly linked to AANZFTA itself).

4.1 Initial provisions

Amongst other things, AANZFTA reaffirms New Zealand's rights and obligations in the WTO (Preamble).

4.2 Trade in goods

New Zealand is required to progressively reduce and/or eliminate its customs duties (or tariffs) on goods originating from ASEAN member countries in accordance with its schedule of commitments annexed to AANZFTA, and may not increase existing customs duties (Chapter 2, Article 1). The Parties may consider accelerating the agreed reduction and/or elimination tariff commitments (Chapter 2, Article 2).

The main obligations imposed by AANZFTA are to:

- Be consistent with the WTO Agreements, eliminate and not reintroduce all forms of export subsidies for agricultural goods destined for the other parties (Chapter 2, Article 3).
- Accord national treatment to the goods of other Parties in accordance with WTO requirements (Chapter 2, Article 4).
- Ensure that all fees and charges in relation to importation and exportation are commensurate with the cost of the services provided, and that the details of any such fees and charges are made available to the other Parties (Chapter 2, Article 5).
- Not adopt or maintain any quantitative restrictions or non-tariff measures, except in the circumstances specified (Chapter 2, Article 7).
- Establish a Committee on Trade in Goods to consider any matter relating to the Chapters on Trade in Goods, ROO, Customs Procedures, SPS measures, STRACAP and Safeguard Measures (Chapter 2, Article 11).
- Within two years of entry into force of the agreement, parties will review non tariff measures with the view to considering the scope for additional means to enhance facilitation of trade in goods.

4.3 Rules of origin (ROO)

AANZFTA establishes rules for determining whether goods traded between the Parties qualify as originating goods and therefore are eligible to receive tariff preferences under AANZFTA.

Goods wholly obtained in any one Party, or goods produced entirely from materials that originate from any of the Parties will qualify for preferential treatment. For products that contain third party inputs, AANZFTA provides alternative pathways for determining origin (Chapter 3, Article 4):

- Under the change in tariff classification (CTC) approach, a good will qualify as originating if all third party inputs used in the production of that good have undergone a specified change of tariff classification.
- Under the regional value content (RVC) approach, a good will qualify for preferential treatment as long as the value of originating inputs is equal to or greater than 40 percent of the FOB value of that good. Conversely third party inputs must not exceed 60 percent of the FOB value of the good.

The option of either the CTC or RVC approach varies for some products. For motor vehicles and automotive parts, the rule is a 40 percent RVC rule only. For some textiles, the RVC option is replaced by an alternative process rule, while for carpets and footwear there is no RVC option. For a limited number of products, the CTC rule is supplemented with a minimum RVC requirement of 35 percent FOB.

For any good to qualify, it must be consigned directly between the Parties (Chapter 3, Article 14). If transported through a non-Party, the goods must not enter the trade or commerce there, or undergo anything more than simple logistical processes, such as unloading and reloading, repacking, or any operation required to keep them in good condition.

Claims for preferential tariff treatment in ASEAN countries will require the presentation of a Certificate of Origin (Chapter 3, Article 15). These certificates will be provided by issuing bodies or authorities. The New Zealand Customs Service is required to notify details of the relevant New Zealand issuing bodies to the ASEAN Secretariat.

New Zealand is obliged to require issuing bodies, producers, exporters and importers to retain origin documents for not less than three years.

AANZFTA specifically allows (Chapter 3, Article 18) for a review, commencing no later than 18 months after entry-into-force, to encourage consideration of further liberalisation of the product specific rules (in particular the wider application of chemical process rules) and the adoption of lower thresholds for cumulation. Taken together, these would increase New Zealand business opportunities through even deeper integration of manufacturing activity within the region.

To monitor the implementation and administration of this chapter the Parties will establish a Rules of Origin sub-Committee. This will also create a forum for discussion on any issues or proposed modifications of the chapter.

4.4 Customs procedures

AANZFTA commits the Parties to pursue a range of trade facilitation measures and promote cooperation amongst customs administrations

Trade facilitation is addressed through:

- Commitment to, wherever possible and to the extent permitted by each Party's customs law, conform with the standards and recommended practices of the World Customs' Organization (Chapter 4, Article 4).
- Agreement to assist the customs administrations of each other Party to simplify and harmonise customs procedures (Chapter 4, Article 4).
- Encouragement of the use of automated systems wherever possible (Chapter 4, Article 6).
- Consistency and predictability of procedural outcomes (for example, by an obligation to provide "advance rulings" in respect of origin and tariff classifications) (Chapter 4, Article 8).
- Encouraging the use of modern customs procedures such as risk management so as to better facilitate the clearance of low-risk goods and place the focus upon high-risk goods (Chapter 4, Article 9).
- Agreement to make relevant information publicly available (Chapter 4, Article 11).
- Designation of one or more contact points to address enquiries from interested persons concerning customs matters (Chapter 4, Article 11).

4.5 Sanitary and phytosanitary (SPS) measures

AANZFTA will complement the existing SPS agreements that New Zealand has with its partners under the Thailand CEP, the Trans-Pacific SEP and the China FTA, as all of those agreements are underpinned by the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

AANZFTA provides for the development of mechanisms to allow parties to enhance implementation of the SPS Agreement, including strengthening cooperation on equivalence of each Party's SPS measures (Chapter 5, Article 5). It also provides for Parties to cooperate on "regionalisation" (the adaptation to regional conditions), in accordance with the SPS Agreement (Chapter 5, Article 8).

Recognition of the outcomes of cooperation will occur under the authority of the Sub-Committee on Sanitary and Phytosanitary Matters (SPS Sub-Committee) made up of all members of the AANZFTA (Chapter 5, Article 10).

AANZFTA emphasises communication between the competent authorities of all Parties, including through the SPS Sub-Committee and subsidiary working groups. There are specific procedures for informing relevant SPS-related changes by both importing and exporting members (Chapter 5, Article 7).

Decisions on matters affecting biosecurity and food safety will continue to be made and enforced in accordance with New Zealand's existing regulatory regime. The right of New Zealand to determine its appropriate level of sanitary and phytosanitary protection in accordance with the SPS Agreement is preserved.

4.6 Standards, technical regulations and conformity assessment procedures (STRACAP)

AANZFTA establishes a framework of disciplines, processes and procedures for addressing a range of technical barriers to trade. The STRACAP framework recognises different options for different circumstances based on an understanding of the supporting architecture of risk management within jurisdictions. It also provides opportunities to deepen existing cooperative relationships and establish new institutional relationships between ASEAN, Australia and New Zealand. Through such co-operative relationships/arrangements, New Zealand will be able to seek to resolve issues with STRACAP requirements that impede or add unnecessary costs to the activities of New Zealand exporters.

AANZFTA will also encourage the exchange of information and co-operation in the preparation, adoption and application of standards (Chapter 6, Article 5).

The Parties will use international standards as the basis for their technical regulations and shall give positive consideration to accepting as equivalent technical regulations of the other Parties. Where a Party does not accept equivalence of technical regulations it must explain the reasons for its decision (Chapter 6, Article 6).

AANZFTA ensures that the Parties will give positive consideration to accepting the results of conformity assessment procedures taken in another Party, provided that they are satisfied that the procedure offers an assurance equivalent to that provided by a procedure conducted in their own country. Acceptance of the results of conformity assessment procedures can be enhanced by a range of mechanisms including mutual recognition arrangements. Parties also have an obligation to explain their reasons for not accepting conformity assessment procedures performed by another Party. (Chapter 6, Article 7).

AANZFTA encourages the Parties to intensify their joint efforts in the STRACAP area with a view to facilitating trade. To give effect to this, the Parties will give positive consideration to proposals for cooperation in a range of areas, as well as sector-specific cooperation activities (Chapter 6, Article 8). In addition, the Parties will seek to identify other trade facilitation initiatives, such as existing agreements or arrangements on regulatory issues, with a view to extending the application of such initiatives to AANZFTA partners that are not already party to these arrangements or agreements (Chapter 6, Article 10).

AANZFTA also establishes a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP Committee) which will determine its work programme in response to priorities as identified by the Parties from time to time (Chapter 6, Article 13).

4.7 Trade Remedies

The commitments on trade remedies in AANZFTA do not affect New Zealand's rights and obligations under the WTO regarding anti-dumping, subsidies and countervailing measures and global safeguards.

AANZFTA provides for the imposition of a safeguard measure to imports during the period that tariffs are being phased out or reduced for any particular good, and for three years beyond that. A measure can be imposed by any Party to AANZFTA to address situations of serious injury to a domestic industry caused by increased imports as a result of tariff reductions under the Agreement by either suspending further tariff reductions or reverting to higher tariffs for a certain period. (Chapter 7, Article 3).

To apply a safeguard measure, New Zealand would have to undertake an investigation, publish the findings and only suspend tariff reductions or increase the tariff to the minimum extent necessary to prevent or remedy the injury being caused and to facilitate adjustment to import competition. Under no circumstances could New Zealand increase the tariff beyond the lesser of the MFN rate that applied on either entry-into-force of the agreement or at the time a measure was imposed. New Zealand would also have to progressively liberalise the measure at regular intervals if it was imposed for more than one year. (Chapter 7, Articles 3 and 6). New Zealand would have to provide compensation to the other Parties whose exports are subject to the measure in the form of either equivalent tariff concessions or offsetting other obligations under AANZFTA equivalent to the measure imposed. If New Zealand was unable to agree on compensation with the affected Parties, those Parties have the right to suspend equivalent tariff concessions on New Zealand's. This right cannot be exercised for the first two years a measure is in place if it was imposed as a result of an absolute increase in imports. (Chapter 7, Article 8).

Any ASEAN member country that proposed to apply a safeguard measure on imports from New Zealand would obviously be subject to the same requirements outlined above.

4.8 Trade in services

AANZFTA seeks to facilitate trade in services between New Zealand and ASEAN member countries by building on current GATS commitments and improving transparency. AANZFTA excludes services supplied in the exercise of government authority,[20] government procurement, subsidies (although there are provisions enabling the Parties to enter into consultations on subsidies issues) and some air transport services (Chapter 8, Article 1).

AANZFTA establishes the general obligations of national treatment (Chapter 8, Article 3) and market access (Chapter 8, Article 4) in sectors listed in the services schedules, subject to the restrictions specified in such schedules. To the extent of associated commitments made in New Zealand's services schedule, these obligations entitle ASEAN member country service suppliers wishing to operate in New Zealand to access the market without quota restrictions (market access) and on the same basis as domestic suppliers (national treatment).

AANZFTA also establishes obligations to ensure that measures affecting trade in services are transparent, are administered in a reasonable, objective and impartial manner (Chapter 8, Articles 10, 11 and 12) and that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not become unnecessary barriers to trade in services (Chapter 8, Article 10). All of these provisions are consistent with New Zealand's existing regulatory settings and practices.

AANZFTA also applies the protections for investment agreed under the Investment Chapter to Mode 3 (Commercial Presence) (Chapter 8, Article 22).

[20] Services supplied in the exercise of governmental authority are defined as services supplied neither on a commercial basis nor in competition with one or more service suppliers.

New Zealand has made GATS-plus commitments covering Modes 1-3 in the following sectors:

- ‘Other education services’ (language training provided in specialist language institutions and tuition in subjects taught at the primary and secondary levels in specialist institutions operating outside the New Zealand compulsory school system);
- Environmental services (the provision of consultancy services across the full range of environmentally-related services, and the delivery of services in waste and waste water management);
- Legal services (extension of existing commitment to cover the provision of foreign law services);
- Taxation services (extension of existing commitment to cover tax planning and consulting services);
- Engineering services (removal of restriction relating to registration);
- Integrated engineering services;
- Urban planning and landscape architecture services (relating to consultancy);
- Veterinary services (extension of existing commitment to cover Mode 1);
- Computer services (extension of existing commitments to cover maintenance and repair of office machinery and equipment, including computers; and other computer services);
- Management consulting services and services related to management consulting;
- Placement and supply services of Personnel;
- Photographic services;
- Convention services;
- Credit reporting services;
- Collection agency services;
- Interior design services;
- Telephone answering services;
- Duplicating services;
- Other business services;
- Construction services (extension of existing commitment to cover consultancy related to construction services and renting of construction equipment); and
- Non-life insurance services and insurance intermediation (removal of restriction related to the Apple and Pear Marketing Board).

None of these commitments go beyond New Zealand’s existing regulatory environment or policy settings in any respect.

The obligations of the Telecommunications Annex in relation to anti-competitive practices, transparency and due process for any licensing requirements, interconnection, co-location, leased circuits and an independent regulatory body are consistent with New Zealand’s existing domestic telecommunications regulatory regime.

The obligations in the Financial Services Annex to make information available, respond to enquiries and deal with applications expeditiously and to not restrict the transfer of information or prevent the processing of information by a financial services provider, are consistent with current New Zealand domestic regulations and practice.

4.9 Movement of natural persons

AANZFTA's provisions on publication (Chapter 9, Article 8), fees for processing immigration formalities (Chapter 9, Articles 4 and 6), and information provision to applicants for temporary entry (Chapter 9, Article 6) are all consistent with current New Zealand immigration practice.

New Zealand's commitments provide for the entry of ASEAN member country business visitors and installers/servicers for up to three months in any calendar year. Executives, managers and specialists, as intra-corporate transferees, are permitted to enter for up to three years. ASEAN member country Independent Professional Service Suppliers are permitted entry for up to one year, subject to labour market tests.

While going beyond New Zealand's existing GATS commitments, these commitments – in as far as they relate to Mode 4 – are within New Zealand's 2005 services offer in the ongoing WTO negotiations and within existing immigration policy parameters. The extension of commitments to goods sellers and investors reflects the coverage of goods and investment under AANZFTA.

4.10 Electronic commerce

AANZFTA's obligations to publish and provide information (Chapter 10, Article 3), maintain (or adopt as soon as practicably possible) a domestic legal framework in support of electronic commerce (Chapter 10, Article 4), maintain domestic frameworks on electronic authentication (Chapter 10, Article 5), work towards mutual recognition and digital signatures (Chapter 10, Article 5), provide protection for consumers (Chapter 10, Article 6), protect personal data (Chapter 10, Article 7), implement paperless trading (Chapter 10, Article 8) and cooperate (Chapter 10, Article 9) are all expressed in terms of "where possible" and/or "as soon as practicable". All of these obligations are consistent with current practice in New Zealand.

4.11 Investment

A key obligation under AANZFTA with regard to investment relates to national treatment (Chapter 11, Article 4). This requires all covered investments to be treated no less favourably by the host country than investments that have been made by its own nationals. Parties are able to enter reservations to this commitment (Chapter 11, Article 12). The scope and content of these reservations, and of New Zealand's own commitments, will be the subject of ongoing negotiations which should be concluded within five years of entry into force of AANZFTA (Chapter 11, Article 16).

The other key obligations are:

- Providing covered investments with fair and equitable treatment, and full protection and security (Chapter 11, Article 6);
- Compensation for losses relating to armed conflict, civil strife, or state of emergency (Chapter 11, Article 7);

- Allowing transfers relating to a covered investment to be generally made freely and without delay into and out of each Party's territory (Chapter 11, Article 8);
- Disciplines relating to expropriation and compensation (Chapter 11, Article 9);
- Transparency disciplines (Chapter 11, Article 13);
- Establishment of the Investment Committee (Chapter 11, Articles 17); and
- Compulsory investor-state dispute settlement provisions to enforce commitments in Australia, New Zealand and all ten ASEAN countries, thereby providing investors with recourse to international arbitration procedures beyond domestic legal systems for claims (Chapter 11, Section B – discussed below).

Compulsory Investor/State Dispute Settlement

AANZFTA establishes a mechanism for the compulsory settlement of disputes between foreign investors and the country in which the investment is made. If a dispute cannot be settled through consultation and negotiation, and unless the parties to the dispute agree otherwise, the investor is able to submit the issue to conciliation or arbitration by the International Centre for the Settlement of Investment Disputes (ICSID) or arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL) or, if the disputing parties agree, to any other arbitration institution or under any arbitral rules.[21]

The provisions enabling investor-state dispute settlement only apply to claims of loss suffered from breaches of specific obligations (national treatment, treatment of investment, compensation, transfers, expropriation), and only where those specific obligations relate to the management, conduct, operation or sale or other disposition of a covered investment. As a consequence, actions relating to decisions on potential investments into New Zealand under the Overseas Investment Act 2005 are not subject to investor –state arbitration.

AANZFTA's Compulsory Investor/State Dispute Settlement (CISDS) provisions mean New Zealand could be subject to international arbitration of a dispute brought by an investor from an ASEAN country. The agreement however includes a number of provisions designed to safeguard the government's right to regulate and to avoid exposure to inappropriate expropriation claims. Importantly, provisions in the Annex on Expropriation and Compensation maintain the government's ability to exercise its regulatory powers for non-discriminatory actions that are designed and applied to achieve legitimate public welfare objectives, such as the protection of public health, safety and the environment.

Obligations on New Zealand to engage in an arbitration process and potential risks are mitigated by a series of provisions set out in the Investment Chapter, including those relating to clear time-limits for the admissibility of claims (Article 22 (Conditions and Limitations on Submission of a Claim)) and allowing preliminary objections to avoid claims that are frivolous or without merit (Article 25 (Conduct of the Arbitration)). In addition, it is a condition of submission of a claim that a disputing investor must waive its right to initiate or continue any related proceedings before the domestic courts or administrative tribunals of the host country (Article 22 (Conditions and Limitations on Submission of a Claim)).

