

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

Regulation Impact Statement

November 2014

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A. INTRODUCTION

1. This Regulation Impact Statement (RIS) addresses the First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) (First Protocol). Consideration of the issues that are addressed in the First Protocol began shortly after AANZFTA entered into force in 2010, in response to a range of concerns raised by businesses about its implementation. These issues all concerned aspects of AANZFTA which are not consistent with Australia's other free trade agreements (FTAs), or with Australia's preferred approach to FTAs. The First Protocol addresses these issues and brings AANZFTA into alignment with Australia's general approach to FTAs on these specific issues and with Australia's position during the original negotiation of AANZFTA. Discussion among the AANZFTA Parties on the practical issues arising from implementation began at the first meeting of the AANZFTA Sub-Committee on Rules of Origin in May 2010. The negotiated text of the First Protocol was subsequently finalised by all Parties in December 2013. The Trade and Investment Minister signed the First Protocol with Ministers from each other Party, at the ASEAN Economic Ministers – Closer Economic Relations Trade Ministers Meeting in Nay Pyi Taw, Burma on 26 August 2014.

B. PROBLEM IDENTIFICATION

2. Despite the liberalised market access provisions of the AANZFTA, the opportunities that it offers may not be being fully realised by manufacturers, producers, importers and exporters in all Parties. Parties have identified three key problems relating to administrative arrangements for claiming preferential tariff treatment:
 - (a) the Minimum Data Requirements setting out the information that must be included on AANZFTA Certificates of Origin (COO) required to claim tariff preferences under the Agreement require traders to disclose information which some companies regard as of a commercial-in-confidence nature; this has either prevented these companies from making use of AANZFTA to import or export goods or involved their divulging information to either their suppliers or customers that may adversely affect their competitive position;
 - (b) the presentation of the Agreement's Product Specific Rules of Origin (PSR) are currently not in a business-friendly format and the format is very different from the PSR in Australia's other FTAs, imposing additional complexity on business when seeking to determine whether goods comply with the rules of origin; and
 - (c) the PSR are also recorded in a superseded version of the Harmonized Commodity Description and Coding System (HS) imposing administrative costs on companies as all other commercial and Customs documents that they need to use are in the current HS version (HS 2012).
3. These issues impose compliance costs on businesses that are excessive, as they involve information and other requirements which go beyond what is necessary to ensure businesses are conforming to the substantive obligations of AANZFTA to

import or export goods. The issue relating to commercial-in-confidence information may either be resulting in reduced overall trade under AANZFTA, or leading multinational corporations and other large companies to directly source products from suppliers at the expense of a range of small and medium sized enterprises who operate as intermediary companies in the sourcing and supply of goods and whose business model is discriminated against by AANZFTA's current requirements.

4. Furthermore, small and medium sized enterprises may be particularly affected by these requirements, as they are less likely to have dedicated staff with expertise in international trade and therefore find it more challenging to ensure that they meet these additional regulatory requirements currently imposed by AANZFTA.

(a) *The Agreement's Minimum Data Requirements prevent some companies from using AANZFTA due to concerns about commercial-in-confidence information*

5. The AANZFTA Rules of Origin (ROO) Chapter prescribes the minimum data that must be included on the COO required to claim AANZFTA tariff treatment. These requirements include the Free-on-Board (FOB) value of the goods at the country of export. The FOB value refers to the value of goods at the time of export, including the cost of transport to the port or site of final shipment abroad. No other Australian FTA has a similar requirement to include the FOB value on the documentation necessary for claiming FTA tariff treatment, and Australia opposed the inclusion of the FOB value on the COO during the AANZFTA negotiations – but we reluctantly agreed to it as part of the final negotiated package when ASEAN was not prepared to move on the issue. The purpose of the COO is to provide *prima facie* documentary evidence of the origin of the goods and the FOB value is not a necessary requirement for this purpose. The FOB value by itself does not provide evidence of the origin of the goods and many businesses base their origin claims on PSR which do not entail a value-added requirement, so that the FOB value of the goods is irrelevant to verifying the origin of their goods. Australia has therefore considered AANZFTA's requirements in this area an unnecessary regulatory burden.
6. A range of businesses have expressed concern that requiring the inclusion of the FOB value on the COO may disclose to their clients the profit margin of companies who act as intermediaries in the sourcing and supply of goods. The companies affected would seem to be mainly small and medium sized enterprises, although some may be larger trading houses, that have developed a market niche in sourcing goods from a range of manufacturing enterprises in export markets for supply to large clients in import markets such as department stores, grocery chains and hardware chains, but possibly also other clients such as large manufacturers. These intermediate companies generally do not undertake the export or import of the goods themselves – the export of the product is arranged by the manufacturing enterprise and the import is undertaken by the retailer or other client purchasing the goods.
7. Under AANZFTA's current provisions these companies need to arrange for the manufacturer to obtain the COO and give it to the importer so that the latter can claim AANZFTA tariff treatment. However, if the COO includes the FOB value as filled out by the exporter, this will enable the importer – the final customer – to

know the price paid by the intermediate firm and therefore calculate the latter's profit margin (i.e. the difference between the FOB value and the price being charged to the final customer less transport and insurance costs to move goods from the Party of export to the Party of import).

