

ASEAN – Australia-New Zealand (AANZFTA)

The ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) Agreement was concluded and announced by Ministers in August 2008 in Singapore. It was signed on 27 February 2009.

The objectives of this Agreement are to:

- 1) liberalise and facilitate trade in goods;
- 2) progressively liberalise trade in services among the Parties, with substantial sectoral coverage;
- 3) facilitate, promote and enhance investment opportunities among the Parties through further development of favourable investment environments;
- 4) establish a co-operative framework for strengthening, diversifying and enhancing trade, investment and economic links among the Parties; and
- 5) provide special and differential treatment to ASEAN Member States, especially to the newer ASEAN Member States, to facilitate their more effective economic integration.

The AANZFTA Agreement is the first comprehensive free trade agreement that ASEAN has signed with a Dialogue Partner. It is also the only one that has commitments in all three pillars of goods, services and investments.

It covers trade in goods; rules of origin; customs procedures; services (including financial and telecommunications services); electronic commerce; movement of natural persons; investments; sanitary and phytosanitary (SPS) measures; standards, technical regulations and conformity assessment procedures; intellectual property; competition; economic cooperation; and a dispute settlement mechanism.

Indonesia will enter into force for AANZFTA by 10 January 2012, following her ratification on 11 November 2011. As such, AANZFTA has been ratified by all FTA member countries since 11 November 2011.

Benefits to Exporters

The AANZFTA Agreement effectively creates a free trade area of over 600 million people with a combined GDP of more than US\$2 trillion (about S\$2.8 trillion). ASEAN's total merchandise trade with Australia and New Zealand was almost US\$50 billion in 2008.

Exporters will progressively enjoy greater export opportunities between ASEAN, Australia and New Zealand by providing a standardised regional content value and product-specific rules. This allows for greater certainty with regard to export expansion in the region of the Parties.

Trade in Goods

Each Party shall progressively reduce and/or eliminate customs duties on originating goods of the other Parties in accordance with its schedule of tariff commitments.

No Party shall adopt or maintain the following except in accordance with its WTO rights and obligations or this Agreement:

- 1) any prohibition or quantitative restriction on the importation of any good of any other Party or on the exportation of any good destined for the territory of any other Party;

- 2) any non-tariff measure on the importation of any good of any other Party or on the exportation of any good destined for the territory of any other Party.

Rules of Origin

According to the AANZFTA, a good shall be treated as an originating good if it is either:

- 1) wholly produced or obtained in a Party;
- 2) not wholly produced or obtained in a Party provided that the good has satisfied the requirements regional value content of not less than 40 per cent of Free On Board (FOB) or all of its non-originating materials have undergone a change in tariff classification at the four-digit level (i.e. a change in tariff heading) of the HS Code in a Party; or
- 3) produced in a Party exclusively from originating materials from one or more of the Parties.

A good that complies with the origin requirements will retain its eligibility for preferential tariff treatment if exported to a Party and subsequently re-exported to another Party. It shall be treated as an originating good if the good has a regional value content of not less than 40 per cent of FOB calculated using the formulae:

Regional Value Content Direct Formula

$$[(\text{AANZFTA Material Cost} + \text{Labour Cost} + \text{Overhead Cost} + \text{Profit} + \text{Other Costs}) / \text{FOB}] \times 100\%$$

Regional Value Content Indirect Formula or Build-down Formula

$$[(\text{FOB} - \text{Value of Non-Originating Materials}) / \text{FOB}] \times 100\%$$

where

- 1) AANZFTA Material Cost is the value of originating materials, parts or produce that are acquired or self-produced by the producer in the production of the good;
- 2) Labour Cost includes wages, remuneration and other employee benefits;
- 3) Overhead Cost is the total overhead expense;
- 4) Other Costs are the costs incurred in placing the good in the ship or other means of transport for export, including but not limited to domestic transport costs, storage and warehousing, port handling, brokerage fees and service charges;
- 5) FOB is the free-on-board value of the goods; and
- 6) Value of Non-Originating Materials is the CIF value at the time of importation or the earliest ascertained price paid for all non-originating materials, parts or produce that are acquired by the producer in the production of the good. Non-originating materials include materials of undetermined origin, but do not include a material that is self-produced.

A good that complies with the origin requirements and used in another Party as a material in the production of another good shall be considered to originate in the Party where working or processing of the finished good has taken place.