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21 In the case of Viet Nam and the Philippines, where the local courts have jurisdiction over breaches of treaty obligations, investors also have the option to submit such a claim to the relevant domestic court.

The Chapter also provides for consultation on the consolidation of claims arising out of a common question of law or fact (Article 24 (Consolidation)); protection of confidential documents (Article 26 (Transparency of Arbitral Proceedings)); and provisions limiting the issue of awards to real damages, costs and fees only, thus avoiding, as far as possible, the possibility of punitive damages (Article 28 (Awards)). There is also a process for the Parties to reach a joint decision on any issue disputed by an investor, with such a decision being binding on the tribunal (Article 27 (Governing Law)).

All of the provisions relating to investment are within New Zealand's existing regulatory and policy settings and do not compromise policy flexibility in areas of vital national interest.

4.12 Economic cooperation

AANZFTA provides for the Parties to work together on an Economic Cooperation Work Programme (ECWP). This is intended to support the implementation of the wider Agreement (Chapter 12, Article 1).

The ECWP sets out objectives and indicative cooperation activities for supporting the implementation of AANZFTA, as well as providing for the possible incorporation of any new and/or changed priorities that might be identified during the implementation of the Agreement. At this stage, the 8 areas of activity covered by the ECWP are:

- ROO and other aspects related to the implementation of tariff commitments.
- SPS measures.
- STRACAP.
- Trade in services.
- Investment.
- IP.
- Sectoral integration.
- Customs procedures.

While precise details regarding implementation of the ECWP have yet to be fully finalised by the Parties, New Zealand has offered to take the lead on the following projects under the ECWP:

- "SPS Assessment" – specific funding for the processing in New Zealand of import health standards (IHS)-related requests from ASEAN member countries.
- "SPS support" – to increase the capacity of ASEAN member countries to undertake the SPS-related processes required to prepare products for IHS assessment.
- "Dairy Industry Development" – to assist the development of dairy industries in ASEAN member countries, through a scoping study.
- "Regulatory Infrastructural Analysis for the Dairy and Meat Industry" – a review of the legislative underpinning, resourcing and existing administrative systems and procedures associated with the provision of food safety and animal health certification.

It is expected that New Zealand will need to contribute up to $4.6 million over 3-5 years to implement approved projects under the ECWP.

The ECWP is to be implemented over five years from the date of the entry into force of AANZFTA and will be reviewed by the AANZFTA Joint Committee to assess its overall effectiveness (Chapter 12, Article 7).

4.13 Intellectual property (IP)

AANZFTA requires Parties to accord to nationals of other Parties treatment no less favourable than it accords to its own nationals with regard to the protection of IP rights (Chapter 13, Article 4). There are also requirements relating to the protection and enforcement of copyright (Chapter 13, Article 5), the use of legitimate software by national governments (Chapter 13, Article 6), the protection of trade marks and geographical indications (Chapter 13, Article 7), greater cooperation (Chapter 13, Article 9), and transparency (Chapter 13, Article 10).

AANZFTA also recognises the right of a Party to establish appropriate measures to protect genetic resources, traditional knowledge and folklore, consistent with international obligations, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) (Chapter 13, Article 8).

The Parties will also establish an Intellectual Property Committee. This will establish its own work programme and monitor through Party notifications the implementation of the intellectual property chapter of AANZFTA. (Chapter 13, Article 12).

4.14 Competition

AANZFTA affirms some core competition-related principles, including that it does not diminish the right of each Party to develop, set, administer and enforce its own competition laws and policies (Chapter 14, Article 1). AANZFTA also establishes that the Parties will engage in a range of cooperation activities in the field of competition (Chapter 14, Article 2) and establishes contact points for the exchange of information between Parties (Chapter 14, Article 3). Last, in line with the cooperative nature of the chapter, competition is not subject to the AANZFTA dispute settlement mechanism. (Chapter 14, Article 4).

4.15 General provisions and exceptions

AANZFTA contains a number of general exceptions which make it clear that the Agreement does not prevent Parties from taking certain measures in certain circumstances. These exceptions acknowledge the regulatory right of the Parties to adopt or enforce measures to deal with a crisis or to achieve certain priority policy outcomes, even if these measures may affect their AANZFTA obligations. The exceptions contain disciplines to ensure that they cannot be abused for trade protectionist purposes.

Article XX of the WTO's General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article XIV of the GATS are incorporated into AANZFTA in relation to certain Chapters (Chapter 15, Article 1). These provisions (namely, GATT Article XX and GATS Article XIV) stipulate that the Parties are able to adopt or enforce measures necessary to protect public morals, human, animal or plant life, provided those measures are not used for trade protectionist purposes. Other exceptions include the ability to take measures relating to the conservation of exhaustible natural resources, and to protect national treasures or specific sites of historical or archaeological value or to support creative arts of national value. It should also be noted that GATT Article XX contains an important exception that imports made from prison labour may be prohibited. In its existing legislation, New Zealand has already operationalised the prohibition on imports made from prison labour.

AANZFTA also provides that a Party is not prevented from taking action which it consider necessary for the "protection of its essential security interests" (Chapter 15, Article 2) or to take measures to deal with serious balance of payments and external financial difficulties (Chapter 15, Article 4).

New Zealand's ability to take measures to accord more favourable treatment to Māori in fulfilment of Treaty of Waitangi obligations is expressly provided for in a Treaty of Waitangi exception (Chapter 15, Article 5).

4.16 Institutional provisions

AANZFTA establishes an "FTA Joint Committee" to review the implementation and operation of the Agreement and recommend any amendments to it (Chapter 16, Article 1). The FTA Joint Committee will meet within one year of AANZFTA entering into force and thereafter as the Parties agree.

In addition to the FTA Joint Committee, and as noted above, a number of specialist committees are also established under AANZFTA to facilitate the ongoing interaction of experts, including a Committee on Trade in Goods, a sub-Committee on ROO, a sub-Committee on SPS Matters, a sub-STRACAP Committee, a Committee on Trade in Services, an Investment Committee and an Intellectual Property Committee.

These committees will review and monitor the operation of their respective specialist areas, provide a forum to discuss any problems that might arise in the implementation of the Agreement and identify prospects for future joint coordination and strengthening of links. The requirement to convene each committee varies between the specialist areas.

A general review of AANZFTA will take place in 2016, and every five years thereafter (Chapter 18, Article 13). This review provides the opportunity to accelerate or expand the commitments under AANZFTA.

4.17 Consultations and dispute settlement

AANZFTA includes a consultation and dispute settlement mechanism for the avoidance or settlement of disputes between the Parties arising out of the Agreement.

The dispute settlement procedures in AANZFTA are in line with New Zealand's standard practice and WTO procedures. The process is compulsory, the outcomes are binding and the procedures for dispute settlement are sufficiently detailed to enable disputes to be dealt with swiftly and effectively. This ensures that New Zealand is able to pursue a matter to arbitration should it believe that another Party has failed to carry out its obligations under the Agreement. Correspondingly New Zealand may also be held to account if another Party believes New Zealand has violated its AANZFTA obligations.

If consultations are not able to resolve a dispute, a Party (or Parties) may request the establishment of an arbitral tribunal to make findings on the matter at issue (Chapter 17, Article 8). Such findings are binding on the Parties to the dispute. An AANZFTA Party that is not a party to the dispute, but has a substantial interest in a matter before the arbitral tribunal, may also make submissions and be heard by the Arbitral Tribunal as a third party (Chapter 17, Article 10).

Commitments under the Economic Cooperation, Competition, Electronic Commerce and SPS Chapters are excluded from the scope of the dispute settlement mechanism. Commitments under the Movement of Natural Persons Chapter are subject to the dispute settlement mechanism only in limited circumstances (Chapter 9, Article 9).

If the Arbitral Tribunal finds that a Party has failed to fulfil its obligations under the AANZFTA, then that Party must take steps to comply with its obligations within a reasonable period of time. If that Party does not take such steps within a reasonable period of time then convening a Compliance Review Tribunal (Chapter 17, Article 16) offering compensation or suspending concessions of equivalent effect (Chapter 17, Article 17) are options available to the disputing parties.

4.18 Final provisions

AANZFTA confirms that nothing in the Agreement can be construed as derogating from any rights or obligations that the Parties already have as WTO members (Chapter 18, Article 2) and that the Parties will undertake a general review of the Agreement, with a view to furthering its objectives, in 2016 (and every five years after that) (Chapter 18, Article 9).

4.19 Notification to the WTO

Upon signature, New Zealand, Australia and the ASEAN member countries will need to notify AANZFTA to the WTO as a free trade area within the meaning of GATT Article XXIV (goods) and GATS Article V (services).

4.20 Related Outcomes

Bilateral arrangements relating to temporary employment entry

In conjunction with the AANZFTA negotiations, but not as part of AANZFTA itself, New Zealand has entered into the following arrangements of less than treaty status for temporary employment entry into New Zealand as follows:

The Philippines:

- 100 registered nurses (applicants need not be in the Philippines at the time they apply for a visa, and may work in New Zealand for up to three months while seeking to meet registration requirements).
- 20 farm managers.
- 20 engineering professionals.

Viet Nam:

- 100 chefs.
- 100 engineering professionals.

These are new arrangements and only apply to the countries specified. They provide for entry as employees for up to three years dependent upon the employment agreement, without labour market testing and subject to specified qualifications requirements.

The effect of these arrangements is that (within the caps set out above) workers in those specified occupations can enter New Zealand without labour market testing even if labour market testing is otherwise required in any of the specified sectors generally. Workers from those countries and in those specified occupations will continue to be able to enter provided they have the qualifications and work experience specified in the arrangements even if the qualifications or work experience requirements are amended for workers from other source countries. The requirement that such workers hold a bona fide job offer will continue to protect employment opportunities and conditions for New Zealanders.

Employers and applicants would continue to need to meet standard immigration policy. Among other things, this requires a *bona fide* job offer (including market rates and terms and conditions, as well as proof that the business can afford to sustain the position), evidence that the applicant is qualified through qualifications and/or work experience to carry out the job, and that heath professionals will be able to meet relevant registration requirements. Standard health and character requirements would also be mandatory.

Bilateral arrangements relating to working holiday schemes

In conjunction with the AANZFTA negotiations, but again not as part of AANZFTA itself, New Zealand has reached understandings to enter into negotiations on reciprocal working holiday schemes with the Philippines and Viet Nam. Once negotiated, the schemes would provide for a maximum of 100 entrants from each country per annum. As with other similar schemes, these would be arrangements of less than treaty status.

Market economy status for Viet Nam

In a joint understanding concluded in association with AANZFTA, New Zealand has bilaterally acknowledged the market economy status of Viet Nam. Confirming Viet Nam's market economy status does not require any substantive legislative or regulatory change, nor will it change New Zealand's current approach to Viet Nam (eg in relation to the application of anti-dumping provisions). Confirming Viet Nam's market economy status was however an important objective for Viet Nam in the context of the AANZFTA negotiations.

Understanding on general exceptions provision

All Parties to AANZFTA, in an associated document of less than treaty status, also set out an understanding that measures taken in accordance with the general exceptions provision (Chapter 15, Article 1) may include measures taken to comply with the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, or other relevant international agreements. General exceptions, however, still have to be justified within the terms of that article and meet the disciplines ensuring that such exceptions cannot be used in a trade protectionist manner.

4.21 Application of AANZFTA between New Zealand and Australia

New Zealand and Australia have jointly agreed in an exchange of letters of treaty status that the AANZFTA obligations will only be applied to a limited extent between the two countries. It is considered that under the New Zealand Australia Closer Economic Relations Trade Agreement (ANZCERTA) umbrella of instruments New Zealand and Australia already have, or are working on, a broad and robust range of commitments aimed towards furthering the Single Economic Market.

New Zealand and Australia have however agreed that the tariff and Rules of Origin (ROO) commitments, including the Operational Certification Procedures, will apply between the two countries in order to maximise the benefits of the AANZFTA regional ROO outcome. This ensures that the AANZFTA cumulation principle will extend to trade between New Zealand and Australia – i.e. exports from New Zealand to Australia (and vice-versa) will be able to count components imported from ASEAN countries toward meeting the ROO requirements for receiving preferential tariff treatment.

New Zealand and Australia have also agreed that the General Exceptions Chapter will apply, including the Treaty of Waitangi provision. Certain framework provisions, such as the establishment of a free trade area, objectives and definitions have also been specified as applying between Australia and New Zealand.

4.22 The treaties on labour and environmental cooperation with the Philippines

These two instruments are treaty level, legally binding documents which were negotiated in the context of AANZFTA.

MOA with the Philippines on labour cooperation

The MOA contains the generally recognised "core" trade and labour principles and is consistent with the Government's 2001 "Framework for Integrating Labour into Free trade Agreements". These include the recognition by both parties that it is both inappropriate to set or use labour laws, regulations, policies and practices for trade protectionist purposes, or to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws, regulations, policies and practices. Both Parties reaffirm their obligations as members of the ILO and their commitment to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up.

The specific (reciprocal) obligations for New Zealand under the MOA are:

- To work to ensure that labour laws, regulations, policies and practices are in harmony with international labour commitments.
- To promote public awareness of labour laws and regulations domestically.
- To designate a national contact point within six months of entry into force to facilitate communication.
- To cooperate with the Philippines on labour matters of mutual interest and benefit.
- To provide funding to support mutually agreed cooperative activities.

- For the Labour Committee, which includes senior officials of the relevant government agencies responsible for labour matters, to meet within the first year of the MOA's operation and then subsequently every two years, unless otherwise mutually agreed. These meetings will serve to establish an agreed work programme of cooperative activities, oversee and evaluate those activities, serve as a channel for dialogue on matters of mutual interest, review the operation and outcomes of the MOA and provide a forum to discuss and exchange views on labour issues of interest or concern.
- Each Party may, as appropriate, invite the participation of its unions and employers and/or other persons and organisations of their countries in identifying potential areas for cooperation and in undertaking cooperative activities.

The MOA requires consultation in the event of an issue arising over its interpretation or application. The Parties are required to make every effort to resolve the matter through cooperation, consultation and dialogue. If a Party seeks a meeting to assist in the resolution of any such matter, the Parties shall meet as soon as practicable and, unless other mutually agreed, no later than 90 days following the request. If a matter is not resolved, it may be communicated to a meeting of the Labour Committee, which may include Ministers, for mutual discussions and consultations.

The MOA remains in force for three years from date of entry into force and shall automatically be renewed for further periods of three years unless one Party notifies the other Party in writing, through diplomatic channels, of its intention to terminate the Agreement at least six months prior to the intended date of termination.

MOA with the Philippines on environmental cooperation

The MOA contains the generally recognised "core" trade and environment principles and is consistent with the Government's 2001 "Framework for Integrating Environment into Free Trade Agreements". These include the recognition by both parties that it is inappropriate to either set or use environmental laws, regulations, policies and practices for trade protectionist purposes, or to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws, regulations, policies and practices.

The specific (reciprocal) obligations for New Zealand under the MOA are:

- To cooperate with the Philippines on mutually agreed environmental issues.
- To provide funding to support mutually agreed cooperative activities.
- To encourage and facilitate, as appropriate, certain cooperative activities.
- To designate a national contact point to facilitate communication.
- For the Environment Committee, which may include senior officials of their government agencies responsible for environmental matters or such other persons as deemed appropriate by each Party, to meet within the first year of the entry into force of the MOA and subsequently as mutually agreed. These meetings will serve to establish an agreed work programme of cooperative activities, oversee and evaluate those activities, serve as a channel for dialogue on matters of mutual interest, review the operation and outcomes of the MOA and provide a forum for resolving differences.
- Each Party may provide an opportunity for relevant stakeholders to submit views or advice to it on matters relating to the operation of the MOA.

The MOA provides for consultation to occur in the event of an issue arising over its interpretation or application. The Parties are required to make every effort to reach a consensus on the issue/s through cooperation, consultation and dialogue. If a Party seeks a meeting to assist in the resolution of any such issue/s the Parties shall meet as soon as practicable and, unless other mutually agreed, no later than 90 days following the request. The matter may be communicated to the Environment Committee, which may include Ministers, for consultations.

The MOA remains in force for three years from date of entry into force and shall automatically renew for further periods of three years unless one Party notifies the other Party in writing, through the diplomatic channel, of its intention to terminate at least six months prior to the intended date of termination.

5 MEASURES WHICH THE GOVERNMENT COULD OR SHOULD ADOPT TO IMPLEMENT THE TREATY ACTIONS

A very small number of legislative and regulatory amendments are required to align New Zealand's domestic legal regime with the rights and obligations created under AANZFTA and thereby enable New Zealand to ratify AANZFTA.

The following changes have been identified as being required:

- An amendment to the Tariff Act 1988 to enable the application of preferential tariff rates, and regulations to implement these rates;
- An amendment to the Tariff Act 1988 to provide for the transitional safeguard mechanism;
- An amendment to the Customs and Excise Act 1996 to allow for the treaty commitment to notify the names of issuing entities for certificates of origin; and
- Regulations will need to be introduced and/or amended under the Customs and Excise Act 1996 to give effect to the ROO obligations.

It has been proposed that an AANZFTA Bill be included in the 2009 legislative programme as a category 2 bill. The Bill and the relevant regulations should optimally be passed in the first half of 2009 as the Parties have indicated they would like to see AANZFTA enter into force on 1 July 2009.