8. A COO that does not contain the FOB value is considered invalid due to the prescriptive requirements of AANZFTA, and therefore the products covered by such a COO would not be eligible for AANZFTA tariff preferences. This has resulted in a wide range of businesses reporting to DFAT and the Australian Customs and Border Protection Service (ACBPS) that they are not claiming tariff preferences available to them solely due to the administrative requirements of the Agreement that would reveal information that these businesses regard as commercial-in-confidence. As such, MFN tariffs continue to be paid adding to the cost of products for consumers while potentially diminishing the competitiveness of the businesses involved vis-à-vis other businesses. For small and medium sized enterprises, the inability to claim tariff preferences, and thereby reduce input costs, may be a limiting factor in relation to their participation in global production networks and overall market competitiveness.
9. In some cases the companies have advised that they have had no choice but to not make use of AANZFTA and expressed concern that this meant “the prospect of major loss of business” to both them and their supplier companies (e.g. letter from a New South Wales-based company dated 1 February 2012). A representative of a logistics company based in Victoria commented that “I am at my wits end to understand how now...[name of a client company] can use current format of ASEAN-ANZ COO 3rd party invoice and not show first FOB price” (email of 12 September 2012). Sometimes the intermediary company is a trading house located outside the AANZFTA Parties (e.g. email of 20 August 2014 from a freight forwarder based in New South Wales reporting that “the Indonesian factory, with input from the Japanese trading house, refuse to complete the section requiring the disclosure of the FOB value for commercial in confidence reasons around profits”).
10. Some companies have reported that they had reluctantly divulged the information to either the supplier or the final customer in order to enable the AANZFTA contract to proceed. One intermediary company based in Victoria, for example, wrote to DFAT stating that “We have had to divulge our selling price to the supplier, which was the ‘lesser of the two evils’” after failing to find alternative redress through extensive correspondence with DFAT and Austrade, and the engagement of a Singaporean lawyer to look at possible changes to their business model (email of 6 June 2013). The fact that these companies have been continuing to raise this issue with DFAT – despite still engaging in transactions under AANZFTA – would indicate their level of concern about the situation and the longer-term impact on their competitive position in the market. The supplier (or client) might be able to use this commercially sensitive information in future contract negotiations with the intermediate company, or use it to bypass the latter and directly contract with the final client in the importing country (or the supplier in the exporting country).
11. Therefore, even when trade involving these intermediary companies is still occurring under AANZFTA, the current situation may over time lead to a loss in

their competitive position as their suppliers and/or clients use the divulged commercially sensitive information to improve their competitive position to the disadvantage of the intermediary companies. If this situation is not addressed, AANZFTA could contribute to longer term distortions in the market and a reduction in the range of companies engaged in this type of trade transaction.

12. This issue does not only affect the business opportunities of the intermediary companies. Many of the companies that have complained about this issue to DFAT or ACBPS are customs brokers, freight forwarders or logistics companies involved in enabling various aspects of the supply chain. These trade services companies complain that they are losing business as their client companies are frustrated at being unable to make use of AANZFTA due to their concerns with the FOB value issue.

(b) Complex presentation of the Agreement's Rules of Origin

13. The current presentation of the Agreement's ROO involves a combination of:
 - (a) Annex 2 of the Agreement, containing a partial list of PSR, i.e. it only covers a subset of products. Annex 2 sets out the detailed ROO requirements for the products listed, which are identified using the internationally harmonized six-digit HS nomenclature; and
 - (b) a general rule set out in Article 4 of Chapter 3 of the Agreement. This applies to all products not listed in Annex 2. The general rule is a choice of: (i) a Regional Value Content (RVC) of 40 per cent of the FOB value of the good, and the final process of production performed within a Party, or (ii) a change in tariff classification (CTC) at the four-digit level.
14. This presentation is very different from Australia's other FTAs, which present the detailed ROO requirements for individual products in a consolidated annex setting out the PSR for all products. AANZFTA's ROO presentation creates unnecessary complexity for business, and is often the subject of enquiries to DFAT due to both the very different approach compared to other Australian FTAs, and difficulties in understanding the structure.
15. Additional confusion can be caused when business are filling out the AANZFTA COO, as they need to identify the ROO requirement that is met by the product covered by the COO using a set of codes. Business can often get confused about the appropriate code to use because of the relationship between the PSR and the general rule – e.g. they can be unsure whether to put on the COO “RVC” or “CTC” – to be used if the general rule is the basis for origin – or “PSR(RVC)” or “PSR(CTC)” – to be used if an Annex 2 PSR is the basis for origin. Incorrectly filling in these details can lead to Customs in the importing AANZFTA Party rejecting the COO – while it is normally possible for the companies to still claim AANZFTA tariff preference this can incur time and financial costs due to the delays while the paperwork is fixed.
16. Unnecessarily complex presentation of the ROO has generated, and continues to generate, confusion and frustration in the business community, particularly small and medium sized enterprises with fewer resources and often less experience with

import and export documentation. This is a major cause of enquiries to the DFAT AANZFTA enquiry line. These small and medium sized enterprises face higher administrative costs in seeking to comply with AANZFTA's ROO. Since entry-into-force of AANZFTA in 2010, DFAT has been alerted to a number of shipments that have been held up at regional ports due to the identification of minor errors and discrepancies in COOs. DFAT, including Australian Embassies, businesses and the Issuing Authorities - ACCI and Ai Group - have expended considerable resources to resolve situations where minor errors or discrepancies in COOs have occurred. These issues will continue to occur so long as the AANZFTA ROO and documentation requirements remain overly complex and difficult for business to understand.

(c) The nomenclature used to describe the tariff commitments and PSR

17. The World Customs Organization (WCO), working in conjunction with its members, updates the HS regularly, usually every five years, to keep it relevant to the needs of the international community. The HS Code is a structured nomenclature that assigns a 6-digit code to every good.
18. The PSR in Annex 2 of AANZFTA is recorded using the previous version of the HS – HS 2007 – which came into force on 1 January 2007. This was the current version of the HS when AANZFTA negotiations were concluded but has since been superseded by the latest revision of the HS – HS 2012 – which came into force on 1 January 2012. Australia began using HS 2012 on that date, so that all export declarations and import declarations for goods exported or imported into Australia have had to be filled out using HS 2012. While many countries experienced some delays in their implementation of HS 2012 most of Australia's trading partners now also require the use of HS 2012 on Customs documentation. Similarly, commercial documentation such as invoices and bills of lading used by Australian businesses would generally use HS 2012. An example of an amendment between HS 2007 and HS 2012 is at **Attachment A**.
19. As AANZFTA's PSR are still in HS 2007, this has imposed compliance costs and administrative complexity for business:
 - (a) exporters need to apply for an AANZFTA COO using PSR in HS 2007, but all their other Customs and commercial documentation for the same goods needs to be in HS 2012. This means they have to operate in two different versions of the HS, and may need to refer to detailed transposition tables or to HS experts to ensure that they have correctly identified the relevant HS lines under both HS 2007 and HS 2012. In addition, some of the documentation they would use to help determine whether the HS 2007 PSR for the product is met would be in HS 2012 (e.g. import declarations or commercial invoices for non-originating materials).
 - (b) importers need to be in possession of an AANZFTA COO that identifies the goods using HS 2007, but their other commercial documentation and the Customs import declaration need to be in HS 2012. This means that they have to apply great care to ensure that they do not claim AANZFTA tariff treatment for the wrong goods or on the basis of incorrect documentation.