Product-Specific Rules

A good subject to product-specific rules shall be treated as an originating good if it meets the requirements. The rules specify that the materials used to produce a good have undergone a change in tariff classification or a specific manufacturing or processing operation, or satisfy a regional value content criterion or a combination of any of these criteria. A requirement of a change in tariff classification applies only to non-originating materials. Where a tariff heading or sub-heading is subject to alternative product-specific rules, it shall be sufficient to comply with one of the rules. Where the product-specific rule requires only a regional value content, the final process of production must be performed within a Party.

Customs Documentation

A claim that goods are eligible for preferential tariff treatment shall be supported by a Certificate of Origin (CO) issued by an Issuing Authority/Body notified to the other Parties. Details of the Issuing Authorities/Bodies shall be notified by each Party through the ASEAN Secretariat.

The manufacturer, producer or exporter of the good or its authorised representative shall apply in writing to an Issuing Authority/Body requesting a pre-exportation examination of the origin of the good to be exported. The result shall be accepted as the supporting evidence in issuing a CO.

The CO shall:

- 1) be in hardcopy;
- 2) bear a unique reference number separately given by each place or office of issuance;
- 3) be in the English language; and
- 4) bear an authorised signature and official seal of the Issuing Authority/Body.

The original CO shall be forwarded by the exporter to the importer for submission to the Customs Authority of the importing Party. Multiple goods declared on the same CO are allowed, provided that each good is originating in its own right.

An Issuing Authority/Body of an intermediate Party shall issue a back-to-back CO, if an application is made by the exporter while the good is passing through that intermediate Party.

The CO shall be valid for a period of 12 months from the date of issue and must be submitted to the Customs Authority of the importing Party within that period.

Advanced Ruling

Under the AANZFTA, each Party shall provide, in writing, advance rulings in respect of the tariff classification and the questions arising from the application of the principles of the Agreement on Customs Valuation and/or origin of goods.

A Party may modify or revoke an advance ruling if the ruling was based on an error of fact or law (including human error), the information provided is false or inaccurate, if there is a change in domestic law consistent with this Agreement, or there is a change in a material fact or circumstance on which the ruling is based.

Mutual Recognition Arrangement for Goods

The objectives are to facilitate trade in goods among the Parties by:

- 1) ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary obstacles to trade;
- 2) promoting mutual understanding of standards, technical regulations and conformity assessment procedures;

- 3) strengthening information exchange and cooperation;
- 4) strengthening co-operation in the work of international bodies related to standardisation and conformity assessments; and
- 5) providing a framework to implement supporting mechanisms.

The Parties shall establish a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP Sub-Committee), consisting of representatives of the Parties, to promote and monitor the implementation and administration. The Committee shall undertake the following:

- 1) Meet as mutually determined by the Parties;
- 2) Determine its terms of reference; and
- 3) Determine its work programme in response to priorities as identified.

To facilitate trade with regard to Sanitary and Phytosanitary Matters, the competent authorities of the relevant Parties may develop arrangements and make decisions in accordance with the SPS Agreement.

The Parties shall establish a Sub-Committee on Sanitary and Phytosanitary Matters (SPS Sub-Committee) consisting of representatives from the relevant government agencies of each Party. The SPS Sub-Committee shall meet within one year of the entry into force of this Agreement and thereafter as mutually determined by the Parties.

Trade in Services

Each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedules of specific commitments, which broadly include:

- 1) Business services — professional services, computer and related services, research and development, real estate, rental and others;
- 2) Communication services — telecommunications;
- 3) Construction and related services;
- 4) Distribution services — wholesale, retail and franchising;
- 5) Educational services;
- 6) Environmental services;
- 7) Financial services;
- 8) Health related and social services;
- 9) Tourism;
- 10) Recreational, cultural and sporting services; and
- 11) Transport services.

The following articles listed in the Investment Chapter will apply to a service supplier of a Party through commercial presence in the territory of another Party:

- 1) Treatment for investment;
- 2) Compensation for losses;
- 3) Transfers;
- 4) Expropriation and compensation;
- 5) Subrogation; and
- 6) Investment disputes.