6 ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL COSTS AND EFFECTS OF THE TREATY ACTIONS

6.1 Economic effects

6.1.1 Introduction

AANZFTA, as well as the MOAs with the Philippines, is expected to have an overall positive impact on the New Zealand economy. The economic impacts of AANZFTA are assessed in Sections 6.1.3 and 6.1.4 below pursuant to the framework which has been used to assess the Thailand CEP, the Trans-Pacific SEP, and the China FTA.

6.1.2 Relationship between trade and macroeconomic performance

Trade is an important factor in driving New Zealand's national economic performance. Indeed, the smaller the economy, the greater the benefits from trading, not least because the opportunities for "trading" domestically are more limited. Put simply, international trade provides small economies like New Zealand the opportunity to specialise including through innovating and adding value to products where they enjoy a comparative advantage. This benefit is perhaps of a lesser magnitude for larger economies since the size of the domestic economy is such that it already offers scope for the development of simple exchanges and comparative advantage-related specialisation. (Small) size therefore has been a significant driver of New Zealand's trade-related dependency and, importantly, its capacity to innovate and compete. Following on from this, changes in trade (particularly for small economies) may impact on the economy – for example, by affecting levels of prices, income or employment.

More generally, the relationship between trade and growth is well established. Extensive economic research has demonstrated that trade and growth are positively related, and an economy's openness to trade has been linked to the explanation of differences in the economic growth rate of countries.

6.1.2.1 Static Effects

The direct impact of trade liberalisation on economic growth may be described as the "static" effects. These include the gains derived from:

- Lowered tariff and non-tariff barriers in export markets which generate higher export returns and volumes.
- Domestic tariff liberalisation which generates efficiency gains from a better allocation of resources ("allocative efficiency"), cheaper consumption and competitive effects.

Where improved market access under FTAs enables exporters to achieve net increases in the value of their exports, this may translate directly into higher GDP, job growth and income. Moreover, the opportunity for local companies to increase market size through greater exports can increase productivity and efficiency through economies of scale. This may be achieved, for example, by the introduction of new processing technologies to service the larger market.

Output and productivity levels rise when resources shift to more efficient sectors of the economy as tariffs reduce. In a previously tariff-protected sector, imports will be cheaper and can be expected to expand their share of the market. Domestically-focused firms with higher cost structures as a consequence of tariff protection will respond by increasing their efficiency, reducing output sufficiently to reduce their costs or shifting resources into more competitive production. Over time, these processes will lead to greater specialisation and increased comparative advantage. These effects are primarily driven through simple tariff removal, suggesting that countries that liberalise the most are likely over time to benefit the most. At the same time, there are likely to be phases of adjustment and transition that affect sectors in different ways.

The extent to which domestic prices change as a consequence of FTAs depends on the size of the distortions being removed. It is also dependent on the degree of competition already prevailing in the domestic market. In general, lower tariffs will result in lower domestic prices. Producers gain access to intermediate goods, thus making their finished products more competitive in the domestic and export markets.

When an economy liberalises under preferential trade agreements, the gains may be reduced or even reversed due to the phenomenon of trade diversion. This describes situations where imports are sourced from FTA partners due to the margin of preference they enjoy over more efficient producers. Where FTA partners are already internationally competitive suppliers, however, the risk of trade diversion and thus welfare reduction is lower.

The impact of changes to the larger ASEAN economies' tariff regime on New Zealand exporters, and the impact on New Zealand domestic sectors of changes to the New Zealand tariff regime are considered in section 6.1.3.2 below.

6.1.2.2 "Second-Order" Effects

An increase in openness to trade helps spur productivity increases and growth within a country through more efficient allocation of resources, the stimulation of innovation and the transfer of knowledge and technology between countries. Productivity increases derived from the more efficient allocation of resources following tariff removal are considered to be static gains and were described in section 6.1.2.1 above.

The other source of productivity growth flowing from FTAs is "dynamic productivity gains". These effects are harder to quantify. They accumulate over time and may be attributable to the downstream effects of trade agreements, rather than the immediate impacts driven by tariff removal and improvements in market access alone. They may also be known as "second-order" effects.

Trade and investment may be stimulated through both the market access liberalisation provisions of FTAs and improvements in the regulatory framework brought about by the FTAs which increase transparency, fairness and predictability for businesses. As a result of the facilitation of increased trade and investment flows, companies are more exposed to competition, innovation, international benchmarking and develop stronger links with international business partners. Such exposure helps drive production and maintain New Zealand companies at the leading-edge in terms of best-practice across a range of issues (innovation, technology, knowledge, research and product/service development, etc). Spillovers from this process into the domestic economy can include the generation of ongoing productivity improvements (dynamic productivity gains) across the wider economy.

The "second-order" effects relating to the regulatory frameworks for bilateral trading relationships under FTAs are of particular relevance. The gains in the case of AANZFTA are assessed in section 6.1.4.

6.1.2.3 Measuring the Macroeconomic Impact of FTAs

FTAs have an impact on the macroeconomic indicators that measure the growth and trade flows of our economy. Economic theory suggests that the most relevant measure of the quantifiable impact of FTAs on the New Zealand economy as a whole is through the change in "welfare" (that is, the value to New Zealand consumers of a FTA in terms of enhanced income). The preferred welfare indicator is "real consumption" – the aggregated quantity of goods and services that the household can consume given current and future income flows. Changes in real GDP reflect only changes in the overall level of economic activity and not changes in net national income or welfare.

In broad terms, the magnitude of the macroeconomic effect of FTAs will be determined by the following factors:

- Contribution of exports and imports to the economy.
- Size of the barriers to trade being addressed in the FTA.
- Relative significance of bilateral trade between the two countries.
- Extent of dynamic productivity improvement.

6.1.3 Static effects on the New Zealand Economy of the AANZFTA

When applied to AANZFTA, the framework for assessing the economic impacts suggests that it will make a significantly positive contribution to New Zealand's economic growth prospects over time.

6.1.3.1 Magnitude of Effects

The section below applies the three factors outlined in section 6.1.2 to AANZFTA and explains why the overall impact of it on the New Zealand economy is expected to be positive.

Contribution of trade to the New Zealand economy

Trade makes a fundamental contribution to the New Zealand economy with exports of goods and services accounting for around 29 percent of GDP. As a small, geographically isolated nation, New Zealand firms are reliant on access to foreign markets to gain economies of scale and remain internationally competitive.

New Zealand's economy is also dependent on imports to help supply the range of goods and services to our producers and consumers. Imports are currently worth around 30 percent of GDP. New Zealand's ability to engage and compete successfully in the global economy will, therefore, be a defining factor in our future economic performance. The more successful New Zealand is at trading, the higher the standard of living it can afford. AANZFTA helps to cement this inter-relationship.

Size of the barriers to trade being addressed in AANZFTA

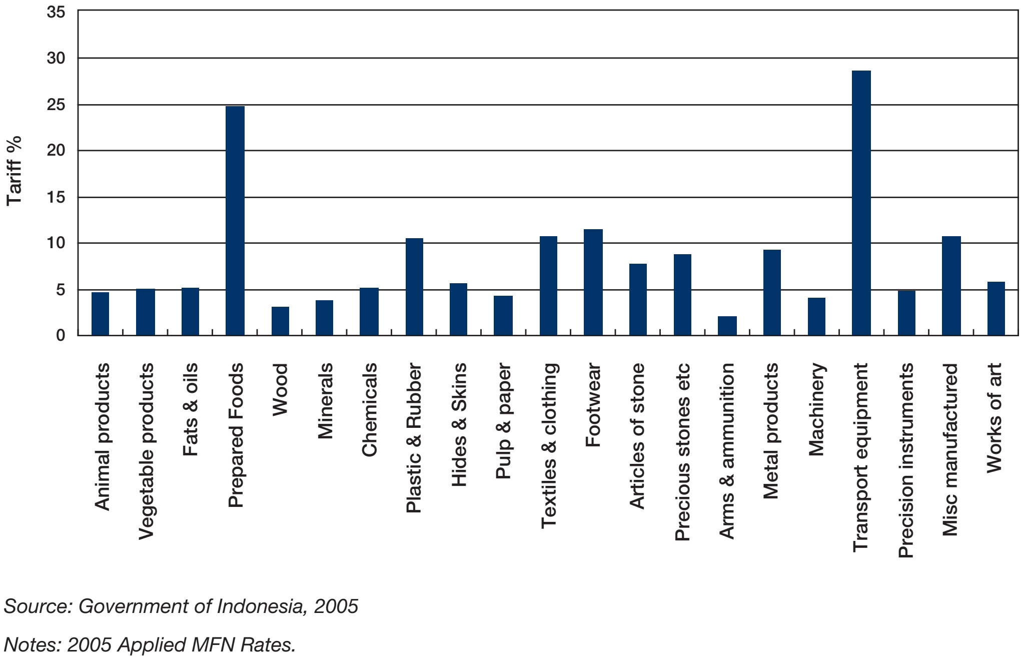
New Zealand

New Zealand is a relatively open economy, with 58 percent of all tariff lines currently duty free. In 2005,[22] New Zealand's average applied tariff across all products was 3.5 percent, with higher tariffs of between 17 and 19 percent applying to certain clothing and footwear products and carpets. The Post-2005 Tariff Policy agreed by Cabinet in September 2003 set a programme for the reduction of those high tariffs down to 10 percent by 1 July 2009 and for all other tariffs between 5 and 12.5 percent to be harmonised at 5 percent by 1 July 2008.

Indonesia

The majority of New Zealand's exports to Indonesia face tariffs of 5 percent. Many manufactured products face tariffs in the range of 10-15 percent; examples include electrical apparatus, air conditioners and certain refrigerators. Indonesia's applied tariffs varied from zero to 170 percent (for mainly alcoholic products). Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 9.8 percent in 2005. Other areas which have high average applied tariffs are transport equipment and prepared foods. These average applied rates compare to Indonesia's WTO average bound rates of 37.1 percent on all goods, and 47 percent on agricultural products.

TABLE 1 INDONESIA'S APPLIED AVERAGE TARIFFS 2005



Source: Government of Indonesia, 2005

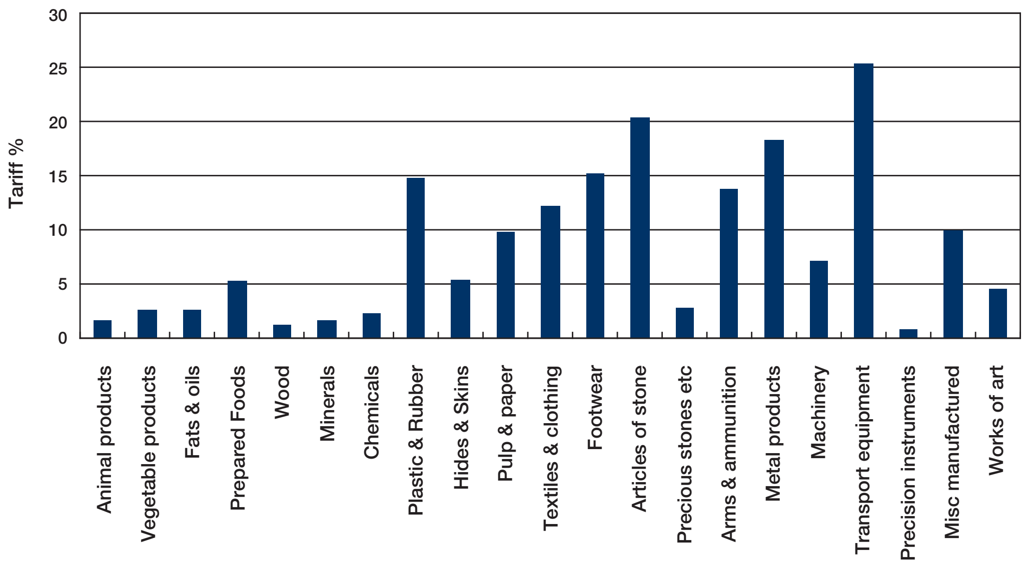
Notes: 2005 Applied MFN Rates.

22 2005 was the base period for most of the statistics that were at the heart of the AANZFTA negotiations and generally represented the most recent data that the ASEAN member countries could share with New Zealand. As a consequence, 2005 is utilised as the base date and reference point throughout the upcoming sections.

Malaysia

Around 58 percent of Malaysia's tariff lines are applied at zero percent. New Zealand's exports face tariffs which can be as high as 50 percent including on some iron or steel products. Overall, the highest applied tariff rate in Malaysia is 60 percent, which is applied in glassware and ceramic products. The product groupings which have the highest applied tariff rates are transport equipment, articles of stone, metal products, footwear and plastics and rubber. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 8.1 percent in 2005. These average applied rates compare to Malaysia's WTO average bound rates of 25.1 percent on all goods, and 79.7 percent on agricultural products.

TABLE 2 MALAYSIA'S APPLIED AVERAGE TARIFFS 2005



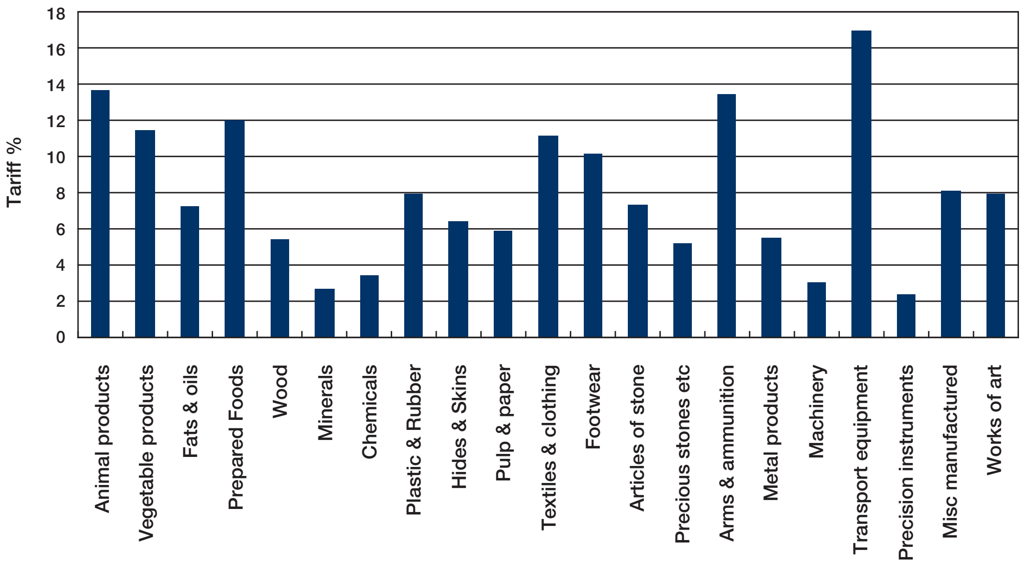
Source: Government of Malaysia, 2005

Notes: 2005 Applied MFN Rates.

The Philippines

In 2005, 96 percent of New Zealand's exports to the Philippines faced tariffs of 7 percent or less. Tariffs on fruit and vegetables are typically higher, with tariffs of 15 percent or more on products such as strawberries, avocados and onions. Overall, the majority of tariff lines in the Philippines have applied tariffs of less than 20 percent, while relatively few tariff lines are applied at zero percent. The highest applied tariff rate is 65 percent, and is applied in sugar products. The products which face the highest applied tariffs in the Philippines are in transport equipment, animal products, arms and ammunition, prepared foods, vegetable products and textiles, clothing and footwear. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 7.5 percent in 2005. These average applied rates compare to the Philippines' WTO average bound rates of 25.6 on all goods, and 34.7 percent on agricultural products.

TABLE 3 THE PHILIPPINES' APPLIED AVERAGE TARIFFS 2005



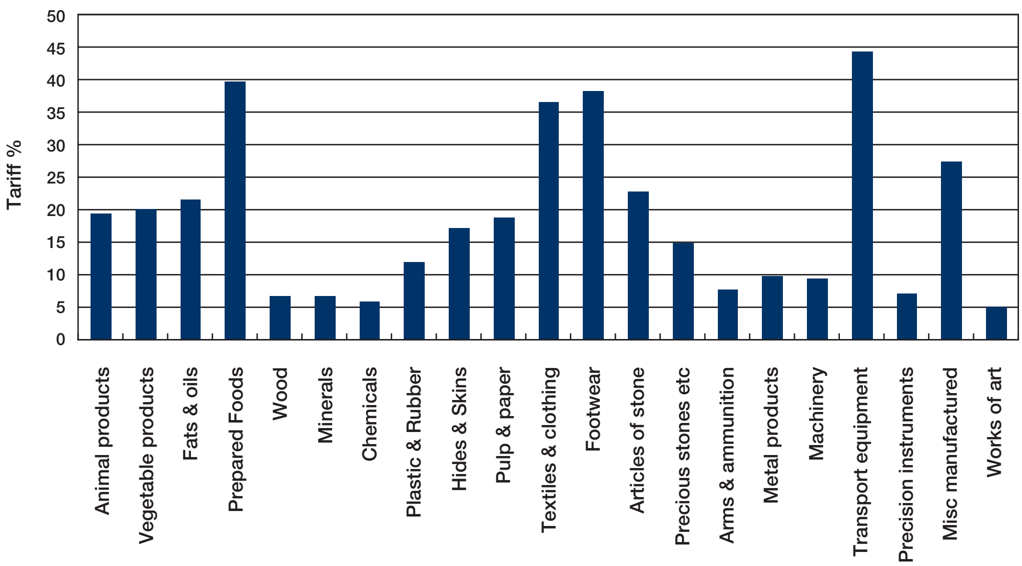
Source: Government of Philippines, 2005

Notes: 2005 Applied MFN Rates.