20. The lack of consistency in the HS used in the AANZFTA ROO with other commercial documentation and the customs import declaration used by business adds to the cost and complexity of international trade. Added compliance costs in the time taken to prepare documentation further undermines the use of AANZFTA tariff preferences while potentially impacting on business competitiveness.

C. OBJECTIVES OF GOVERNMENT ACTION

21. The objective of Australian FTAs, such as AANZFTA, is to promote economic integration among the Parties to the FTAs, by eliminating tariffs and other access restrictions so that businesses compete on the basis of comparative advantage. This improved trading environment exposes industry to more competition, increasing the general efficiency of the economies of the Parties, to the advantage of both producers and consumers. In particular, the improved efficiency of the economies should see resources shift from less competitive sectors to those sectors where these resources will be used more effectively, leading to increased incomes, improved access to better quality products or lower prices for consumers and real income increases.
22. The problems identified in Section B above mean that AANZFTA is not fully realizing these objectives. Businesses may not be fully utilizing AANZFTA due to the FOB value issue, so that competitive producers will be losing market opportunities and there will not be the expected increase in investment in the more competitive sectors of the economy. Even where AANZFTA trade is taking place, it may not be realising the full efficiency benefits to the economy due to the deadweight losses incurred by businesses spending time and money in meeting unnecessary or complex administrative requirements in order to take advantage of AANZFTA opportunities.
23. To address these issues the following specific outcomes were sought in the First Protocol:
- (a) removal of the requirement to include commercially sensitive information - the FOB value - on all COOs, so that affected businesses would be better able to make use of AANZFTA to import and export goods:
 - i. mandatory inclusion of the FOB value on all COOs is an unnecessary regulatory burden which has hindered business use of the FTA, and discriminated against a particular business model (i.e. small and medium sized enterprises which specialise in acting as intermediaries between manufacturers/exporters and end buyers in the importing country). These small and medium sized intermediaries do not import or export any goods; rather they enable trade transactions that would not occur due to the seller and buyer not being in a position to interact under normal circumstances.
 - ii. these small and medium sized intermediaries typically specialise in linking small producers with large or multinational businesses. However, having to reveal the FOB value on the COO discloses their profit margins to the large or multinational company. In this situation,

the small and medium sized intermediaries often choose to not make use of the AANZFTA to avoid disclosing their profit margins.

- (b) removal of the list of Minimum Data Requirements from the text of the Agreement to allow for more efficient administration of the documentation for the Agreement.
- (c) make the presentation of AANZFTA's ROO more business-friendly and consistent with Australia's other FTAs by presenting the PSR in a consolidated annex, and transpose them into the current version of the HS – HS 2012 - to relieve business from having to make use of two versions of the HS when using AANZFTA to import or export goods. This will mean that business will no longer be faced with AANZFTA ROO being presented in a very different manner to Australia's other FTAs, thereby simplifying business practice and reducing the risk of inadvertent mistakes. The transposition of the ROO into HS 2012 should significantly simplify arrangements for both exporters and importers.
- (d) improve the arrangements followed by the Parties to transpose AANZFTA's tariff commitments into the periodically updated HS, so that this can be done more expeditiously and that the transpositions are published early to assist business use of the Agreement.

D. OPTIONS THAT MAY ACHIEVE THESE OBJECTIVES

(a) No Action

- 24. No action to update the Agreement would mean that those Australian businesses which have not been able to make use of AANZFTA to import or export goods, due to their concerns about the FOB value requirement, would continue not to access the Agreement and lose opportunities to expand trade and participate in global production networks. This could also result in structural changes to their competitive position as importers and exporters look for alternative ways to make use of AANZFTA tariff commitments – e.g. this could happen if large retailers began direct sourcing of product rather than using the services of these intermediary companies due to the fact that the regulatory requirements of AANZFTA discriminate against the business models used by the latter.
- 25. In addition, ASEAN is in the process of removing the FOB value requirement from all its other FTAs (i.e. the internal ASEAN FTA, and ASEAN's bilateral FTAs with China, India, Japan and Korea), so that failure to update AANZFTA would have larger implications for its perceived value by business globally, i.e. it would be seen as unable to keep pace with contemporary business needs. This could be particularly important in relation to multinational corporations which are the driving force in the establishment of global production networks, and which look at FTAs in helping make commercial decisions on possible investment and sourcing locations for their operations.

26. No action to update the Agreement would also mean that business would continue to face the regulatory burden and compliance costs associated with:

- (a) the need to operate in both the HS 2007 and HS 2012 environments if they want to use AANZFTA to import or export goods;
- (b) the need to be familiar with two different ROO systems in Australia's FTAs – the AANZFTA model of a partial PSR annex combined with a general rule, and the model in Australia's other FTAs of a consolidated annex;
- (c) lengthy periods for AANZFTA Parties to respond to any business concerns about AANZFTA's arrangements for administering ROO as any required changes to these administrative arrangements would need to go through a treaty amendment in all Parties (even if they have no implications for AANZFTA's substantive rights and obligations); and
- (d) a repetition of the current delay in implementing HS 2012 at each future five yearly updating of the HS by the WCO.

(b) Amendment of AANZFTA

27. The Parties to the Agreement have agreed an amendment, the First Protocol, which directly addresses the issues raised in the Problem Identification section (Section B above) without impairing current commitments under the existing FTA.

28. The First Protocol removes the requirement to include the FOB value on the AANZFTA COO except in cases where origin is being claimed on the basis of an RVC rule. AANZFTA makes use of three distinctive types of PSR for goods produced using a combination of originating and non-originating materials:

- (a) RVC rules – these require that a good claiming AANZFTA origin has had a specified percentage of the FOB value of the good added in an AANZFTA Party, and the last process of production must have been performed within a Party;
- (b) change in tariff classification (CTC) rules – these require that non-originating materials used to produce a good undergo a specified change in tariff classification, i.e. the good produced as a result of the production process must be in a different tariff classification as set out in the relevant PSR rule; and
- (c) production process rules – these require that non-originating materials used to produce a good undergo a specified production process within the AANZFTA region.

