



AANZFTA Upgrade

On 21 August 2023, the Upgrade to the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) was signed by New Zealand in Semarang, Indonesia.

ASEAN is at the heart of the Indo-Pacific region and is one of New Zealand's most important trading relationships. The Upgrade ensures that AANZFTA remains a modern, high-quality agreement that meets the needs of businesses today.



You can find more information about AANZFTA at www.mfat.govt.nz, alongside the full FTA text and the National Interest Analysis (NIA).

Key Outcomes

Trade in Goods

The Trade in Goods (TIG) Chapter sets out the rules AANZFTA Parties apply to qualifying imports from other Parties.

The Upgrade focused on improving the facilitation of trade in goods, to make moving goods across the border easier, cheaper and more predictable.

- The Upgrade introduces a dedicated set of provisions that address non-tariff measures (NTMs). NTMs are requirements (other than tariffs) applied to imports and exports such as certification, testing, licencing, and health and safety measures. NTMs may, however, be implemented in a way that unreasonably hinders or distorts the free and open flow of trade – these are non-tariff barriers (NTBs).
- The Upgrade includes new provisions that seek to limit existing and new NTBs on imported goods and commits Parties to ensuring the transparency of their NTMs.
- The Upgrade provides a mechanism within AANZFTA for Parties to engage in technical consultations on measures they consider to be adversely affecting trade. This includes a fast-track option for perishable goods. This means that AANZFTA Parties are obliged to meet and negotiate with New Zealand when requested, to try to resolve NTB issues.
- The Upgrade strengthens obligations relating to import licensing, including a prohibition on measures that are inconsistent with the WTO's Import Licensing Agreement, and an obligation on Parties to notify any new or modified import licensing procedures.
- The Upgrade includes new provisions to support the efficient flow of essential goods during times of crisis by committing Parties to refrain as far as possible from introducing trade-restricting NTMs on essential goods during humanitarian crises, epidemics, or pandemics.
- The Upgrade will help to reduce fees and duties when trading goods under AANZFTA. There is now a requirement for periodic review of import/export fees and charges, with a view to reducing their number and complexity. Each Party is also now required to not apply or update such fees and charges until information on them has been published, including their reason, the responsible authority, and when and how payment is to be made.

Rules of Origin

The Rules of Origin (ROO) Chapter establishes the rules that determine whether goods traded among AANZFTA Parties are considered to ‘originate’ in the free trade area, and therefore qualify for preferential tariff rates and other benefits provided in the agreement.

- The Upgrade broadens the scope of goods that achieve originating status and therefore benefit from AANZFTA’s trade rules. It strengthens cumulative rules of origin by introducing a ‘full cumulation’ provision that adds the value of materials and production costs incurred in all Parties. These improvements will increase the number of products that can qualify for tariff preferences under AANZFTA.
- The Product Specific Rules (PSRs) have been updated. PSRs are rules that apply to a specific product that determine whether it is considered originating. The upgraded ROO Chapter includes chemical and plastic products in the PSRs, which aligns AANZFTA with modern FTAs, further expanding the number of products qualifying for tariff preferences.
- The Upgrade introduces a range of practical measures to help goods exporters, such as a new option of self-declaration of origin for traders.
- The Upgrade simplifies the transit and transshipment of goods by including a new provision that removes ambiguity in interpretation of terminology and simplifies documentation requirements. This aims to ensure that a good remains ‘originating’ and is therefore eligible for preferential access.
- The Upgrade also introduces a provision to support importers to claim any excess duty paid when an originating good is imported. The new provision will enable importers who have not claimed preferential tariff at the time of importation to apply for refund of duty already paid.

Customs Procedures and Trade Facilitation

The Customs Procedures and Trade Facilitation (CPTF) Chapter upgrade facilitates the movement of goods across borders, particularly facilitating the movement of essential goods during humanitarian crises. The Upgrade will benefit exporters through increased efficiency at the border and the expedited release of goods. This is expected to lead to a lower cost of trade and simplified customs procedures for traders when using AANZFTA.

- The Upgrade introduces processes for expedited customs clearance by introducing a provision setting an expectation that, to the extent possible, all goods should be cleared by customs within 48 hours of arrival and lodgement of all necessary information for customs clearance.

- The Upgrade introduces provisions to ensure consistent implementation and application of customs procedures between Parties and throughout a Party's customs territory. It requires that information related to trade is as transparent as possible, including the opportunity for Parties to comment on potential changes.

Standards, Technical Regulations and Conformity Assessment Procedures

- The Upgrade includes a minor updated provision on technical consultations, where a 60-day consultation period has been introduced which provides greater clarity over the timeframe within which consultation will occur.

Trade in Services

The Trade in Services (TIS) Chapter facilitates cross-border trade in services between AANZFTA Parties. The Upgrade introduces improvements to the rules that govern services trade and modernises the Chapter to better align with New Zealand's more recent FTAs.

- Provisions regarding domestic regulation have been improved, providing Parties with greater transparency and certainty on the process of authorisation (for example, the granting of a business licence) and provision of a service.
- Parties have committed to ensure reasonable timeframes and transparent processes for applications for authorisation and in addition agreed to have further discussions to improve commitments in future.
- The Upgrade introduces two additional annexes, on Education Services Cooperation and Professional Services. These sectors are significant services exports for New Zealand in the ASEAN region.

Financial Services

Financial Services are addressed in an annex to the TIS Chapter which establishes a framework of rules governing the cross-border trade in financial services between the Parties.

- The Upgrade modernises this Annex, introducing a range of new measures. This includes a commitment to transparency in regulation of financial services, a prohibition on any requirements that financial data be stored locally (subject to the right to protect personal data and relevant exceptions), and a consultation mechanism.