Viet Nam

The majority of New Zealand's exports to Viet Nam face tariffs of between 5 and 20 percent. Many processed dairy products, such as chocolate and ice-cream face tariffs of 20 percent or higher. In 2005, the highest applied tariff rate in Viet Nam was 100 percent (mainly for personal vehicles). Textiles, clothing and footwear have average applied rates higher than 35 percent, as do prepared foods. Manufactured products also face average tariffs of higher than 25 percent. About 30 percent of Viet Nam's tariffs are applied at zero percent. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 18 percent in 2005. Viet Nam has recently acceded to the WTO and its tariffs are now falling to meet the average bound rate of 11.4 on all goods, and 18.8 percent on agricultural products.

TABLE 4 VIET NAM'S APPLIED AVERAGE TARIFFS 2005



Source: Government of Viet Nam, 2005

Notes: 2005 Applied MFN Rates.

Brunei Darussalam

Under the Trans-Pacific Strategic Economic Partnership Agreement, tariffs on 92 percent of New Zealand's exports to Brunei Darussalam were eliminated from the entry into force of that Agreement. The remaining tariffs will be phased out by 2015.

Singapore

As Singapore provides duty free-access for New Zealand exports, including through existing FTAs such as the Trans Pacific SEP and New Zealand-Singapore CEP, there are no barriers to trade in goods to be addressed.

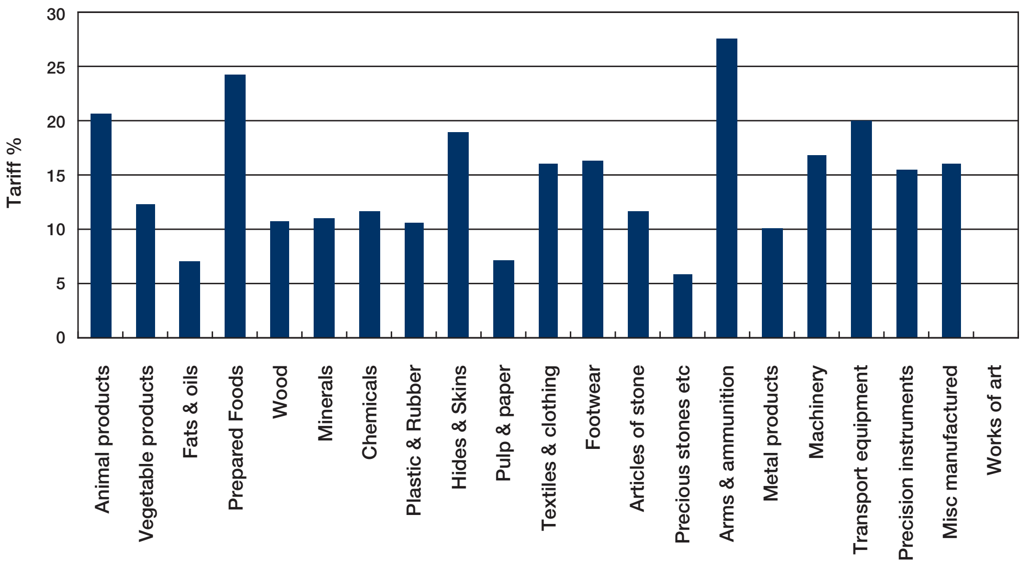
Thailand

The Thailand-New Zealand CEP already provides for the reduction and, over time, elimination of tariffs on all products. As such, New Zealand exporters already enjoy preferential tariff rates on many products, with 52 percent of New Zealand's exports to Thailand entering duty free. All of New Zealand's exports to Thailand will be duty free by 2025.

Cambodia

Cambodia's tariff regime is applied at zero, 7, 15, or 35 percent. Around 8 percent of product lines have an applied tariff rate of zero percent. The highest applied rate of 35 percent is applied across a wide range of product groups, with high concentrations in machinery, textiles and clothing, transport equipment, prepared foods, chemicals and animal products. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 14.7 percent in 2005. These average applied rates compare to Cambodia's WTO average bound rates of 19 percent on all goods, and 28.1 percent on agricultural products.

TABLE 5 CAMBODIA'S APPLIED AVERAGE TARIFFS 2005



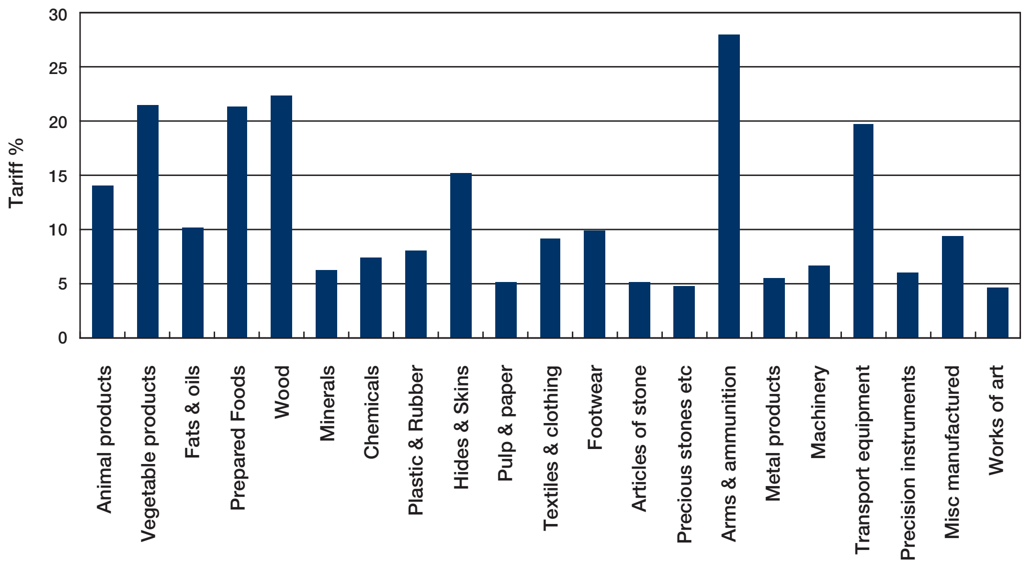
Source: Government of Cambodia, 2005

Notes: 2005 Applied MFN Rates.

Laos

Most of Laos' tariffs are applied at either 5 or ten percent. However, some applied rates stretch up to 40 percent. These affect fruit, vegetables, coffee and tea, alcohol, tobacco, plastics, wood, machinery, personal vehicles, furniture and some toys. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 10.1 percent in 2005. Laos is not a member of the WTO, so is not subject to WTO disciplines in respect of its tariff policies. As such, without AANZFTA there would be no upper limit on the tariffs that could apply to New Zealand exports to Laos.

TABLE 6 LAOS' APPLIED AVERAGE TARIFFS 2005



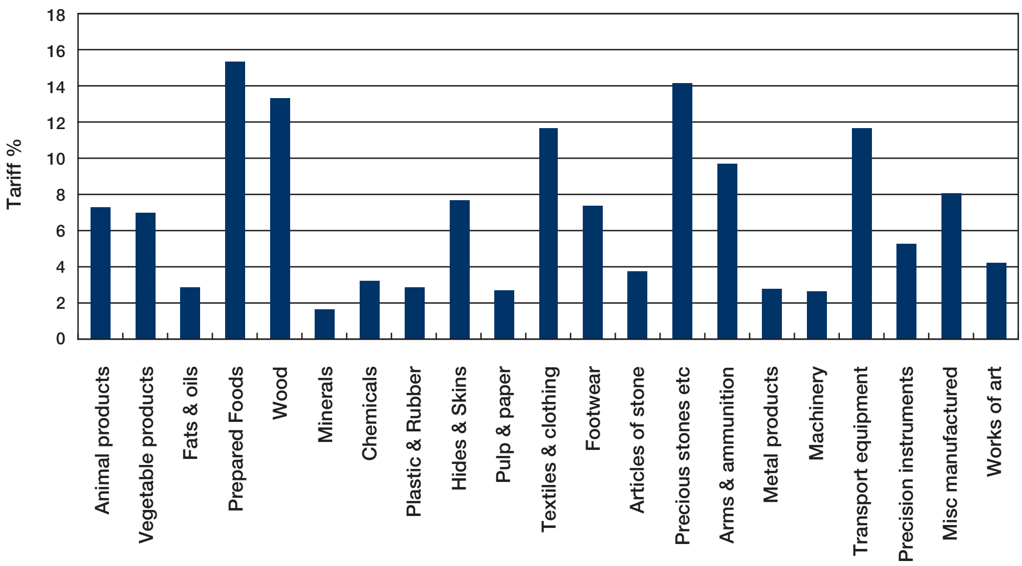
Source: Government of Laos, 2005

Notes: 2005 Applied MFN Rates.

Myanmar

Around 75 percent of Myanmar's applied tariffs are below 10 percent, with 92 percent applied at a tariff rate of 15 percent or lower. Myanmar's highest applied tariff rate is 40 percent, which is applied on alcohol and personal vehicles. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 6.1 percent in 2005. These average applied rates compare to Myanmar's WTO average bound rates of 83 percent on all goods, and 102.2 percent on agricultural products.

TABLE 7 MYANMAR'S APPLIED AVERAGE TARIFFS 2005



Source: Government of Myanmar, 2005

Notes: 2005 Applied MFN Rates.

Relative significance of New Zealand-ASEAN bilateral trade

New Zealand and the ASEAN countries have a complementary goods trading relationship, with New Zealand exporting large volumes of primary products and importing a range of manufactured goods from ASEAN. This has been reflected in the significant growth in bilateral trade flows in recent years.

New Zealand exports to the ASEAN countries have increased 145 percent since 1998 to around $3.7 billion per year. Over the same period, imports from the ASEAN countries have increased 258 percent to almost NZ$5.7 billion in calendar year 2007.

In terms of relative importance to New Zealand, in the 2007 calendar year:

- **Indonesia** was New Zealand's 7th largest export destination, with exports worth NZ$777 million. Indonesia was New Zealand's 14th largest source of imports, valued at NZ$731 million.
- **Singapore** was New Zealand's 10th largest export destination, with exports worth NZ$687 million. Singapore was New Zealand's 5th largest source of imports, valued at NZ$2,149 million.

- **The Philippines** was New Zealand's 11th largest export destination, with exports worth NZ$667 million. The Philippines was New Zealand's 26th largest source of imports, valued at NZ$216 million.
- **Malaysia** was New Zealand's 12th largest export destination, with exports worth NZ$651 million. Malaysia was New Zealand's 8th largest source of imports, valued at NZ$1,126 million.
- **Thailand** was New Zealand's 15th largest export destination, with exports worth NZ$567 million. Thailand was New Zealand's 9th largest source of imports, valued at NZ$1,125 million.
- **Viet Nam** was New Zealand's 23rd largest export destination, with exports worth NZ$362 million. Viet Nam was New Zealand's 36th largest source of imports, valued at NZ$135 million.
- **Myanmar** was New Zealand's 114th largest export destination, with exports worth almost NZ$5 million. Myanmar was New Zealand's 87th largest source of imports, valued at nearly NZ$2 million.
- **Brunei Darussalam** was New Zealand's 135th largest export destination, with exports worth NZ$3 million. Brunei Darussalam was New Zealand's 28th largest source of imports, valued at NZ$186 million.
- **Cambodia** was New Zealand's 146th largest export destination, with exports worth NZ$2 million. Cambodia was New Zealand's 94th largest source of imports, valued at NZ$1 million.
- **Laos** was New Zealand's 160th largest export destination, with exports worth NZ$755,940. Laos was New Zealand's 152nd largest source of imports, valued at NZ$3,899.

Detailed data on the composition of bilateral trade with each ASEAN member country is set out in the Annex.[23] Set out below are two tables that highlight the composition of New Zealand's trade with ASEAN as a whole.

TABLE 8 NEW ZEALAND'S TOP TEN EXPORTS TO ASEAN

Product	Export value (NZ$ M)	% total exports
Dairy	1,869.7	50%
Mineral Fuels	216.1	6%
Meat	178.8	5%
Cereal preparations	174.8	5%
Wood	170.8	5%
Pulp	129.5	3%
Machinery	113.3	3%
Iron and steel	101.0	3%
Food wastes	73.1	2%
Starch	64.7	2%
Subtotal top ten exports	**3,091.7**	**83%**
Total exports	**3,722.4**	

Data Source: New Zealand Customs

23 Use of 2005 data (with the exception of 2006 for Viet Nam) in such tables reflects the data which formed the basis for the negotiations.

TABLE 9 NEW ZEALAND'S TOP TEN IMPORTS FROM ASEAN

Product	Import value (NZ$ M)	% total imports
Mineral Fuels	2,148.4	38%
Electrical Machinery	581.9	10%
Machinery	493.7	9%
Ships	409.6	7%
Vehicles	306.3	5%
Plastic	264.2	5%
Paper	118.8	2%
Food wastes	109.6	2%
Furniture	98.7	2%
Rubber	77.2	1%
Subtotal top ten exports	**4,608.4**	**81%**
Total exports	**5,670.8**	

Data Source: New Zealand Customs

6.1.3.2 Specific Market Access Outcomes

The context for New Zealand's engagement with ASEAN countries has been set within the framework of its existing bilateral or plurilateral FTAs with Singapore, Brunei Darussalam, and Thailand and the re-engagement with Malaysia for a bilateral FTA. Cambodia, Laos, and Myanmar are least developed countries and, as such, already have duty free, quota free access to the New Zealand market. They were therefore not a key target for these negotiations. Against this background, New Zealand focused on those major markets where New Zealand did not have an existing FTA, or an ongoing separate negotiation. The outcomes in this area also reflect the AANZFTA Parties' recognition of each others differing levels of development as established in the AANZFTA's "guiding principles".[24] This was understood to mean inter alia, differentiated timeframes for tariff elimination with the developed countries (Australia and New Zealand) expected to undertake earlier tariff elimination than the developing and Least Developed Country (LDC) members of ASEAN.

Tariff elimination has been secured on all key products of trade interest to New Zealand in these major markets. Significant commercial benefits are provided to exporters through the elimination of tariffs on about 99 percent of New Zealand's current exports to such markets. Moreover, unlike in previous FTAs there are no special safeguards for agricultural products.

The key features by country are as follows (these outcomes are also summarised in Tables 10 and 11 below):

Indonesia

New Zealand's exports to Indonesia were valued at $777 million in 2007, making Indonesia New Zealand's largest export market in ASEAN. Under the AANZFTA, the percentage of New Zealand exports that are duty free increases from 36 percent in 2005, to 64 percent in 2010 and to 99 percent in 2020.

[24] The *Guiding Principles for Negotiation on ASEAN-Australia and New Zealand Free Trade Area (FTA)* can be found on the ASEAN Secretariat's website: www.aseansec.org/16799.htm

The Philippines

New Zealand's exports to the Philippines were valued at $667 million in 2007. In 2005, only 2 percent of New Zealand's exports to the Philippines entered duty free; this increases to 74 percent in 2010 and to 99 percent in 2020.

Viet Nam

Viet Nam is a rapidly growing export market for New Zealand. In 2007, exports were valued at $362 million, roughly double that of 2005. As a less developed (and newer) member of ASEAN, and consistent with the "guiding principles" for the AANZFTA, ie special and differentiated treatment, AANZFTA provides for slower tariff elimination timeframes for Viet Nam than those agreed for the Philippines, Indonesia and Malaysia. The percentage of New Zealand's trade that is duty free increases from 28 percent in 2006 to 83 percent in 2016. 99 percent of New Zealand exports to Viet Nam will be duty free by 2020.

Malaysia

Malaysia accounted for $651 million of New Zealand's exports in 2007. AANZFTA provides for the elimination of tariffs on over 97 percent of trade by 2013. This is a solid foundation for New Zealand's ongoing bilateral FTA negotiations with Malaysia. The remaining two percent of trade that is subject to tariff elimination after 2013, or non-elimination outcomes, face relatively high tariffs and account for a high proportion of duties paid on New Zealand exports to Malaysia.

Singapore

The AANZFTA reconfirms New Zealand exporter's existing duty free access to the Singapore market, where exports were valued at $687 million in 2007.

Thailand

New Zealand has an existing bilateral FTA with Thailand (the Thailand CEP) which provides for the elimination of all tariffs by 2025 (this is confirmed by AANZFTA). New Zealand exports to Thailand were valued at $567 million in 2007.

Brunei

New Zealand has an existing FTA with Brunei (the Trans-Pacific Strategic Economic Partnership Agreement). This provides for the elimination of almost all tariffs by 2015. New Zealand's exports to Brunei were valued at NZ$3 million in 2007.

Laos, Cambodia and Myanmar

Total New Zealand exports to these three Least Developed Countries (LDCs) were valued at $7 million in 2007. As these three countries have least developed status, their exports have entered New Zealand duty free and quota free since 2001 (when New Zealand agreed to provide LDCs with duty free and quota free access to its domestic market). The outcomes of AANZFTA provide for tariff elimination by these three countries on between 85 and 88 percent of tariff lines, with 2020 being the earliest date for tariff elimination. Given their least developed status, these countries were not a primary focus in these negotiations.