29. Except for a small number of automotive tariff lines, which only provide for the use of RVC rules, AANZFTA provides companies with the choice of using an RVC rule or a CTC rule to determine whether their goods are originating. For some products there may be a choice of using a production process rule. While the FOB value remains relevant to goods claiming origin based on the RVC requirement, companies that have concerns about this would be able to avoid it for

the vast majority of shipments by simply having the manufacturer/exporter use the relevant CTC rule as the basis for claiming origin or, for some products, the relevant production process rule. This would address the concern that certain types of businesses, notably intermediary firms, are less able to access AANZFTA without affecting existing users.

30. The First Protocol also removes the Minimum Data Requirements from the text of the Agreement, allowing for Parties to alter the Data Requirements at a future stage without treaty amendment. Such an action would require the agreement of all Parties, but will mean that if there is consensus on any future changes then the Parties will be able to respond to any other business concerns about these administrative requirements in a more timely manner. This will make the Agreement more responsive to the needs of all businesses that make use of it in the future.
31. The First Protocol will streamline the requirements for identifying a product's particular PSR by removing the reference to a general rule and converting Annex 2 into a consolidated annex that covers all products. This will make AANZFTA consistent with the presentation of Australia's other FTAs, and simplify processes for businesses when making use of the Agreement.
32. The First Protocol is using the consolidation of AANZFTA ROO into a single PSR Annex to also update the ROO into HS 2012 nomenclature. Implementation of the First Protocol will ensure consistency in the HS used in the AANZFTA ROO with other Customs and commercial documentation used by businesses. Businesses will no longer need to refer to HS 2007 but will only have to operate using the current HS 2012.
33. In addition, the First Protocol sets out the process to be followed by the Parties in the future to ensure a more timely introduction of future updates of the HS into AANZFTA's ROO. This should avoid a repetition of the current situation where there has been a lengthy delay between the introduction of HS 2012 and its implementation in AANZFTA's ROO.
34. It is expected that implementation of the First Protocol would reduce the compliance costs for businesses seeking to access the Agreement's preferential tariffs, including by reducing the time taken to complete the COO documentation. There is expected to be a small transitional cost for businesses in implementing the First Protocol as they adopt the new system. However, this is not expected to be large, and nowhere near the cost currently imposed on Australian businesses.
35. Furthermore, due to the existing Agreement not making use of the latest version of the HS or a consolidated annex of PSRs, there are currently risks of export shipments being held up at ports by customs authorities in other Parties when minor errors and discrepancies occur in documentation. While the costs of these delays are borne by the importer in another Party, these can negatively affect the business relationship with an Australian exporter. Implementation of the First Protocol will bring AANZFTA into line with Australia's other FTAs, reducing this risk for exporters.

36. An estimation of the size of the impacts of implementing the First Protocol is provided in **Attachment B – Regulatory Burden Measurement**. This estimation is provided using the assumptions and information sources explained in **Attachment B**. Information from Australia’s Issuing Authorities indicates that there are some 20,000 export transactions from Australia under AANZFTA each year. While direct information on the number of import transactions using AANZFTA is not available, it is possible to draw on information from export data and import clearances to estimate that there may be around 93,000 import transactions each year (see paragraph 9 and footnote 3 in **Attachment B**). For exporters, a very conservative estimate is that business would spend an additional 10 minutes per transaction to complete the required COO documentation in its current form above what should be necessary. For importers the additional burden would be at least five minutes per import transaction. This is the burden faced only by Australian businesses importing or exporting from Australia and does not calculate full costs that may be experienced along the supply chain. Based on AUD 59.85 per hour labour and non-labour costs, with a saving of 10 minutes on each export transaction, and a saving of five minutes on each import transaction, the First Protocol would deliver benefits of at least AUD 642,832 per year in reduced regulatory costs to business.
37. A detailed example of the administrative actions companies have to perform under AANZFTA in order to export goods is provided in **Box 1 in Attachment B**. This example demonstrates the simplification in the documentary and knowledge requirements that will be achieved by the First Protocol, so that a 10 minute savings in time costs for each export transaction is likely to be a conservative measure of the impact of the First Protocol.
38. This estimate of the net benefits of implementation of the First Protocol takes account of both:
- a) potential transitional costs for exporters. Under a worst-case scenario, implementation of the First Protocol would involve exporters having to use different COO forms for exports to those AANZFTA Parties for whom the First Protocol has entered into force, and those Parties for whom it has not entered into force. The Parties are working closely to agree arrangements for the smooth implementation of the First Protocol and may be able avoid this worst-case scenario. However, even if the worst-case scenario is realized, based on current advice from all Parties the transition period is unlikely to exceed six months and would only involve a small reduction in the average annual net benefits (i.e. the worst-case scenario would reduce the estimated annual benefit over a ten year period from AUD 664,433 to AUD 659,443, see paragraph 10-13 of **Attachment B**).
 - b) unrealised benefits for exporters and importers. The estimated benefits of implementing the First Protocol will not be realised during the transition period under the worst-case scenario explained in sub-paragraph (a) above. This would reduce the average annual net benefits by a further AUD 16,611 (to AUD 642,832). (See paragraphs 14-15 of **Attachment B**).

(c) Multilateral trade negotiations

39. AANZFTA is a treaty among 12 Parties. Multilateral trade negotiations cannot amend AANZFTA provisions and therefore cannot directly address the problems with its implementation. The only way that multilateral trade negotiations could address these problems would be through achieving such a significant degree of trade liberalization, resulting in global tariffs of zero or close to zero, that AANZFTA's tariff commitments were no longer commercially relevant for Australian businesses. While the WTO Doha Round of trade negotiations was launched in 2001 and is a trade policy priority for the Australian Government, at this time no end is in sight for the negotiations. Furthermore, the proposed modalities under consideration in the Doha Round would not deliver liberalization outcomes in ASEAN countries – as developing countries – that would match AANZFTA's extensive tariff elimination commitments. A snapshot of AANZFTA's tariff elimination commitments is provided in **Table 1** – these levels of liberalization are well above those that would be achieved by a successful Doha Round based on the current tariff modalities being considered in those negotiations. Even with a successfully Doha Round, AANZFTA's tariff commitments would retain their economic importance.