Investment

To promote greater liberalisation in the investment area in AANZFTA, the Parties have committed to the following:

- 1) National Treatment — shall accord to investors treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments.
- 2) Prohibition of specific requirements — no measures that are inconsistent with the Agreement on Trade-Related Investment Measures to the WTO Agreement shall apply.
- 3) Compensation for losses — shall accord treatment no less favourable than that it accords, in like circumstances, losses suffered by investments in its territory owing to armed conflict, civil strife or state of emergency.

- 4) Transfers — each party shall allow transfers relating to a covered investment to be made freely and without delay into and out of its territory.
- 5) Expropriation and compensation — shall not expropriate or nationalise a covered investment either directly or through measures equivalent to expropriation or nationalisation except for a public purpose, in a non-discriminatory manner and on payment of prompt, adequate and effective compensation.
- 6) Investment disputes — disputing parties shall as far as possible resolve the dispute through consultation, with a view towards reaching an amicable settlement. If such consultation fails, then disputing parties could request for arbitration.

A list of commitments by various countries is appended in Annex 3 of the AANZFTA.

Movement of Natural Persons

The AANZFTA provides rights and obligations to facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties. It aims to establish streamlined and transparent procedures for applications for immigration formalities for the temporary entry of natural persons.

Each Party has provided Schedules of Movement of Natural Persons Commitments to affect the temporary entry of natural persons of a Party into the territory of another Party. These schedules shall specify the conditions and limitations governing those commitments, including the length of stay for each category of natural persons included in each Party's schedule of commitments. The list may include:

- 1) Business visitors;
- 2) Installers and servicers;
- 3) Executives of a business headquartered in a Party establishing a branch or subsidiary, or other commercial presence of that business in another Party;
- 4) Intra-corporate transferees; or
- 5) Contractual service suppliers.

The AANZFTA shall not apply to natural persons seeking access to the employment market of another Party, nor shall it apply to citizenship, residence or employment on a permanent basis.

Each Party shall grant temporary entry or extension of temporary stay provided those natural persons follow prescribed application procedures for the immigration formality sought and meet all relevant eligibility requirements for entry to the granting Party.

Dispute Settlement

The consultation and dispute settlement shall not apply to disputes arising from sanitary and phytosanitary measures, electronic commerce, economic cooperation and competition. The Party requesting for consultation should provide reasons, including identification of the measures at issue and an indication of the legal basis for the complaint.

The Parties shall make every effort to reach a mutually satisfactory solution through consultations. The disputing Parties shall:

- 1) Provide full information to enable full examination of the measures;
- 2) Treat confidential or proprietary information on the same basis as the Party providing the information; and
- 3) Make available consulting personnel who have the responsibility or expertise.

Proceedings involving good offices, conciliation and mediation by the Parties shall be confidential and without prejudice to the rights of any Parties.

The Complaining Party may request the establishment of an arbitral tribunal to consider the matter if the Responding Party does not enter into consultation or fail to resolve the dispute.

Where more than one Party requests the establishment of an arbitral tribunal related to the same matter, a single arbitral tribunal may be established to examine these complaints if all of the Parties to the disputes agree.

The arbitral tribunal shall consist of three arbitrators. An arbitral tribunal shall make an objective assessment of the matter before it, including an objective assessment of:

- 1) the facts of the case;
- 2) the applicability of the provisions of this Agreement; and
- 3) whether the Responding Party has failed to carry out its obligations under this Agreement.

The arbitral tribunal shall provide its final report to all other Parties seven days after the report is presented to the Parties to the dispute.

Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the Responding Party does not comply with its obligation. However, neither compensation nor the suspension of concessions or other obligations is preferred to compliance with the obligation. Compensation is voluntary and, if granted, shall be consistent with this Agreement.

Intellectual Property

Through the AANZFTA, each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights.

Copyright

Each Party shall:

- 1) provide authors the exclusive right to authorise any communication to the public of their works by wire or wireless means;
- 2) provide criminal procedures and penalties in cases where a person wilfully infringes copyright for commercial advantage or financial gain;
- 3) foster the establishment of appropriate bodies for the collective management of copyright;
- 4) provide authors of sound recordings the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;
- 5) provide adequate legal protection and remedies against the circumvention of effective technological; and
- 6) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright.

Government Use of Software

Each Party confirms its commitment to maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software authorised by law and encourage its respective regional and local governments to maintain or adopt similar measures.

Trademark and Geographical Indications

Each Party shall maintain a trademark classification system and provide high quality trademark rights. In addition, each Party shall protect trademarks and recognise geographical indications.