TABLE 10 TARIFF ELIMINATION UNDER AANZFTA

		Singapore	Brunei	Thailand	Malaysia	Indonesia	Philippines	Viet Nam	Laos, Cambodia and Myanmar
	Coverage		93%	87%	90%	85%	85%	85%	83% (80% for Myanmar)
Normal Track	Treatment	100% of tariffs eliminated on entry-into-force.	Tariffs of 5% or less will be eliminated in 2010.					Tariffs of less than 20% will be eliminated in 2016.	Tariffs will be eliminated by 2021.
			Tariffs of less than 10% eliminated in 2011.					Tariffs of less than 25% will be eliminated in 2017.	Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement, and tariffs of greater than 5% will be subject to non-linear reductions prior to elimination.
			Tariffs of less than 15% eliminated in 2012.					All other tariffs will be eliminated by 2018. Elimination in 2016 and 2017 has been negotiated on some products of key export interest to New Zealand. Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement and many will be subject to reductions prior to elimination.	
			The remaining tariffs will be eliminated by 2013. Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement, and many will be subject to reductions prior to elimination.						
Normal Track with Flexibility	Coverage	0%	0%	3%	0%	5%	5%	5%	5%
	Treatment	Not Applicable	Not Applicable	Tariffs will be eliminated by 2015. Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement, and many will be subject to reductions prior to elimination.	Not Applicable	Tariffs will be eliminated by 2015. Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement, and many will be subject to reductions prior to elimination.		Tariffs will be eliminated by 2020. Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement, and will be subject to reductions prior to elimination.	Tariffs will be eliminated by 2024. Tariffs cannot be raised above their 2005 rates from entry-into-force of this Agreement, and will be subject to reductions prior to elimination
Sensitive Track 1	Coverage		3%	7%	6%	6%	6%	6%	7% and (10% for Myanmar)
	Treatment	Not Applicable	Tariffs will be reduced and eliminated by 2020	Tariffs will be reduced and eliminated by 2020	Tariffs will be eliminated by 2020	Tariffs will be reduced and eliminated on 3-5% of tariff lines by 2020.		Tariffs of 5 percent or less will be capped at their 2005 rate.	Tariffs of 5 percent or less will be capped at their 2005 rate.
						Tariffs on other lines will be reduced by 20% or to 5% whichever is lower.		All other tariffs will be reduced to 5 percent by 2022.	All other tariffs will be reduced to 5 percent by 2025.
Sensitive Track 2	Coverage		3%	3%	4%	4%	4%	4%	5%
	Treatment	Not Applicable	The treatment on these lines includes caps at 50%, 75%, and exclusion from commitments.					The treatment on these lines includes caps at 50% of the 2005 rate, a reduction to 50%, a reduction to 20 percent, and exclusions from commitments.	Up to 2% of lines will be excluded from tariff commitments. Other lines will be subject to tariff caps and limited tariff reductions.

TABLE 11 KEY MARKET SUMMARY OF OUTCOMES

	Indonesia		Viet Nam		Philippines		Malaysia	
	% of NZ Trade Duty Free	Key Products Duty Free	% of NZ Trade Duty Free	Key Products Duty Free	% of NZ Trade Duty Free	Key Products Duty Free	% of NZ Trade Duty Free	Key Products Duty Free
Already Duty Free	36.3%	Pet food, woodpulp, logs, paper, scrap metal	27.6%	Logs and sawn timber, furskins and hides	1.9%	Circuit boards, pulp wood	82.9%	Milk powder, beef, scrap metal, casein, fish fillets, woodpulp, cream
Entry into force	36.3%		27.6%		2.0%	Some footwear, some automotive parts	89.0%	Butter, cheese, ghee, honey, fruit juice, canned paua
2010	63.8%	Whole milk powder, cheese, butter, wool, paper and paperboard, apples, kiwifruit, navigational equipment, frozen vegetables	27.6%		74.1%	Casein, milk powder, cheese, butter milk, some forestry products	92.1%	Paper, apples, tallow, machine parts, icecream
2011	63.8%		27.6%		77.9%	Some dairy and forestry products, kiwifruit, apples	95.5%	Paper, sweetcorn, beans, fruit juice
2012	64.3%	Static convertors, air conditioners, locks, aluminium, toys	27.6%		80.1%	Beef, frozen french fries, toys	97.2%	Electrical parts, fibreboard, kiwfruit, chocolate
2013	64.3%	Soap, jewellery, refrigerators	27.6%		81.5%	Some forestry products, bath fittings	97.3%	Some iron and steel products, paper
2014	64.4%	Kitchen and bath fittings (e.g baths and sinks), barbed wire	27.6%		81.5%		97.3%	
2015	64.5%	Aluminium, steel and plastics	27.6%		82.4%	Wine, salt	97.3%	
2016	64.5%		83.3%	Whole and skim milk powder, butter fat, some paper and wood products, apples, kiwfruit, sheepmeat	82.4%		97.9%	
2017	66.4%	Frozen french fries, whey, butter oil	86.8%	Butter, liquid milk and cream, paper products, cheese, whey, aluminium	89.7%	Some pulp and paper products	97.9%	
2018	66.8%	Liquid cream	88.4%	Beef, salmon, magarine, ice-cream, wood	89.7%		97.9%	
2019	86.6%	Unsweetened skim milk powder, some whole milk products	91.4%	Some dairy products (including casein and buttermilk), avocados, fruit juice	99.6%	Liquid milk, butter, cheese, beef offal	97.9%	
2020	98.6%	Beef, beef offal, chocolate	98.8%	Butter oil, particle board, paper, air conditioners, whiteware	99.6%		98.9%	Newsprint, plastics, paints, whiteware
2021	98.6%		98.8%		99.6%		98.9%	
2022	98.6%		98.8%		99.6%		98.9%	
2023	98.6%	Apple juice, jam	98.8%		99.6%		98.9%	
2024	98.6%		98.8%		99.6%		98.9%	
2025	98.6%		98.8%		99.6%		98.9%	
Not Subject to Elimination	1.4%	Sheep meat and some meat of lesser export significance, frozen fish fillets, alcohol, some forms of dairy products, avocados, honey	1.2%	Steel, wine, seafood (including frozen fish fillets)	0.4%	Onions, goat meat, and some steel, plastic and machinery products	1.1%	Poultry, steel, wine, liquid milk

Non-elimination Outcomes

AANZFTA provides for tariff elimination on between 85 and 100 percent of tariff lines: Viet Nam is offering tariff elimination on 90 percent of tariff lines, and Indonesia and the Philippines are both offering elimination on between 93-95 percent of tariff lines. This is typical of the type of FTA that ASEAN usually undertakes. Tariffs are eliminated on a lower proportion of tariff lines under AANZFTA than under the New Zealand-China FTA (97 percent) and the Thailand CEP (100 percent). Under AANZFTA, the lines not subject to tariff elimination are scattered throughout each ASEAN member country's schedule on the basis of their own sensitivities.

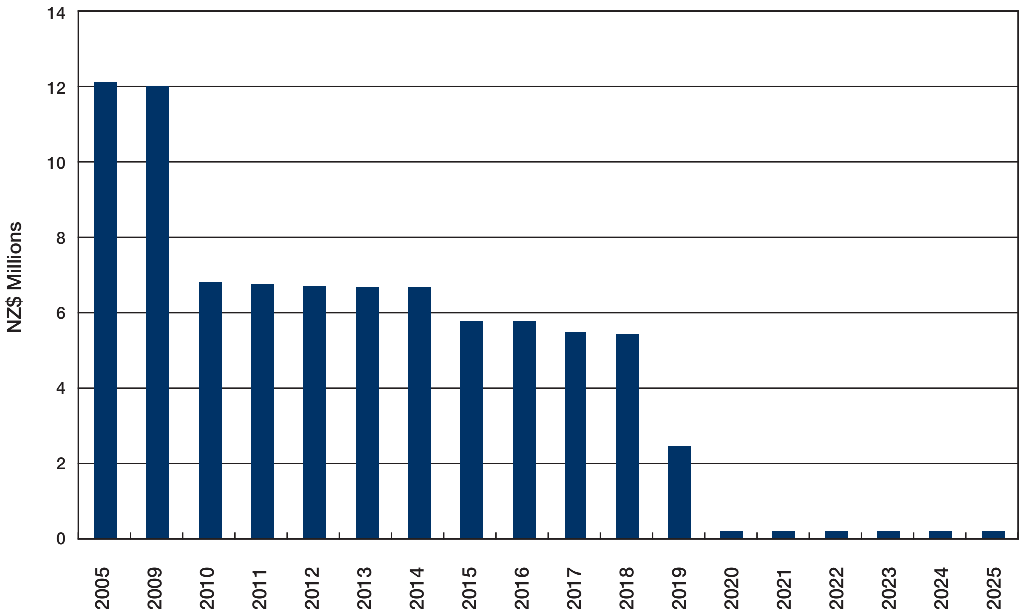
This means that although AANZFTA provides for tariff elimination on all key products of New Zealand export interest in major markets, there are instances of products of global export interest to New Zealand that are not subject to tariff elimination outcomes in AANZFTA – in these cases, the tariff will either be reduced, subject to a "tariff rate quota" bound, or the MFN tariff rate will apply. These include some horticulture, wine, seafood, meat, dairy and steel products. Collectively, exports of such products constitute only one percent of New Zealand's exports to the major markets of Indonesia, Malaysia, the Philippines and Viet Nam.

Estimated Reduction in Duties on New Zealand exports to Key ASEAN Markets

Indonesia

New Zealand exports to Indonesia incurred estimated duty payments of $12.1 million in 2005. Table 12 shows the estimated reduction in duty payments on current exports to Indonesia over the implementation period of AANZFTA. The value of duty savings will increase as exports to Indonesia grow, including because of increased export activity in response to tariff liberalisation in this key export market.

TABLE 12 REDUCING DUTIES ON NEW ZEALAND EXPORTS TO INDONESIA UNDER AANZFTA



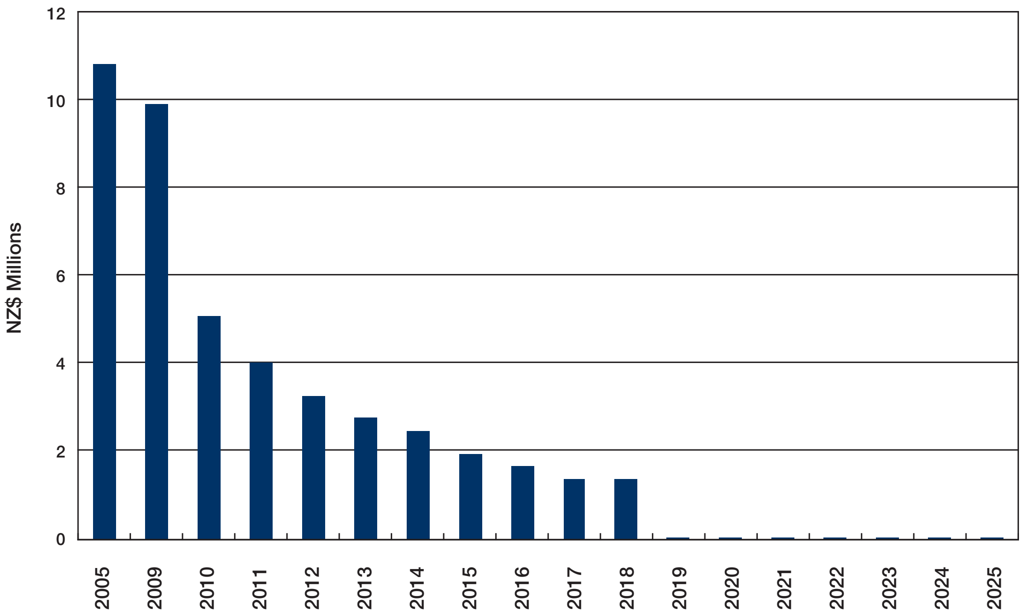
Data Source: Government of Indonesia,

New Zealand Ministry of Foreign Affairs and Trade calculations

The Philippines

New Zealand exports to the Philippines incurred estimated duty payments of $11.4 million in 2005. Table 13 shows the estimated reduction in duty payments on current exports to the Philippines over the implementation period of AANZFTA. The value of duty savings will increase as exports to the Philippines grow, not least because of increased New Zealand exports to the Philippines in response to tariff liberalisation.

TABLE 13 REDUCING DUTIES ON NEW ZEALAND EXPORTS TO THE PHILIPPINES UNDER AANZFTA



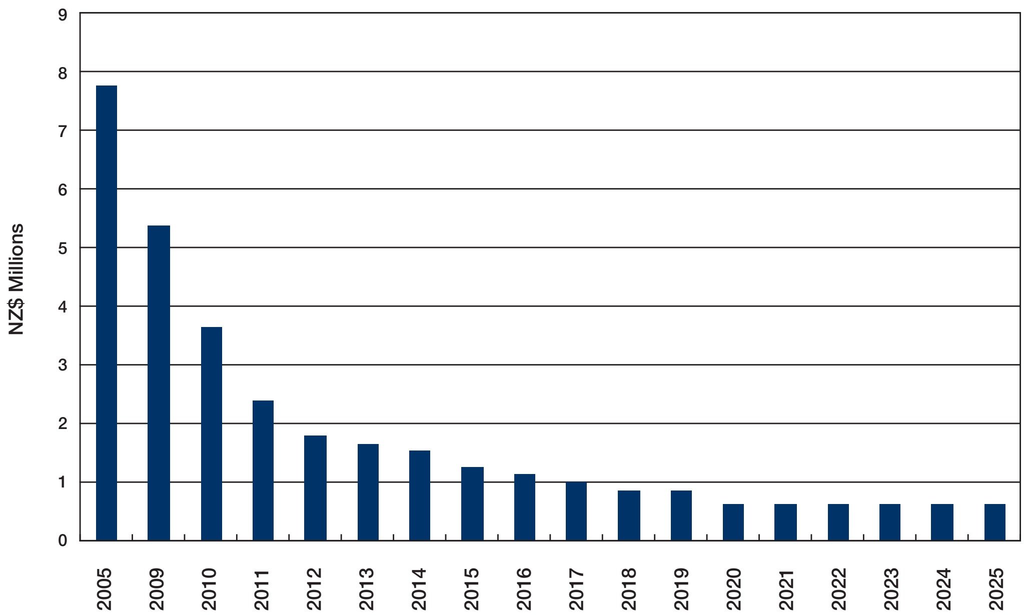
Data Source: Government of the Philippines,

New Zealand Ministry of Foreign Affairs and Trade calculations

Malaysia

New Zealand exports to Malaysia incurred estimated duty payments of $7.9 million in 2005. Table 14 shows the estimated reduction in duty payments on current exports to the Malaysia over the implementation period of AANZFTA. The value of duty savings will increase as New Zealand exports to Malaysia expand, including as a consequence of a rise in exports in response to tariff liberalisation in Malaysia.

TABLE 14 REDUCING DUTIES ON NEW ZEALAND EXPORTS TO MALAYSIA UNDER AANZFTA



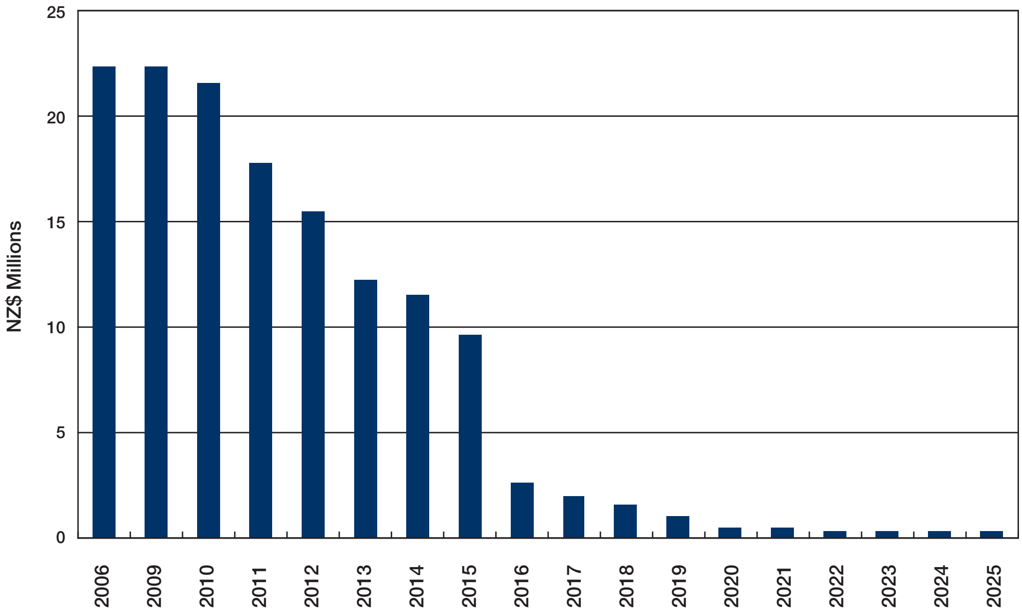
Data Source: Government of Malaysia,

New Zealand Ministry of Foreign Affairs and Trade calculations

Viet Nam

New Zealand exports to Viet Nam resulted in estimated duty payments of $22.4 million in 2006. Table 15 shows the estimated reduction in duty payments on current New Zealand exports to Viet Nam over the implementation period of AANZFTA. The value of duty savings is expected to increase as New Zealand exports to Viet Nam grow, including because of an expected growth in exports in response to tariff liberalisation.