Table 1
Percentage of Tariff Lines with Tariff-Free Treatment Under AANZFTA

Country	2005 Base Tariffs (%)	2010 (%)	2015 (%)	Final Tariff Elimination (%)	Year Achieved
Australia	46.1	96.4	96.9	100	2020
Brunei	71.9	82.5	95.6	98.7	2020
Burma	4.1	4.1	4.1	86.1	2024
Cambodia	5	5	5	86.2	2024
Indonesia	22.5	63.6	92.2	93.9	2025
Laos	0	0	0	90.5	2023
Malaysia	50	61.6	89.3	95.5	2020
New Zealand	57.7	84.6	90.6	100	2020
Philippines	3.6	60.4	93.2	94.7	2020
Singapore	99.9	100	100	100	2009
Thailand	5	72.3	89.8	98.8	2020
Vietnam	27.6	27.6	27.6	90.6	2020

(d) Regional trade negotiations

40. At present, there is one ongoing regional trade agreement negotiation involving all AANZFTA Parties which might have the potential to deliver such a significant degree of trade liberalization that AANZFTA's tariff commitments were no longer relevant to Australian business. This is the Regional Comprehensive Economic Partnership (RCEP).

41. RCEP negotiations include all 10 ASEAN Member States and ASEAN's six FTA partners – Australia, China, India, Japan, Korea and New Zealand. The Guiding Principles for RCEP call for negotiation of a high-quality, comprehensive

agreement which should go beyond ASEAN's existing FTAs with these countries (which includes AANZFTA). However, there are some significant differences in the liberalization levels achieved in each of these existing FTAs, with all of the other ASEAN+1 FTAs involving less ambitious liberalization levels than those achieved in AANZFTA. Furthermore, negotiations to date have not succeeded in achieving consensus on a modality for the tariff negotiations. There is therefore no certainty that RCEP will be successfully concluded or that the outcomes will be sufficiently ambitious to obviate the benefit of AANZFTA's tariff commitments to Australian business.

42. In addition, failure to address problems related to AANZFTA implementation would introduce an important disparity between AANZFTA and ASEAN's other FTAs which are all in the process of making a similar change in relation to the FOB value requirement on the COO. RCEP has the potential to build on the existing ASEAN FTAs by introducing greater uniformity in their administrative arrangements. The current initiative to remove the FOB value requirement for most shipments in the sixteen countries participating in RCEP therefore supports this aspect of RCEP. Failure to amend AANZFTA now could therefore adversely affect the progress and direction of the RCEP negotiations by introducing significant disparity between AANZFTA (which would still have the FOB value requirement) and the other ASEAN FTAs (which will all be modernized).
43. While another regional trade negotiation is also underway – the Trans-Pacific Partnership (TPP) negotiations – it does not involve all AANZFTA Parties and therefore would not provide an alternative option to amending AANZFTA.

E. IMPACT ANALYSIS

44. An amendment to AANZFTA is the only realistic option to achieve the specific outcomes required. The First Protocol addresses the issues raised in the Problem Identification section (Section B above) directly without impairing current commitments under the existing FTA.
45. The First Protocol benefits Australian businesses trading with AANZFTA Parties by simplifying the requirements for exporters and importers and reducing or removing current regulatory burdens imposed by the existing Agreement. Taking advantage of the benefits will require minor changes to existing business processes; these are expected to reduce compliance costs for Australian businesses exporting to ASEAN Member States. The reduction arises from: the consolidation of PSRs into one list rather than the existing use of a partial list and a general rule; the provision to update and use current HS nomenclature (HS 2012) rather than businesses having to be familiar with, and use, both HS 2007 and HS 2012; and the elimination of the provision requiring the inclusion on the COO of FOB values for all trades.
46. The current requirement to make use of a partial list of PSRs and a general rule imposes a nuisance cost on businesses as they are required to look at the text of the Agreement, then the partial PSR and then, if their good is not listed, revert to the text of the Agreement for the general rule. By consolidating the partial list of PSRs and the general rule, businesses no longer have to go back and forth between

the documents and have greater certainty about the actual rule that applies to their goods.

47. In addition to reducing compliance costs associated with making use of AANZFTA, implementation of these changes to the Agreement could be expected to reduce the risk of introducing minor errors or discrepancies into the documentation. In this way, the First Protocol should reduce the risk of unnecessary delays at ports and facilitate existing trade under AANZFTA.
48. The First Protocol will also remove a regulatory requirement in AANZFTA – the requirement to include the FOB value on all COOs – that has had the effect of disadvantaging small and medium sized intermediaries that have operated business models in which their niche role is to source product from manufacturers/producers in the exporting country and on-sell to customers who are generally large companies in the importing country.
49. The requirement to include the FOB value has been found to be so commercially sensitive that businesses have preferred not to make use of AANZFTA when importing and exporting goods. Instead, businesses have chosen to pay the higher MFN tariff rather than make use of AANZFTA preferences or have lost business when they have refused to provide an AANZFTA COO when the larger company they supply to demands that they do so. Paragraphs 9 and 10 above set out very specific examples of businesses that have had difficulties because of the requirement to include the FOB value on AANZFTA COOs.