Telecommunications

The Telecommunications Annex has been updated and introduces a range of provisions with the aim of improving open, transparent and fair access to telecommunications networks, resources and services.

Movement of Natural Persons

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

- The expanded commitments will benefit New Zealand businesses. In particular, certain ASEAN members have made improved commitments for intra-corporate transferees and business visitors.
- New Zealand exporters will be able to access speciality services and skilled professionals, including through the Installer or Servicer category, which will allow New Zealand firms to access aftersales servicing for specialist equipment and machinery they may have purchased, as well as ICT and specialist independent professionals.
- The Upgrade introduces a commitment to transparency, which requires Parties to publish all relevant information regarding temporary entry for business persons in the covered categories, providing businesses with certainty on the process for applying for a visa and processing times.

Electronic Commerce

The Electronic Commerce (E-commerce) Chapter provides rules to facilitate and encourage e-commerce between the Parties, and to create a platform for cooperation.

- The E-commerce Chapter is also now legally binding through the full application of dispute settlement with delayed effect for data rules and a transition period for the Least Developed Economies (LDCs). This is the first time New Zealand has secured enforceable E-commerce rules in an FTA with ASEAN.
- The Upgrade introduces a range of new requirements around consumer protection, privacy, and transparency such as the requirement for Parties to have legal frameworks to protect online consumers from fraudulent practices and to protect the personal information of e-commerce users.
- There is agreement by Parties to take into account international standards when developing measures on e-invoicing, which would support faster development, adoption, and consistency among measures in the region.

- The Upgrade includes provisions that promote paperless trading through the acceptance of electronic trade administration documents, which reduce costs and margins for error and increase the efficiency and security of cross-border transactions. A further provision supports the use of electronic authentication and electronic signatures, providing additional certainty for businesses engaging virtually across borders.
- The Upgrade addresses two novel issues in E-commerce: digital inclusion and open government data. The provision on digital inclusion recognises the unique role that e-commerce can play in promoting inclusive development and trade. Parties must endeavour to publish data and information in an open and machine-readable format when made available to the public.
- The Parties agreed to a new provision to reduce barriers and compliance costs by adopting international regulatory standards that support digital trade, while provisions on e-authentication, e-invoicing, and personal information protection all recognise the importance of interoperability across different systems.

Investment

The Investment Chapter provides a rules-based framework to facilitate free and open flows of investment between AAZNFTA Parties. These benefits provide greater certainty and consistency on how obligations are interpreted across agreements, and provide certainty as to the standard of treatment New Zealand investors will receive in AANZFTA countries.

The Upgrade's new obligations are:

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

New Zealand tried but was unable to secure the removal of Investor-State Dispute Settlement (ISDS) from AANZFTA, but did achieve some concessions. Parties agreed that ISDS and state-state dispute settlement will not apply to investment screening regimes (e.g. New Zealand's Overseas Investment Act). Additionally, ISDS claims for a breach of the national treatment obligation will be suspended for 30 months after entry into force of the Upgrade, to allow time for a review of the ISDS provisions.

New Zealand and Australia have already agreed to exclude ISDS from applying between them under the AANZFTA meaning that the majority of investment flows to New Zealand under the agreement are already carved out from this mechanism.

Competition

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

- Previously a cooperation-only Chapter, the Upgrade introduces commitments to support pro-competitive regulations and practices, providing greater clarity on Parties' obligations around implementation and enforcement of competition laws and regulations.

Trade and Sustainable Development

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

- The Upgrade recognises the need to promote trade and investment in a way that supports this sustainable development. The Chapter's provisions state the importance of cooperating on sustainable trade issues including the environment, labour, and women's economic empowerment, and note the Parties' shared aspiration to promote and uphold high standards in these areas.
- The Upgrade provides an important platform for New Zealand to encourage ASEAN Parties to take action on sustainable trade issues, through mechanisms such as Parties' regular AANZFTA consultations, and by targeting TSD issues under New Zealand and Australia's AANZFTA economic cooperation assistance.

Micro, Small and Medium Enterprises

- The Upgrade introduces a new Micro, Small and Medium Enterprises Chapter to support MSMEs to utilise AANZFTA and benefit from international trade.
- The Upgrade requires each Party to make information related and relevant to MSMEs under this Agreement publicly available with the purpose of exchanging knowledge, experience and best practice.



Government Procurement

- The Upgrade introduces a new Government Procurement Chapter, which includes a range of provisions to make government procurement more transparent, fair and open among AANZFTA Parties.
- It also includes mechanisms for cooperation on government procurement practice and requires Parties to consider environmental sustainability in government procurement.

Side Letter with Australia

- Because New Zealand has multiple FTAs with Australia including CER, New Zealand will sign a side letter that addresses the relationship between these agreements in certain areas.
- In essence, the new side letter will maintain what was previously agreed in the original side letter negotiated alongside AANZFTA. It states that three chapters of AANZFTA, including the Investment Chapter and its ISDS provisions, will “not create rights or obligations between New Zealand and Australia”.

Māori interests

- A high proportion of New Zealand’s trade with ASEAN is in significant sectors for the Māori economy. The Ministry of Foreign Affairs and Trade engaged with Treaty Partners throughout negotiations on specific areas of trade that are of interest to Treaty Partners such as e-commerce, services, and investment.
- The Treaty of Waitangi exception remains unchanged from the existing FTA and states that the Crown will be able to adopt measures considered necessary to accord more favourable treatment to Māori, including under the Treaty of Waitangi. The Treaty of Waitangi exception applies in respect of matters covered by the entire FTA, as amended by the Upgrade.