TABLE 15 REDUCING DUTIES ON NEW ZEALAND EXPORTS TO VIET NAM UNDER AANZFTA



Data Source: Government of Viet Nam,
New Zealand Ministry of Foreign Affairs and Trade calculations

6.1.3.3 Potential Impacts on New Zealand of Tariff Liberalisation under AANZFTA

In broad terms, New Zealand's commitments on tariff liberalisation follows a similar structure to the commitments of Australia and ASEAN countries, with 90 percent of tariff lines contained in a "normal track" (with elimination between entry into force and 2012) and 10 percent of lines in a "sensitive track" with tariffs to be eliminated between 2013 and 2020. The most significant years for tariff elimination are entry into force (80 percent of lines), 2010 (a further 5 percent of lines), 2012 (another 5 percent of lines), 2017 (6 percent of lines), 2020 (4 percent of lines). Tariffs on a small number of tariff lines are eliminated each year between 2013 and 2019. The structure of the New Zealand offer and the effect on Indonesian, Malaysian, Philippine and Vietnamese trade is set out in Table 16 below.

TABLE 16 STRUCTURE OF NEW ZEALAND OFFER

	Percentage of Tariff Lines	Key Products Becoming Duty Free	Percentage of NZ Imports Already Duty Free from:			
			Indonesia	Malaysia	Philippines	Viet Nam
Already Duty Free	58.6%		78.5%	77.9%	76.8%	26.4%
2009	79.8%	Some plastics, rubber (excluding new car tyres), wood, glass fibres, manufactures, some food products	78.8%	83.3%	80.4%	28.4%
2010	84.7%	Some plastics, rubber	80.0%	86.6%	82.9%	32.4%
2011	84.7%	Nil	80.0%	86.6%	82.9%	32.4%
2012	90.0%	Some plastics, wood, yarn, certain fabrics, some iron or steel products, glass wool insulation, refrigerators, tug boats, mattresses, upholstered seats with wooden frames	81.1%	91.9%	88.1%	39.2%
2013	90.3%	Some metal furniture, bicycles	82.0%	92.4%	91.3%	51.1%
2014	90.3%	Some iron and steel bars and rods	82.0%	92.4%	91.3%	51.1%
2015	90.3%	Saddles and harnesses	82.0%	92.4%	91.3%	51.7%
2016	90.4%	Very narrow range of fabrics	82.3%	92.4%	91.3%	52.0%
2017	96.5%	Fabrics, carpets, clothing, footwear, some iron or steel, new car tyres	83.9%	93.4%	94.6%	54.5%
2018	96.7%	Footwear	85.0%	93.4%	94.7%	65.6%
2019	96.8%	Wooden furniture	87.2%	95.5%	95.5%	92.0%
2020	100.0%	Some: Clothing, plastics and wood, chemicals, iron and steel, food products	100.0%	100.0%	100.0%	100.0%

While there is a reduction in most tariffs prior to elimination, this does not occur in a year-by-year linear fashion as was the case with the China FTA. In fact, because of New Zealand's scheduled unilateral tariff cuts, New Zealand's actual current applied tariffs on many lines are likely to already be below the AANZFTA commitment for most of the implementation period. However, all New Zealand rates will eventually reduce to zero.

"Sensitive Track": Elimination in 2013-2020

Products in this part of New Zealand's commitments to ASEAN generally fall into three categories:

- Clothing, footwear, carpets and some textile products (TCFC). These have generally been accorded earlier elimination dates in previous FTAs and typically have higher applied tariffs.
- Some manufactured products. Although these products, have lower applied tariffs and relatively early elimination dates under previous FTAs they have been identified as sensitive to imports from ASEAN member countries. These products include (wooden) furniture, some steel products and plasterboard (gib-board).
- Items of trade interest to certain ASEAN countries, on which a later date for tariff elimination has been provided in order to balance New Zealand's commitments against commitments secured from each ASEAN country. Examples of such products include some chemicals, plastics and manufactured products.

The 2020 elimination date represents a twelve year timeframe for tariff elimination. This is longer than the ten year timeframe for tariff elimination in the Thailand CEP and the eight year timeframe agreed for the New Zealand-China FTA. The twelve year timeframe represents a balanced and calibrated response by New Zealand to the undertakings made by key ASEAN negotiating partners. For instance, many sensitive lines for ASEAN will not be eliminated until 2020 as well (eg beef in Indonesia).

ASEAN is New Zealand's third largest source of imports overall, and is a major supplier of products in the traditionally sensitive TCFC areas. In general, it is these product areas where New Zealand maintains its highest applied tariffs, currently up to 10 percent. ASEAN is also a significant source of imports of a wide range of manufactured products where New Zealand tariffs are now at 5 percent, such as furniture and some plastics and steel items.

Against this background, table 17 below shows these key areas of New Zealand's domestic sensitivity and the corresponding tariff outcomes under AANZFTA.

TABLE 17 TARIFF OUTCOMES IN KEY AREAS OF NEW ZEALAND'S DOMESTIC SENSITIVITY

			Percentage of imports from ASEAN on which tariffs will be eliminated								
	Imports from ASEAN 2005 (NZ$ millions)	Duties in 2005 (NZ$)	% Duty Free in 2005	% Duty Free in 2009	% Duty Free in 2010	% Duty Free in 2012	% Duty Free in 2013-2016	% Duty Free in 2017	% Duty Free in 2018	% Duty Free in 2019	% Duty Free in 2020
Plastic & Rubber	262.3	2,931,466	64.1%	75.2%	77.7%	82.3%		87%			100%
Textiles & clothing	73.6	4,321,113	34.1%	34.2%	34.9%	39%		53.6%			100%
Footwear	26.2	3,806,977	5.1%	5.2%	7.5%			13.1%	96.1%		100%
Metal products	97.5	706,759	34.9%	44.1%	51.1%	74.2%	80.3%	81.7%		83,1%	100%
Furniture	102.4	4,545,334	0.1%		0.5%	31.1%				90%	100%
Miscellaneous manufactures	28.9	630,373	17.5%	36.6%	51.4%	74.8%					100%

As can be seen from Table 17, extended timeframes for tariff elimination have been provided for many TCFC products from ASEAN countries. These items have traditionally been sensitive for New Zealand and only isolated products of minimal trade interest to ASEAN are subject to elimination prior to 2017. Similarly, extended timeframes for tariff elimination are also provided for some steel, furniture, new tyres and manufactured products where domestic sensitivities to imports from ASEAN have been identified. These timeframes are typically longer than in the previous FTAs that New Zealand has concluded. On the other hand, AANZFTA follows the approach in some previous agreements such as the Thailand CEP by providing for a relatively high proportion of tariff lines to move to zero on entry into force. Consequently, for some products there will be earlier tariff elimination than under the recently concluded FTA with China, but this is not in areas of particular domestic sensitivity.

Consultation with New Zealand industry has shown that views vary on the issue of the elimination of New Zealand tariffs for ASEAN. Four key themes were evident in the majority of import-sensitive sectors:

- Businesses are already planning on the basis of the post-2005 tariff programme that sets out unilateral cuts in tariffs through to July 2009 and which will be held at those levels until June 2011.
- There is a general level of comfort with the approach adopted in New Zealand's previous FTAs such as the Thailand CEP and the Trans-Pacific SEP. These have resulted in a high percentage of tariffs eliminated on entry-into-force, further mid-range tariffs eliminated by 2008/10 and the highest, most sensitive, tariffs eliminated by 2015.
- There is an awareness that the levels of domestic protection will be altered following the implementation of tariff commitments contained in FTAs concluded with major sources of imports such as China. This will mitigate the effect of tariff commitments in other FTAs, including AANZFTA.
- There is a strong desire to ensure that the trade remedies regime available under the WTO to protect domestic industry from import surges and unfair competition would not be diluted through AANZFTA. As noted elsewhere in this report, this has been secured.

The ASEAN countries already have a significant share of the imports in many of New Zealand's import-sensitive sectors. The longer phase-out periods (in some cases through to 2020) included in AANZFTA should help to mitigate any negative impacts of the tariff reductions under the Agreement by allowing domestic industry a more lengthy transition period. This will allow domestic industries more time to adjust. Should some negative effects emerge, New Zealand can, of course, continue to have recourse to all existing WTO trade remedy-related measures as well as the additional safeguard mechanism that is contained in AANZFTA if the reduction in tariffs under AANZFTA results in increased imports that cause serious injury to a domestic industry.

Potential Impacts on New Zealand of Australia's Tariff Liberalisation under AANZFTA

Since the introduction of CER in 1983, New Zealand exporters have enjoyed preferential access to the Australian market. Australia is now New Zealand's largest export destination, with exports in 2007 worth over $8.0 billion. This preferential access has assisted New Zealand exporters to develop competitive advantages over third country exporters, including the ASEAN economies. The reduction of Australian tariffs on imports from ASEAN will, however, erode the advantage that New Zealand exports currently have in the Australian market through CER.

Australia has committed to remove all tariffs on products from the ASEAN countries by 2020. This gradual reduction will test the competitiveness of New Zealand's exports into Australia in areas of mutual interest with the ASEAN countries. More particularly, there are a significant number of product lines on which Australia has agreed to eliminate tariffs relatively quickly. Examples of this include footwear and automotive parts, on which Australia has committed to tariff elimination upon entry into force.

New Zealand exporters have however, already begun to adjust to the reductions in their preferential levels of access to the Australian market. This has occurred as a result of Australia's tariff liberalisation undertaken as a consequence of WTO-related commitments, and its obligations to its other FTA partners, including the United States, Singapore, Thailand and most recently Chile.

6.1.3.4 ***Potential Impacts on the New Zealand Economy of the Outcome in Services***

The services commitments that New Zealand has made to the ASEAN countries are all within existing policy settings. In practice, therefore, those sectors covered by such commitments are already open to foreign competition. It is not expected that the binding of this degree of openness to the ASEAN countries in AANZFTA will have any adverse impact on the New Zealand economy.

Trade in services and particularly the impact of changes in the conditions faced by service suppliers is more difficult to measure compared to trade in goods. Many analyses rely on surveys and other qualitative data, rather than quantitative material. Such analyses are therefore difficult to quantify in a meaningful way beyond the general sectoral headings. For instance, services trade statistics may not take account of the sales taking place in another market through the commercial presence of a New Zealand firm there. This is due to the inherent difficulty in collecting disaggregated services data and also because of confidentiality issues related to the collection of services statistics.

There are some services sectors like tourism and education however, where some quantitative material is available. New Zealand's services trade has expanded in recent years, particularly in the sectors of tourism and education. In 2007, almost 87,000 tourists from ASEAN countries visited New Zealand, making it one of New Zealand's larger tourism markets. In the area of education, ASEAN student numbers studying in New Zealand have grown to over 7,800 in 2007. AANZFTA therefore provides a good base on which to build and expand services trade as ASEAN economies develop and open further to foreign service providers.

ASEAN member economies are rapidly growing and most are still developing their domestic services industries. This creates opportunities for New Zealand services exporters, but also brings challenges given the fact that many of New Zealand's services exporters are small niche operators which struggle to establish a presence in external markets.

Given their relatively small size, the additional certainty and transparency for services provided by AANZFTA is especially important to New Zealand services suppliers. This will provide them with greater confidence and certainty that the "rules of the game" will not change to their disadvantage. This in turn provides the opportunity for them to deepen and broaden their engagement within the region, build new and broaden existing relationships and increase the integration of the New Zealand service sector in south-east Asia. This is expected to facilitate further growth in services exports regionally.

6.1.3.5 Potential Impacts on the New Zealand Economy of the Outcome on Investment

As noted in section 2.2.1, the investment relationship between New Zealand and the ASEAN countries is growing quickly, having trebled since 2002. In the case of AANZFTA, and given there is no market access outcome for investment agreed at this point, the outcome will still have positive benefits for New Zealand in two inter-related ways: "signalling"; and broader dynamic effects.

In terms of "signalling", the AANZFTA outcome, including the added-value of the investment protections (ie over and above existing conditions for New Zealand investors and investments into the region), is expected to generate greater interest in New Zealand both as a source of investment into the region, but also as a location for investment from the region.

More generally, investment flows in both directions have a number of benefits which the investment protections negotiated in AANZFTA can help maintain and facilitate. These benefits include those direct capital and portfolio flows – ie the 'static' and traditional macro-economic benefits from investment. These in turn help drive dynamic productivity gains including the way in which investment can attract and support innovation, including through the transfer of managerial skills and advanced technical know-how. Improved and adaptable skills and new organisational techniques, technologies and management practices can yield competitive benefits and enhance factor productivity for countries like New Zealand as well as help sustain employment as economic and technological conditions change overtime.

The Investment Chapter contains a range of protection elements which relate in particular to the equitable treatment of investments once established in the host market and introducing new commitments on protections for investments in those countries where such commitments do not yet exist for New Zealand. At a time when New Zealand government policy is focusing on the potential gains to New Zealand of increased outward investment, AANZFTA provides a credible regional legal framework for investors and their investments at an opportune time.

Given the importance of the availability of foreign capital and opportunities for internationalisation of New Zealand business in New Zealand's economic development, a growing bilateral investment relationship with the ASEAN economies resulting from AANZFTA can be expected to have a positive impact on the New Zealand economy. The AANZFTA outcome does not, however, compromise New Zealand's existing regulatory environment and New Zealand's investment screening regime under the Overseas Investment Act 2005 will continue to apply to investments from the ASEAN economies.

6.1.3.6 Conclusions Regarding Static Gains to the New Zealand Economy

Based on the above assessment, it is possible to conclude that there will be overall positive static gains to the New Zealand economy as a whole from the reciprocal market access liberalisation under AANZFTA.

As discussed in Section 6.1.2.1, the direct impact of trade liberalisation on economic growth is essentially derived from reduced tariff and non-tariff barriers. These benefits are likely to vary from sector to sector, and among individual companies, depending on the significance to the individual exporter of removal of tariffs.

There are expected benefits to New Zealand exporters who currently trade with the ASEAN countries, or those who may be encouraged by AANZFTA to investigate exporting to those markets. The benefits are expected to be in terms of either increased trade volumes (both current and new export products) or increased returns from current exports, or a combination of the two. AANZFTA also helps to establish and maintain a "level playing field" for those New Zealand exporters who are competing with third country exporters that already enjoy preferential access into the ASEAN economies.

In terms of investment, due to the facilitatory and "signalling" (ie as on investment destination) nature of AANZFTA, New Zealand's bilateral investment relationship with the ASEAN economies is expected to continue to grow and have a positive impact on the New Zealand economy.

On non-tariff barriers, AANZFTA contains a general prohibition on non-tariff measures that are not consistent with the parties' WTO rights and obligations and a requirement to ensure that permitted non-tariff measures do not create unnecessary obstacles to bilateral trade. This will provide a bilateral course of action under AANZFTA on any unjustifiable non-tariff measures. It also provides a basis for the development, again over time, of outcomes designed to facilitate trade and reduce associated transactions costs in particular regulatory areas and for specific products. Moreover, it is also worth noting that the institutional mechanism established in the FTA provides another way to address non-tariff barriers that New Zealand exporters did not have before AANZFTA. This is an important "added value" benefit of the Agreement.

The phased nature of the tariff and non-tariff reductions will see the bulk of these static gains delivered over time.

6.1.4 "Second order" effects on New Zealand of AANZFTA

As outlined in Section 6.1.2.2, increased trade and services flows facilitated by regulatory improvements under trade agreements can help generate wider dynamic productivity gains throughout the wider New Zealand economy. These effects are harder to quantify. They accumulate over time and may be attributable to the downstream effects of trade agreements over time, rather than the more immediate impacts driven by tariff removal and other market access improvements alone.

There are a number of aspects of AANZFTA that might help generate "second-order" benefits for the New Zealand economy. These relate to the provisions outlined in Sections 3 and 4 and in particular include customs procedures, SPS measures, STRACAP, electronic commerce, economic cooperation, IP rights, competition, and consultation and dispute settlement procedures.

Collectively, these provisions should, over time, significantly enhance the predictability and transparency of the New Zealand trading relationship with the ASEAN economies. Taken together with the market access improvements related to the reduction of tariffs and services in the static effects section (Section 6.1.3), these are expected to help generate the "second-order" effects related to dynamic productivity.

Although it has not been possible to quantify the precise economic effects of these provisions, it can be assumed that New Zealand companies are more likely to benefit than to lose from the application of improvements to the regulatory framework governing the trade and economic relationship with the ASEAN economies. In this context, modest dynamic productivity gains are expected to accrue to the New Zealand economy over time.

6.1.5 Conclusions regarding overall gains to the New Zealand economy

Overall, AANZFTA is expected to make a net positive contribution to the New Zealand economy through:

- an expansion of trade in goods and services as a result of the reductions in tariff and non-tariff barriers with duty savings and new opportunities for New Zealand exporters;
- improvements in productivity as a result of dynamic effects, including the potential for enhanced levels of investment and greater competition; and
- enhanced regional integration, including the expansion and facilitation of improved investor and business links, which will trigger further factor productivity gains.

The overall outcome of AANZFTA will be to strengthen New Zealand's economic ties with the ASEAN member states which will contribute to New Zealand's wider skills, innovation, and technology-related goals.