F. TRADE IMPACT ASSESSMENT

50. The First Protocol should enhance the implementation of Australia's largest existing free trade agreement, the AANZFTA, by reducing compliance costs experienced by importers and exporters, enabling a range of small and medium sized intermediary companies to take advantage of the Agreement for the first time by not having to disclose their profits to their suppliers or large company clients, and possibly encouraging greater use of the Agreement. Companies have approached DFAT and ACBPS expressing concerns about the adverse effects on them of the information requirements currently imposed by AANZFTA in the context of specific commercial transactions they wish to conduct using AANZFTA. The concerns being addressed by the First Protocol are therefore not speculative or hypothetical but concerns which business have identified in relation to real commercial transactions.
51. A full Regulatory Burden Measurement is attached to this RIS and sets out the expected benefits of the First Protocol (**Attachment B**). Trading conditions under the AANZFTA will become easier once the First Protocol enters into force compared with the current situation. This can be attributed to two factors. First, businesses will face lower costs in completing their documentation and, secondly, businesses that are currently unable to use AANZFTA, to avoid revealing commercial-in-confidence information, will be able to do so. The First Protocol is a deregulatory measure which will remove administratively burdensome requirements for business and will not impose any new requirements or administrative burdens. Any initial transitional costs are likely to be minimal as

AANZFTA Parties have agreed to cooperate closely to have the First Protocol brought into force by a critical mass of countries (i.e. completion of domestic processes) to allow implementation of the First Protocol at the same time. AANZFTA Parties are also developing transitional arrangements to ensure clarity for both business and customs officials on the process of introducing the revisions in the amended AANZFTA. A Workshop is to be held in early 2015 in which officials from all the Parties will review these transitional arrangements and ensure that all details are finalized, ready to implement immediately on the entry-into-force of the First Protocol, and that arrangements are in place for effective communication with business.

52. The First Protocol will build on Australia's growing economic relationship with South East Asia, and contribute to boosting bilateral trade and investment links. Australia's two-way merchandise trade with AANZFTA Parties reached AUD 85 billion in 2013. This is up from AUD 73 billion in 2009 before AANZFTA entered into force.
53. In 2009 Australian exports of goods to AANZFTA Parties were valued at AUD 27 billion. This has increased to AUD 32 billion in 2013. Similarly, AUD 46 billion of goods were imported from AANZFTA Parties in 2009, increasing to AUD 53 billion in 2013.
54. Information on usage of AANZFTA is provided in **Tables 2A** and **2B**, which show annual import clearances into Australia from the other 11 AANZFTA Parties for the three years immediately prior to its entry-into-force (2007 to 2009) and for the four years since entry-into-force (2010 to 2013). It should be noted that AANZFTA only entered-into-force for Indonesia, a major trading partner for Australia, in 2012.
55. **Tables 2A** and **2B** indicate that AANZFTA usage is significant. Import clearances valued at over \$4 billion entering Australia in 2013 claimed AANZFTA tariff treatment in 2013 (or 8 per cent of total imports from these countries). Significantly, the percentage of imports from the other AANZFTA Parties paying MFN tariffs above zero has fallen from 6 per cent or more prior to the Agreement to 2.4 per cent in 2013. Almost all imports from these countries are now entering Australia tariff-free.
56. The regulatory complications imposed by AANZFTA due to the continued use of HS 2007 PSR in the ROO, and the more complex general rule/partial PSR structure of the ROO, impose additional time and compliance cost on businesses as they need to spend time ensuring the match between the HS 2007 PSR and other HS 2012 documentation needed to claim AANZFTA tariff rates. The complexity of ensuring consistency between different documentation, some of which is in HS 2007 and some in HS 2012, and of understanding adequately the general rule/partial PSR structure, increases the risk of businesses making mistakes and incorrectly claiming AANZFTA tariff preference. In doing so, these businesses could be subject to penalties, or face costly delays in clearing goods through customs while mistakes in the documentation are corrected.
57. The First Protocol is consistent with Australia's trade policy objectives – it confirms and enhances AANZFTA's relevance as a comprehensive, high-quality

trade agreement that complements multilateral and bilateral trade liberalisation. The First Protocol is consistent with Australia's existing international commitments, including those under the WTO Agreement.

Table 2A - Annual Import Clearances – A\$ Value – All AANZFTA Parties – Calendar Years 2007-2013

Treatment Category	2007	2008	2009	2010	2011	2012	2013
AANZFTA preference	-	-	161,142	1,233,691,792	1,987,563,861	3,389,091,615	4,191,905,811
Duty-free MFN tariff rates	26,979,579,560	36,903,423,600	28,558,892,447	29,206,085,539	31,159,305,477	32,557,388,092	30,235,778,750
Other trade agreements	8,611,741,871	9,525,929,867	8,375,432,179	9,832,397,339	8,522,445,074	9,712,785,238	11,286,580,990
Developing country preferences	1,055,723,310	1,425,629,820	995,478,546	766,478,757	731,755,638	416,455,575	318,568,698
Domestic tariff concession arrangements	3,393,119,292	3,721,361,576	5,462,658,303	4,688,548,461	4,741,782,168	4,516,248,587	5,096,485,707
Paid the MFN tariff - where the MFN tariff is higher than 0%	2,878,855,511	3,152,653,957	2,677,724,168	1,918,357,599	1,660,035,773	1,603,165,155	1,286,907,090
Confidential data	562,165,497	466,997,415	324,911,689	302,614,028	345,623,896	321,552,838	230,612,396
Total imports	43,481,185,041	55,195,996,235	46,395,258,474	47,948,173,515	49,148,511,887	52,516,687,100	52,646,839,442

Table 2B - Annual Import Clearances – Percentage – All AANZFTA Parties – Calendar Years 2007-2013

Treatment Category	2007	2008	2009	2010	2011	2012	2013
AANZFTA preference	0.0%	0.0%	0.0%	2.6%	4.0%	6.5%	8.0%
Duty-free MFN tariff rates	62.0%	66.9%	61.6%	60.9%	63.4%	62.0%	57.4%
Other trade agreements	19.8%	17.3%	18.1%	20.5%	17.3%	18.5%	21.4%
Developing country preferences	2.4%	2.6%	2.1%	1.6%	1.5%	0.8%	0.6%
Domestic tariff concession arrangements	7.8%	6.7%	11.8%	9.8%	9.6%	8.6%	9.7%
Paid the MFN tariff - where the MFN tariff is higher than 0%:	6.6%	5.7%	5.8%	4.0%	3.4%	3.1%	2.4%
Confidential data	1.3%	0.8%	0.7%	0.6%	0.7%	0.6%	0.4%
Total imports	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