Government agencies are developing a whole-of-government strategy in conjunction with private sector and other stakeholders to ensure that New Zealand derives as much economic benefit as possible from AANZFTA.

6.2 Social effects

AANZFTA and the associated documents, including the MOAs that have been concluded with the Philippines, are expected to have an overall net-benefit to New Zealand socially. They are not expected to have any discernible negative social effects. The following section examines potential effects on domestic employment, social regulation and immigration.

6.2.1 Employment

Free trade agreements may have both positive and negative employment effects. Given that such agreements facilitate greater trade by removing or reducing trade barriers and distortions, the major negative effects can be expected to be found in industries previously protected by tariffs or other barriers to trade, which may find it difficult to compete with cheaper imports under an FTA. Positive employment effects, however, can be expected in industries likely to gain from increased export opportunities under the agreement and in areas of the economy where activity increases, either domestically or in exporting to third countries, as a result of cheaper imports available under the Agreement.

As previously mentioned, AANZFTA protects New Zealand's domestic interests in sensitive sectors such as clothing, footwear, carpet and furniture through longer transitions, or longer phase-out periods for tariffs on these sensitive items. This will provide these sectors with more time to adjust to the increase in competition from ASEAN countries.

As noted in Section 6.1, it is expected that AANZFTA will result in an increase in New Zealand's net exports to ASEAN member countries and an increase in overall economic activity in New Zealand. That suggests that, in aggregate, the effect of AANZFTA on employment in New Zealand is likely to be modestly positive.

Arrangements for temporary entry into New Zealand's employment market by skilled Filipino and Vietnamese workers have been made in conjunction with the AANZFTA negotiations, but not as part of the Agreement itself. As noted in Sections 3.1.9 and 4.9, the conditions attached to those arrangements – including the limitation of numbers, skill level requirements and the requirement that the jobs meet New Zealand labour market conditions – are specifically designed to avoid and mitigate as far as possible negative impacts on New Zealand employment.

The working holiday schemes that are to be negotiated separately with the Philippines and Viet Nam are also expected to have a positive social impact allowing young, skilled Filipinos and Vietnamese to engage in tourism and incidental employment in New Zealand. Once negotiated, the benefits of such schemes should accord with those of similar schemes New Zealand participates in.

6.2.2 Social regulation

New Zealand's social regulation frameworks will not be affected by AANZFTA. In the area of trade in services, AANZFTA follows the structure of the GATS and therefore excludes services supplied in the exercise of government authority. Moreover, New Zealand has not made any commitments in respect of publicly provided services, such as public health, education, housing and social welfare.

In terms of labour standards, the MOA with the Philippines reaffirms the commitments of both countries to maintaining sound labour policies and practices. In line with the Government's existing policy framework, this instrument establishes mechanisms through which specific labour issues can be addressed by way of both cooperative and consultative processes between the two countries. This instrument can also be seen as complementing other existing labour-related instruments negotiated with other ASEAN partners in the context of New Zealand's other FTAs (ie with Thailand, Singapore, Brunei) and the ongoing negotiations with Malaysia for a bilateral FTA.

Finally, New Zealand's commitments on the movement of natural persons under AANZFTA, as well as the separate arrangements relating to temporary employment entry, include a number of safeguards designed to avoid, as far as possible, negative impacts on the New Zealand labour market. This includes the fact that New Zealand labour standards apply to all people receiving remuneration in New Zealand, including entrants under the temporary employment entry arrangements. Similarly, the working holiday schemes will be negotiated on the basis that they must include certain safeguards to prevent their abuse or misuse.

6.2.3 Immigration

The specific commitments entered into in respect of movement of natural persons, as well as the separate arrangements relating to temporary employment entry and (once concluded) working holiday schemes with the Philippines and Viet Nam, do not require changes to existing immigration policy. The specific temporary employment entry changes are not expected to impact greatly on the numbers of people entering the country, as they are dependent upon the availability of *bona fide* job offers. The promotion of trade and investment opportunities under AANZFTA and the subsequent rise in New Zealand's profile in ASEAN member countries may, however, encourage greater interest in immigration to New Zealand from ASEAN countries (including by skilled migrants) and vice versa. This can only occur, however, through the ambit of current immigration policy settings.

6.3 Cultural effects

AANZFTA and its associated instruments and documents, including the MOAs that have been concluded with the Philippines, are not expected to have any negative cultural effects.

Indeed, AANZFTA includes certain safeguards to ensure that New Zealand preserves the ability to pursue certain cultural policy objectives, such as supporting the creative arts and taking measures in relation to Māori, including in fulfilment of Treaty of Waitangi obligations.

AANZFTA incorporates the GATT exception (GATT Article XX (f)) that Parties may take measures necessary to protect national treasures or specific sites of historical or archaeological value, providing that such measures are not used for trade protectionist purposes. AANZFTA elaborates further that Parties may take measures in support of creative arts of national value and that this may include a range of artistic activity, for example, theatre, dance and music, literature, indigenous traditional practice and digital interactive media.

The Treaty of Waitangi exception (Chapter 15, Article 5) provides that nothing in AANZFTA prevents the New Zealand Government from taking any measure it deems necessary to accord more favourable treaty to Māori, through the fulfilment of its obligations under the Treaty of Waitangi. Interpretation of the Treaty of Waitangi itself is also carved out of the purview of the dispute settlement mechanism.

AANZFTA also recognises that each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore, in accordance with its international obligations.

6.4 Environmental effects

New Zealand approached the AANZFTA negotiations in the context of the Government's 2001 policy framework of ensuring that sustainable development and environmental objectives are appropriately supported by FTAs

AANZFTA, as well as the MOA on Environmental Cooperation with the Philippines, can contribute to positive outcomes for New Zealand on the environment and sustainable development. They support the objective of harmonising trade and environment and provide opportunities to enhance capacity in the Philippines and New Zealand for improved environmental management and promote trade in goods and services that benefit the environment.

The MOA sets out a list of specific, though not exclusive, areas for cooperation identified as being of mutual interest and benefit to the Parties. These include environmental management systems, urban environmental management, air quality management, water quality management; toxic chemicals and hazardous and solid waste management, restoration of degraded watersheds, and climate change. These cooperation activities may lead to the development of environmental practices and systems that could have a positive impact on environmental management in both countries.

FTAs have the potential to affect the environment in positive and negative ways. There are four means by which the environment can be affected: through changes in environmental regulation; changes in the types of goods and services that are traded; changes in the distribution and intensity of production and consumption; and changes in the scale of production. These are discussed below.

6.4.1 Regulatory effects

FTAs may, in principle, have positive and negative regulatory effects in relation to their impact on existing environmental policies and standards.

In general terms, both the New Zealand and international experience on the effect of FTAs is that positive regulatory effects can be realised if care is taken not to undermine the ability of the government to pursue appropriate and effective environmental policies. In this regard, AANZFTA does not affect the government's ability to regulate for environmental protection.

The general exceptions to AANZFTA incorporate the relevant WTO (GATT and GATS) exceptions relating to measures necessary to protect human, animal or plant life or health, or measures relating to the conservation of exhaustible natural resources. These exceptions apply across the whole Agreement, including trade in goods and in services, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in goods or services or investment.

New Zealand's environmental laws, policies, regulations and practices constitute an environmental management system that is designed to deal with any adverse effects of economic activity (including activity resulting from trade agreements) in a manner consistent with the Government's broader objective of sustainable development.

Relevant legislation includes the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, 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.

AANZFTA will not compromise New Zealand's ability to apply these laws, policies and regulations, nor will it constrain New Zealand's ability to set new laws, policies and regulations provided that these are applied to meet a legitimate objective and are not implemented in a discriminatory manner. In addition, the Government has instigated a range of voluntary initiatives to assist in addressing potential adverse environmental effects, including the New Zealand Packaging Accord and the Clean Streams Accord. The Government also continues to encourage and promote adherence to the OECD Guidelines on Multinational Enterprises. These guidelines encourage multinational firms to establish and maintain environmental management systems and take into account (and address where necessary) the environmental effects of their activities.

The MOA promotes high levels of mutual supportiveness between the Parties' environmental and trade policies. They explicitly acknowledge the sovereign rights of each country to set their own policies and national priorities and to set, administer and enforce their own environmental laws and regulations. They also provide for cooperation and information exchange, which can potentially encourage "best practice" on environmental regulations being shared between the Parties. No adverse impacts on New Zealand's biosecurity regulations are anticipated as existing policy and practice will be maintained.

6.4.2 Product effects

Product effects concern changes in the composition of New Zealand's trade arising from the removal of trade restrictions. Positive product effects arising from the liberalisation of trade in goods and services that benefit the environment can in principle help offset any negative scale and structural effects of freer trade. Increased trade can also benefit the environment by enhancing access to less ecologically damaging inputs (for example, cleaner technologies) to New Zealand production systems. An increase in the movement of goods, however, can also bring with it a possible increase in biosecurity risk, and may require increased attention to and monitoring of movements of environmentally hazardous or environmentally sensitive goods and endangered species.

AANZFTA may open up new opportunities for New Zealand production and export of goods that benefit the environment. This is a rapidly growing area of trade for New Zealand, with the growth in New Zealand's global exports of such products expanding by more than five percent a year over the past four years.

AANZFTA is also considered unlikely to pose significant risks in relation to movements of environmentally hazardous or environmentally sensitive goods and endangered species. New Zealand's environmental laws, regulations, policies and practices are considered to be sufficiently robust to deal with any particular issues related to product effects that might arise and the AANZFTA does not change this situation.

6.4.3 Structural effects

The structural effects of AANZFTA are not expected to be significant for New Zealand. Such effects can be both positive and negative. Positive effects arise when an FTA results in the removal of policies that contribute to environmental damage, for example, the removal of subsidies to agriculture that contribute to over-production and result in land degradation. Negative effects can arise in situations where an increase in production of goods for trade leads to environmental damage and policy interventions are inadequate to deal with this.

Economic and environmental policy reforms over the past 25 years in New Zealand has helped reduce distortions in the economy, so further positive structural effects from the removal of policies are expected to be minimal. Any negative structural effects are expected to be manageable within existing environmental policies, regulations and practices.

6.4.4 Scale effects

Potential negative effects stem from pollution and other environmental risks associated with the expansion of economic activity and the increase in the movement of goods. These may not be completely offset by the advantages derived from increased growth as a consequence of the FTA. Environment-related policy instruments therefore need to be kept under review to help ensure the overall sustainability of economic growth, including that driven by FTAs.

Where an FTA augments growth in the New Zealand economy, this can have the positive effect of helping leverage additional financial resources, which can be used to address wider environmental concerns (for example, enabling companies to invest in cleaner technologies and governments to raise revenue for financing environment-related infrastructure).

On balance, the overall economic impact of AANZFTA on the New Zealand economy is not expected to generate substantive negative scale effects that cannot be addressed by New Zealand's current framework of environment and sustainable development-related legislation, policies and practices.

7 COSTS TO NEW ZEALAND OF COMPLIANCE WITH THE TREATIES

7.1 Tariff revenue

In 2005, the revenue collected on imports from the ASEAN economies was $26.3 million. As tariffs are phased out over time under AANZFTA, the New Zealand Customs Service will progressively collect less revenue from duty payments. The exact amount of duty collected will be influenced by the pattern of actual imports and the proportion that qualify for preference under the applicable rules of origin (ROO).

Some of the revenue potentially foregone as a result of AANZFTA has already been reduced by New Zealand's commitments under the Thailand-New Zealand CEP, the Trans-Pacific Strategic Economic Partnership Agreement (which includes Singapore and Brunei), and the domestic tariff reduction programme in place for the period 1 July 2006 – 1 July 2009.

7.2 Costs to government agencies of implementing and complying with the treaties

One-off costs associated with implementing AANZFTA incurred in the 2008/09 financial year are estimated to amount to $582,000, as currently bid for from the inter-agency FTA Growth and Innovation Fund (GIF) pools for promotion and outreach activities and capacity building. Key activities include:

- The development of a whole-of-government AANZFTA website to provide comprehensive information on the content of the Agreement and provide market information on the key ASEAN markets. The site will also include a tariff locator along the lines of the New Zealand-China FTA website.
- The production of appropriate publications explaining the key outcomes of AANZFTA.
- A one-day "road show" held in each of the five major centres (Auckland, Hamilton, Wellington, Christchurch and Dunedin) in 2009 to:
  - outline the content of AANZFTA to the New Zealand business and wider stakeholder community;
  - assist in capacity building for doing business with the ASEAN countries.

As with other FTAs New Zealand has entered into, there will be on-going costs of meeting New Zealand's obligations under AANZFTA, as well as the associated documents and instruments (for example, the MOAs with the Philippines) This includes staffing, the establishment of new institutions, developing implementation arrangements, technical assistance and implementation costs. It is difficult to estimates costs at this stage. Key relevant government agencies (Ministry of Foreign Affairs and Trade, Ministry of Agriculture and Forestry, Ministry of Economic Development, Ministry for the Environment, Department of Labour, New Zealand Customs Service, New Zealand Food Safety Authority) will seek funding for these activities, together with the funding of activities associated with other FTAs as part of the Economic Transformation budget initiative.

In addition, new funding will be sought to contribute up to $4.6 million over 3-5 years to implement approved projects under the AANZFTA Economic Cooperation Work Programme.

Government agencies will also be working with the private sector and others to implement startegies for best leveraging opportunities from AANZFTA. Such activties are considered, however, to represent an investment in AANZFTA, rather than a compliance cost.

7.3 Costs to businesses of complying with the treaties

As outlined in Section 3.1, the predominant effect of AANZFTA should be to reduce transaction costs for New Zealand business in trading with ASEAN countries through trade facilitating outcomes across the agreement, including in areas such as customs procedures, STRACAP and SPS measures.

Some of these outcomes, such as trade facilitating provisions for customs procedures, will help reduce transactions costs from the outset of AANZFTA. Other outcomes are expected to develop and increase over time from the platform that AANZFTA creates in areas such as STRACAP and SPS for enhanced regulatory cooperation to facilitate trade.

8 COMPLETED OR PROPOSED CONSULTATION WITH THE COMMUNITY AND PARTIES INTERESTED IN THE TREATY ACTIONS

8.1 Inter-departmental consultation process

The negotiation of AANZFTA and associated documents and instruments was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade. The inter-agency team comprised officials from the Ministry of Agriculture and Forestry, the Ministry of Culture and Heritage, the Department of Labour, the Ministry of Economic Development, the Ministry of Education, the Ministry for the Environment, Treasury, New Zealand Customs Service, New Zealand Food Safety Authority, Te Puni Kokiri, New Zealand Qualifications Authority, New Zealand Trade and Enterprise (NZTE), and the Reserve Bank of New Zealand.

Other relevant departments and agencies were also regularly consulted during the negotiations in the preparation of New Zealand's position, in particular in the preparation of New Zealand's tariff schedule and services schedule.

The Department of Labour and the Ministry for the Environment were directly involved in the negotiation of the MOAs with the Philippines.

The Department of the Prime Minister and Cabinet was also generally and regularly consulted on the AANZFTA process.

8.2 Public consultation process

From September 2004, the Ministry of Foreign Affairs and Trade, together with other government agencies, organised and conducted a wide-ranging consultation programme to raise public awareness of the negotiations and to seek stakeholder views.

This programme used printed, emailed and website information, supported by extensive specific discussions with key stakeholders, such as exporters and industry sectors likely to be interested in or affected by the outcomes of AANZFTA (including the MOAs on labour and the environmental cooperation with the Philippines).

Communication programme

The communication programme supporting the consultations included:

- Updates in the bimonthly MFAT news bulletin, Business Link, which is also posted on the MFAT website.
- A call for submissions in advance of the commencement of negotiations in early 2005.
- An on-going call for submissions posted on the MFAT website throughout the negotiating period.
- Regular bulletins posted on the MFAT website which provided information about the negotiations and requested views from stakeholders and the general public.

- Ongoing presentations on the negotiations as part of wider trade policy consultations with interested parties including NGOs.
- Regular updates on the negotiating process, emailed to stakeholders who had registered an interest in the negotiations.

Consultation programme

Public outreach and consultation has taken place throughout the negotiation of AANZFTA, including with key stakeholders on negotiating objectives. In particular, stakeholders have been consulted on the phase-out of tariffs, rules of origin, services and investment commitments (including the shape of potential outcomes on movement of natural persons), and associated labour and environment outcomes.

The communications programme provided the basis for a consultation programme involving:

- Meetings and email correspondence with companies and sectoral organisations with an interest in access to the key ASEAN goods and services markets.
- Meetings and email correspondence with companies and sectoral organisations with an interest in New Zealand's tariff phase-out arrangements under AANZFTA.
- Meetings with organisations with a broad interest in the negotiations, including the Council of Trade Unions, The Export Institute, the Federation of Māori Authorities, the Employers and Manufacturers Association (Northern), the Canterbury Manufacturers Association, the Asia Foundation, Amnesty International, Local Government, and Education New Zealand.
- Meetings with a range of business groups in New Zealand, including Business New Zealand, Chambers of Commerce, and the ASEAN-New Zealand Combined Business Council (ANZCBC).
- The International Treaties List, produced every 6 months by the Ministry of Foreign Affairs and Trade, provided an update on the negotiation process, identifying in particular issues of interest to Māori. This was distributed to iwi, and provided contact details for feedback from iwi.

Submissions process

The consultation process, elicited a significant number of submissions, including from:

- Amnesty International, Business NZ, the Council for International Development, the Canterbury Manufacturers' Association, Te Mana Akonga (the National Māori Tertiary Students' Association), the Dairy Companies Association of New Zealand, the Employers and Manufacturers Association (Northern), Fair World Links, Furniture Association of New Zealand, the Green Party of Aotearoa New Zealand, Heinz Watties Limited, Meat and Wool New Zealand / Meat Industry Association / Deer Industry New Zealand, the Marine Industry Association, New Zealand Winegrowers, New Zealand Footwear Industry Association, New Zealand Council of Trade Unions, Horticulture Export Authority, New Zealand Forest and Wood Processing Industry, New Zealand Trade Liberalisation Network, New Zealand University Students' Association, Otago Chamber of Commerce, Zespri Group Limited, Yum! Restaurants International.

Issues covered in the consultation process

The key messages were:

- Overall there was strong support for an FTA with ASEAN.
- Those in support of AANZFTA saw the removal of tariffs as a significant benefit to many businesses and consumers. Most submissions accorded priority to the elimination of tariffs in three ASEAN markets: Indonesia, the Philippines and Viet Nam. New Zealand already has FTAs with Brunei, Singapore and Thailand and is currently negotiating an FTA with Malaysia. The submissions indicated minimal or no business interest in the LDC country members of ASEAN.
- Many organisations consulted noted that standards, labelling requirements, quarantine requirements, mandatory testing and other non-tariff barriers to trade caused many of the problems encountered in doing business in ASEAN. Organisations stressed the need to address these in the AANZFTA. The forward work programme in AANZFTA includes a mechanism to consult and work to remove non-tariff barriers.
- Services exporters highlighted restrictions relating to qualifications recognition, requirements for partnerships or joint ventures, and complex and time-consuming processes for visas and work permits. The chapter on movement of natural persons provides greater transparency and certainty around Visas.
- Education was a particular area of interest in services. Distance education and presence of natural persons were highlighted, as well as a growing interest in commercial presence. Thailand, Malaysia, and Viet Nam were identified as priority countries for education service providers. AANZFTA includes a range of new commitments in education services.
- Concerns around intellectual property protection were also identified as an issue for the negotiations. As set out in Section 4.13, AANZFTA reinforces commitments to any IP obligations ASEAN member countries have under the TRIPS Agreement. AANZFTA also maintains substantive commitments on copyright and on cooperation to assist with the adequate and effective protection and enforcement of intellectual property rights in the ASEAN region.
- Consultations on investment issues highlighted concerns with the lack of legal protections for New Zealand investors and their investments in ASEAN (except with Thailand and Singapore, where New Zealand already has investment agreements). The investment provisions of AANZFTA include improved protection for New Zealand investors through national treatment and Compulsory Investor/State Dispute Settlement (CISDS). CISDS allows investors to enforce the chapter's protections by taking a party government to international arbitration for breach.
- Some of the submissions on investment raised concerns related to the free transfer of funds. Provisions were secured in the AANZFTA that allow and provide certainty on the transfer of investment funds.
- Some unions, organisations, and businesses involved in the manufacturing of textiles, carpet, clothing, footwear, furniture, whiteware, and steel expressed concern that New Zealand should not liberalise its tariffs faster in AANZFTA than in the China FTA. Officials have accommodated these concerns in the AANZFTA, typically by achieving either the same phase-out periods for these products as in the China FTA or, in some cases, by securing even longer phase-out periods.

- Many industry submissions noted concerns about fair market practice and the need for protections against dumped and subsidised goods from ASEAN countries. To this end, AANZFTA does not affect New Zealand's ability to fully utilise the existing WTO trade remedy measures.
- Concerns were raised about the labour and environment standards of some ASEAN member countries and the need to pursue the Government's priorities in integrating labour and environment objectives in the context of AANZFTA. Negotiators were able to take this into account by establishing treaty-level labour and environment instruments with the Philippines which supplement existing outcomes in these areas with other key ASEAN member states.
- Some submissions raised concerns with New Zealand negotiating with a regional grouping that includes Myanmar. AANZFTA does not change New Zealand's relationship with Myanmar. Negotiating an FTA with a country or, in the case of AANZFTA, a group of countries, did not constrain or alter the approach New Zealand takes bilaterally, plurilaterally or multilaterally on human rights-related matters. New Zealand expects to continue its ongoing bilateral dialogue and engagement on these issues, as well as through all relevant international and regional mechanisms.

9 SUBSEQUENT PROTOCOLS AND/OR AMENDMENTS TO THE TREATIES AND THEIR LIKELY EFFECTS

AANZFTA provides that it may be amended by agreement in writing by the Parties and that any amendments would come into force on the date or dates agreed among them (Chapter 18, Article 6).

A number of Chapters (for example, Investment and Services) contain future work programmes that may result in particular amendments to AANZFTA in the medium-term.

New Zealand would consider proposed amendments on a case-by-case basis and any decision to accept an amendment would be subject to the normal domestic approvals and procedures.

Either Party to the MOAs with the Philippines may propose an amendment in writing. Any amendments agreed in writing by the Parties shall enter into force when the Parties notify the completion of any necessary domestic legal procedures. Again, New Zealand would consider any proposed amendments on a case-by-case basis and any decision to accept an amendment would be subject to the normal domestic approvals and procedures.

10 WITHDRAWAL OR DENUNCIATION

Any Party may withdraw from AANZFTA by giving six months advance notice in writing. The Agreement terminates if New Zealand withdraws, or if Australia withdraws, or the Agreement is in force for less than four ASEAN member countries (Chapter 18, Article 8).

The MOAs with the Philippines remain in force for periods of three years, and are automatically renewed for further periods of three years, unless one Party notifies the other Party of its intention to terminate the instruments by giving six months' advance notice in writing.

11 ADEQUACY STATEMENT

The Regulatory Impact Analysis Unit has reviewed the aspects of the extended National Interest Analysis (NIA) that cover the regulatory impact statement (RIS) elements and considers the extended NIA is adequate according to the adequacy criteria.

ANNEX: NEW ZEALAND'S BILATERAL TRADE WITH EACH ASEAN MEMBER COUNTRY[25]

Indonesia

Top Ten New Zealand Exports to Indonesia (2005)

Product	Export value (NZ$ 000)	% total exports
Dairy	151,544.1	41%
Food Wastes	60,738.1	16%
Meat	45,521.4	12%
Pulp	45,274.3	12%
Wood	17,793.3	5%
Iron and steel	7,551.9	2%
Starch	7,065.3	2%
Machinery	4,970.1	1%
Vegetables	4,790.3	1%
Vegetable Preparations	4,178.3	1%
Subtotal top ten exports	**349,427.1**	**94%**
Total exports	**373,413.0**	

Data Source: Government of Indonesia

Top Ten New Zealand Imports from Indonesia (2005)

Product	Import value (NZ$ 000)	% total imports
Mineral Fuels	177,350.8	43%
Paper	42,601.4	10%
Electrical Machinery	31,773.5	8%
Plastic	22,667.7	5%
Wood	15,862.5	4%
Rubber	15,401.3	4%
Furniture	11,631.9	3%
Glass and glassware	8,516.1	2%
Machinery	8,033.1	2%
Cocoa	5,598.5	1%
Subtotal top ten imports	**339,436.7**	**82%**
Total imports	**412,786.3**	

Data Source: New Zealand Customs

25 The 2005 year is used as the basis for analysis as this was the base year for information exchanged in the course of negotiations, and which informed New Zealand's negotiations with its AANZFTA Partners. The exception to this is Viet Nam which exchanged information based on a 2006 base year. More up-to-date New Zealand export and import information is contained in the Statistics New Zealand publication: New Zealand's External Trade Statistics, available at (www.stats.govt.nz).

Singapore

Top Ten New Zealand Exports to Singapore (2005)

Product	Export value (2005 (NZ$ 000)	% of total exports
Dairy	183,987.3	41%
Machinery	62,404.0	14%
Electrical Machinery	29,548.4	7%
Meat	24,003.1	5%
Meat/Fish Preparations	23,208.9	5%
Aircraft	18,306.4	4%
Beverages, Liquor	13,632.0	3%
Fruit	11,020.7	2%
Art Works	10,514.0	2%
Photographic	7,234.7	2%
Subtotal top ten exports	**383,859.4**	**85%**
Total exports	**453,781.2**	

Data Source: Government of Singapore

Top Ten New Zealand Imports from Singapore (2005)

Product	Import value (2005 (NZ$ 000)	% of total imports
Mineral Fuels	492,645.3	57%
Machinery	110,779.5	13%
Electrical Machinery	104,674.8	12%
Plastic	36,138.3	4%
Pharmaceutical	14,741.1	2%
Photographic	14,623.7	2%
Paper	13,569.2	2%
Cocoa	11,886.9	1%
Organic chemicals	9,977.8	1%
Books	8,256.9	1%
Subtotal top ten imports	**817,293.6**	**94%**
Total imports	**870,985.2**	

Data Source: New Zealand Customs

Viet Nam

Top Ten New Zealand Exports to Viet Nam (2006)

Product	Export value (2006) (NZ$ 000)	% of total exports
Dairy	136,317.7	55%
Wood	57,523.2	23%
Pulp	10,363.2	4%
Hides	6,811.4	3%
Furs	6,106.0	2%
Iron and steel	4,517.5	2%
Cereal Preparations	3,822.9	2%
Food Wastes	3,095.3	1%
Paper	1,998.5	1%
Starch	1,895.4	1%
Subtotal top ten exports	**232,451.1**	**94%**
Total exports	**246,141.6**	

Data Source: Government of Viet Nam, 2006. Detailed data is not available for 2005.

Top Ten New Zealand Imports from Viet Nam (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Furniture	21,769.8	30%
Footwear	8,637.2	12%
Fruit	6,869.1	10%
Ceramics	3,188.5	4%
Leather	2,911.3	4%
Apparel Other	2,810.2	4%
Fish	2,523.9	4%
Coffee, Tea	2,113.4	3%
Vegetable Preparations	2,059.5	3%
Electrical Machinery	1,979.5	3%
Subtotal top ten imports	**54,862.5**	**76%**
Total imports	**71,791.0**	

Data Source: New Zealand Customs

The Philippines

Top Ten New Zealand Exports to the Philippines (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Dairy	267,970.0	68%
Paper	30,315.1	8%
Starch	18,945.4	5%
Wood	16,561.6	4%
Cereal Preparations	16,031.5	4%
Pulp	8,833.5	2%
Vegetable Preparations	4,626.4	1%
Meat	4,361.4	1%
Machinery	3,851.4	1%
Sugar	2,840.8	1%
Subtotal top ten exports	**374,337.1**	**95%**
Total exports	**392,244.8**	

Data Source: Government of the Philippines

Top Ten New Zealand Imports from the Philippines (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Fruit	27,533.9	32%
Electrical Machinery	20,301.0	24%
Machinery	6,227.2	7%
Inorganic Chemicals	3,574.1	4%
Vegetable Preparations	2,214.7	3%
Furniture	2,188.0	3%
Apparel Other	1,648.2	2%
Photographic	1,550.6	2%
Mineral Fuels	1,344.7	2%
Cereal Preparations	1,341.0	2%
Subtotal top ten imports	**67,923.4**	**80%**
Total imports	**85,167.6**	

Data Source: New Zealand Customs

Malaysia

Top Ten New Zealand Exports to Malaysia (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Dairy	212,244.1	45%
Meat	67,372.7	14%
Cereal Preparations	24,393.9	5%
Machinery	22,280.6	5%
Paper	16,861.4	4%
Iron and steel	12,984.9	3%
Vegetables	12,410.2	3%
Electrical Machinery	11,198.9	2%
Pulp	11,024.6	2%
Wood	11,021.9	2%
Subtotal top ten exports	**401,793.3**	**85%**
Total exports	**473,851.4**	

Data Source: Government of Malaysia

Top Ten New Zealand Imports from Malaysia (2005)

Product	Import value (2005 (NZ$ 000)	% of total imports
Mineral Fuels	173,585.4	27%
Machinery	147,793.0	23%
Electrical Machinery	98,669.4	15%
Plastic	34,197.9	5%
Furniture	29,289.4	4%
Fat, Oil	26,959.5	4%
Rubber	15,765.4	2%
Food Wastes	15,525.8	2%
Fertilizers	12,735.5	2%
Paper	9,604.8	1%
Subtotal top ten imports	**564,126.1**	**86%**
Total imports	**654,818.1**	

Data Source: New Zealand Customs

Thailand

Top Ten New Zealand Exports to Thailand (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Dairy	153,332.0	43%
Cereal Preparations	55,503.3	16%
Fish	18,428.9	5%
Pulp	17,910.2	5%
Wood	16,167.1	5%
Wool	13,101.3	4%
Furs	11,493.8	3%
Hides	7,557.9	2%
Electrical Machinery	6,066.7	2%
Machinery	5,811.4	2%
Subtotal top ten exports	**305,372.6**	**86%**
Total exports	**356,029.3**	

Data Source: Government of Thailand

Top Ten New Zealand Imports from Thailand (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Vehicles	211,843.9	32%
Machinery	83,737.1	13%
Mineral Fuels	77,058.3	12%
Plastic	40,200.9	6%
Electrical Machinery	35,360.8	5%
Oils, Cosmetics	20,890.4	3%
Meat/Fish Preparations	19,817.7	3%
Rubber	15,164.9	2%
Iron and steel	14,069.6	2%
Furniture	12,920.4	2%
Subtotal top ten imports	**531,064.0**	**75%**
Total imports	**665,484.2**	

Data Source: New Zealand Customs

Brunei Darussalam

Top Ten New Zealand Exports to Brunei Darussalam (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Dairy	1,734.0	53%
Iron or steel articles	784.4	24%
Vegetables	186.1	6%
Fish	106.4	3%
Meat/Fish Preparations	99.2	3%
Carpet	83.0	3%
Electrical Machinery	65.6	2%
Vehicles	40.0	1%
Headgear	33.5	1%
Machinery	27.0	1%
Subtotal top ten exports	**3,159.2**	**96%**
Total exports	**3,287.9**	

Data Source: New Zealand Customs

Top Ten New Zealand Imports from Brunei Darussalam (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Mineral Fuels	97,924.0	100%
Dairy	3.2	0%
Machinery	1.6	0%
Apparel Other	1.2	0%
Tools & Cutlery	0.5	0%
Apparel knitted	0.4	0%
Headgear	0.3	0%
Plastic	0.1	0%
Carpet	0.1	0%
Paper	0.1	0%
Subtotal top ten imports	**97,931.4**	**100%**
Total imports	**97,931.4**	

Data Source: New Zealand Customs

Laos

Top Ten New Zealand Exports to Laos (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Machinery	548.8	100%
Aircraft	0.6	0%
Dairy	0.2	0%
Subtotal top ten exports	**549.6**	**100%**
Total exports	**549.6**	

Data Source: Government of Laos

Top Ten New Zealand Imports from Laos (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Apparel knitted	48.2	68%
Machinery	13.6	19%
Beverages, Liquor	6.2	9%
Apparel Other	1.8	2%
Silk	0.6	1%
Wood	0.2	0%
Textile Made Up	0.1	0%
Photographic	0.1	0%
Iron or steel articles	0.0	0%
Carpet	0.0	0%
Subtotal top ten imports	**70.7**	**100%**
Total imports	**70.7**	

Data Source: New Zealand Customs

Myanmar

Top Ten New Zealand Exports to Myanmar (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Dairy	5,315.5	100%
Total exports	5,315.5	

Data Source: Government of Myanmar

Top Ten New Zealand Imports from Myanmar (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Wood	592.8	86%
Apparel Other	37.0	5%
Furniture	29.3	4%
Straw	13.1	2%
Machinery	12.5	2%
Ceramics	3.8	1%
Apparel knitted	2.4	0%
Leather	1.7	0%
Oils, Cosmetics	0.1	0%
Plastic	0.0	0%
Subtotal top ten imports	692.8	100%
Total imports	692.8	

Data Source: New Zealand Customs

Cambodia

Top Ten New Zealand Exports to Cambodia (2005)

Product	Export value (2005) (NZ$ 000)	% of total exports
Electrical Machinery	2,093.5	56.1%
Aircraft	1,002.3	26.9%
Cereal Preparations	162.4	4.4%
Fruit	115.1	3.1%
Hides	74.9	2.0%
Dairy	68.9	1.8%
Iron or steel articles	40.1	1.1%
Vehicles	39.6	1.1%
Pharmaceutical	32.1	0.9%
Misc. Vegetable Preparations	30.3	0.8%
Subtotal top ten exports	**3,659.0**	**98.0%**
Total exports	**3,732.3**	

Data Source: Government of Cambodia

Top Ten New Zealand Imports from Cambodia (2005)

Product	Import value (2005) (NZ$ 000)	% of total imports
Apparel knitted	277.9	53%
Apparel Other	139.2	27%
Synthetic Filaments	23.9	5%
Plastic	23.1	4%
Textile Made Up	17.4	3%
Footwear	16.2	3%
Fertilizers	10.3	2%
Electrical Machinery	6.3	1%
Clocks	4.4	1%
Leather	2.4	0%
Subtotal top ten imports	**521.1**	**99%**
Total imports	**525.2**	

Data Source: New Zealand Customs