G. CONSULTATION

58. DFAT has regular contact with business on AANZFTA implementation issues through its AANZFTA enquiries email line, and key issues addressed by the First Protocol were first raised by business through this enquiries line, and with the ACBPS through its stakeholder engagement processes and enquiries services. Initial concerns were raised during information sessions conducted with industry immediately prior to the entry-into-force of AANZFTA on 1 January 2010 (e.g. concerns were raised at an information session held by the ACBPS with customs brokers in Perth on 25 November 2009).
59. Australia's position in the negotiation of the First Protocol was developed on the basis of the concerns detailed in these contacts with individual companies adversely affected by the current requirements in AANZFTA. ACBPS issued Customs Notice 2010/13 on 15 March 2010 (copy at **Attachment C**) in response to the concerns raised. The Customs Notice reported ACBPS "has received numerous questions from importers and brokers in regard to the Free on Board (FOB) price on the certificate of origin (COO) being different from the FOB price on the invoice used to determine the customs value." (Names of individual companies have not been supplied as the contacts reported below – and in paragraphs 9 and 10 above – have been in relation to specific commercial transactions and DFAT treats all such information as commercial-in-confidence).
60. Sometimes the small and medium sized enterprise which acts as an intermediary between a manufacturer/exporter in the exporting country and a final customer in the importing country has made direct representations to DFAT or ACBPS. However, many of the enquiries received by DFAT and ACBPS have been from customs brokers, freight forwarders, logistics companies, or trade advisory firms reporting concerns raised with them by client companies. Companies have repeatedly expressed a concern that the issue needed to be addressed urgently.
61. DFAT wrote to the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (Ai Group) on 1 July 2010 about AANZFTA implementation, and drew the attention of these peak industry bodies (which are also Australia's two COO issuing authorities) to the fact that individual businesses were raising concerns that the FOB value requirement on the COO was restricting trade. DFAT informed ACCI and Ai Group that Australia had raised these concerns in meetings of the AANZFTA Sub-Committee on Rules of Origin (SC-ROO), and that the SC-ROO had agreed to consider how to respond to these trade concerns following further investigation back in capitals.
62. DFAT has kept industry informed of developments in AANZFTA's consideration of this issue, including progress in the negotiation of the First Protocol, through briefings to the biannual Stakeholder Consultations on FTAs, as well as in regular email reports on SC-ROO meetings provided to ACCI and Ai Group (emails of 15 December 2011, 7 June 2012, 16 August 2013 and 28 May 2014). In addition, the DFAT booklet on "Making Use of AANZFTA to Export or Import Goods", widely circulated to both industry associations and individual companies, and available on the DFAT and ACBPS websites, provided a discussion of the problems identified by business and advised business of the steps the Parties were taking to address this issue through negotiation of the First Protocol.

63. The position taken by Australia in the negotiation of the First Protocol, i.e. that the FOB value requirement on the COO is unnecessary and should be removed, is consistent with the position that Australia took during the original negotiation of AANZFTA, based on industry input, and consistent with Australia's general approach on FTAs. Australia does not have such a requirement in any of its other FTAs, and when pressed by ASEAN to include this requirement in the Agreement Australia opposed this proposal and only agreed to it as part of the final negotiated outcome when ASEAN made it clear that it was not prepared to move on the issue when finalizing the negotiations. Ai Group advised by email on 20 June 2008 that it strongly opposed the FOB value requirement. ACCI advised by email on 19 May 2008 that on the basis of its consultations with industry the strong view was that Australia should not agree to this requirement.
64. DFAT is consulting closely with industry in seeking to ensure that the First Protocol is implemented by the Parties in a manner that would be trade facilitating and business-friendly. DFAT met with representatives of ACCI and Ai Group on 12 June 2014 to explain the final outcome in the First Protocol and to invite industry views and input on potential issues that the Parties should address as part of the implementation process. DFAT also made publicly available on 25 August 2014 an Issues Paper inviting public submissions or other input on implementation aspects of the First Protocol (available at www.dfat.gov.au).
65. DFAT will continue to engage industry as AANZFTA Parties develop arrangements for implementing the First Protocol and will ensure information about the implementation is widely circulated to business.
66. DFAT and ACBPS will monitor business experience as the First Protocol is implemented through existing channels for direct company engagement and reporting of problems, and will work with individual companies to address any problems experienced. DFAT will also bring to the attention of other AANZFTA Parties any systemic issues identified through this engagement to ensure that swift action is taken by the Parties to address any problems.

Commonwealth Government agencies

67. Commonwealth Government departments were consulted extensively throughout the negotiation of the First Protocol, and representatives from relevant departments attended the AANZFTA meetings at which the First Protocol was negotiated.

H. CONCLUSION

68. It is in Australia's interests to implement the First Protocol, given that the First Protocol will:
- (a) update an existing FTA to reflect modern business practices and further secure Australia's competitiveness in key markets;

- (b) remove regulatory impediments that have hindered business use of AANZFTA; and
 - (c) make AANZFTA more consistent with Australia's other FTAs, reducing the regulatory complexity faced by businesses using the FTAs to import or export goods.
69. It should be noted that with tariff reductions under the AANZFTA scheduled to continue over the next 10 years, it is important to ensure that the Agreement remains commercially relevant in order for businesses to take full advantage of the opportunities available.

I. IMPLEMENTATION AND REVIEW

70. As a treaty, the First Protocol will be tabled in Parliament and examined by the Joint Standing Committee on Treaties.
71. Implementation of the First Protocol will require amendment of the *Customs (ASEAN-Australia-New Zealand Free Trade Agreement Rules of Origin) Regulations 2009*.
72. Once Australia's domestic processes are completed, the First Protocol will enter into force 30 days after Australia, New Zealand and at least four ASEAN Member States have notified all AANZFTA Parties that they have completed their internal requirements necessary for entry-into-force. The First Protocol would enter into force for other ASEAN Member States thirty days after they notify all Parties they have completed their internal processes. Parties are aiming for entry-into-force in the first half of 2015.
73. The provisions of the First Protocol do not include specific dates for the review or expiry of the First Protocol. However, the AANZFTA provides mechanisms for unilateral termination by any Party and review through the joint FTA institutional provisions.
74. Officials of the Parties regularly meet in a number of committees, comprising all Parties and co-chaired by Australia, New Zealand, and Brunei Darussalam (as coordinator for ASEAN) to oversee implementation of AANZFTA. Implementation of the First Protocol will be monitored by the Sub-Committee on Rules of Origin (SC-ROO) and the Committee on Trade in Goods (CTG), to which the SC-ROO reports. The CTG and the SC-ROO normally meet twice a year as well as working intersessionally through email exchanges. The CTG and SC-ROO will review implementation of the First Protocol, exchange views on business responses to this implementation, and respond to any problems identified. They will, if necessary, be able to bring any issues to the attention of the FTA Joint Committee (FJC), which oversees implementation of AANZFTA for higher level consideration and reports to Trade and Economic Ministers of the Parties on an annual basis.

ATTACHMENT A: AN EXAMPLE OF AN AMENDMENT BETWEEN HS 2007 AND HS 2012

The HS Code is split into 2-Digit Chapters, 4-digit Headings and 6-digit Subheadings. Every product is able to be assigned to one of the over 5,000 6-digit Subheadings in the HS Code. This system is internationally comparable and forms the basis for both customs procedures and international merchandise trade statistics.

During the periodic review, new Subheadings are created, old Subheadings are deleted and some Subheadings are split and/or merged into others. This periodic action of creating, deleting, splitting and merging Subheadings is undertaken to take into account various changes to international trade. The current version, HS 2012, includes 220 sets of amendments: 98 relating to the agricultural sector; 27 to the chemical sector; nine to the paper sector; 14 to the textile sector; five to the base metal sector; 30 to the machinery sector; and an additional 37 that apply to a variety of other sectors.¹

The first amendment of HS 2012 related to the first two Subheadings in the nomenclature. These changes were adopted as a result of the Food and Agriculture Organization (FAO) proposal to enhance the monitoring of global food security.

In HS 2007, **Live horses, asses, mules and hinnies**, were classified as either *Pure-bred breeding animals* (HS Code 0101.10) or *Other* (0101.90) as shown below.

Heading	H.S. Code	
01.01		Live horses, asses, mules and hinnies.
	0101.10	- Pure-bred breeding animals
	0101.90	- Other

In HS 2012, the amendments to the nomenclature created two specific Subheadings for *Horses* dependent on whether they were *Pure-bred breeding animals* (HS Code 0101.21 – Originally 0101.10 in HS 2007) and *Other* (HS Code 0101.29 – Originally 0101.90 in HS 2007). The amendments also created a new Subheading for *Asses* (HS Code 0101.30 – which included *Asses* from 0101.10 – *Pure-bred breeding animals* and 0101.90 – *Other* in HS Code 2007). The remainder of 0101.90 – *Other* – in HS 2007 was kept in 0101.90 in HS 2012. These were **Mules and Hinnies** mentioned in the Heading 01.01. As **Mules and Hinnies** cannot be *Pure-bred breeding animals*, there were no **Mules and Hinnies** in 0101.10 in HS 2007 and this Subheading was deleted.

Heading	H.S. Code	
01.01		Live horses, asses, mules and hinnies.
		- Horses :
	0101.21	-- Pure-bred breeding animals
	0101.29	-- Other
	0101.30	- Asses
	0101.90	- Other

¹ A full list of the amendments can be found at:
http://www.wCoOmd.org/en/topics/nomenclature/instrument-and-tools/hs_nomenclature_2012/correlations-tables.aspx

ATTACHMENT B: REGULATORY BURDEN MEASUREMENT

1. The First Protocol is a deregulatory measure which will reduce the regulatory requirements and compliance costs for Australian businesses making use of AANZFTA to import or export goods. It will not introduce any new or additional regulatory requirements for business.
2. Currently Australian businesses using AANZFTA to import or export goods need to have AANZFTA Certificates of Origin (COO) which include the FOB value of the goods and which record that the goods are originating because they meet AANZFTA rules of origin (ROO) which are:
 - a) presented using a combination of:
 - i. Annex 2 of the Agreement, containing Product Specific Rules (PSR) which list the detailed ROO requirements for a subset of products. The products are identified at the six-digit level of the Harmonized Commodity Description and Coding System (HS) which is an internationally harmonized nomenclature to classify goods for the purposes of levying tariffs and collecting trade statistics. For each of the products listed in the Annex a PSR is detailed – normally this is a choice of a regional value content rule (RVC) or a change in tariff classification rule (CTC), but for some products may include the choice of a production process rule; and
 - ii. a general rule set out in Article 4 of Chapter 3 of the Agreement which applies to products not listed in Annex 2. The general rule is a choice of an RVC of 40 per cent of the FOB value of the good, and the final process of production performed within a Party, or a change in tariff classification at the four-digit level; and
 - b) recorded using HS 2007. The HS is updated every five years by the World Customs Organization (WCO) to maintain its relevance to contemporary trade patterns and to take account of technological developments. HS 2007 was the version that came into force on 1 January 2007. The current version of the HS, HS 2012, came into force on 1 January 2012 and is now applied by most countries (e.g. export and import declarations need to be filled out using HS 2012, and applicable tariffs and other duties payable determined using tariff schedules recorded in HS 2012). The WCO, and national administrations, prepare detailed transposition tables allowing users to match HS 2007 with HS 2012 at the six-digit level, and more detailed levels (normally eight or nine digits) used by individual countries.
3. AANZFTA's requirement to include the FOB value on the documentation (the COO) needed to establish *prima facie* evidence of origin, and the presentation of the ROO using a combination of a partial annex of PSR and a general rule makes it quite different from Australia's other FTAs. These do not require the inclusion of an FOB value on the documentation, and they present the PSR in a consolidated Annex.² Exporters and importers therefore have to follow a different system

² Australia currently has the following FTAs in force in addition to AANZFTA: the Australia New Zealand Closer Economic Relations Agreement (ANZCERTA); the Singapore-Australia FTA

when making use of AANZFTA compared to Australia's other FTAs. This has introduced complexity for business and imposed compliance costs in understanding and ensuring they apply the correct system to AANZFTA compared to other Australian FTAs.

4. The First Protocol will remove the FOB value requirement for most shipments and bring the presentation of AANZFTA's ROO into alignment with that of Australia's other FTAs. In addition, the First Protocol will remove the compliance costs for importers and exporters using AANZFTA because the AANZFTA ROO are recorded using the superseded HS 2007 rather than the currently used HS 2012:
 - a) currently exporters need to apply for a COO using AANZFTA ROO that are recorded using HS 2007. However, they need to use HS 2012 to fill out the export declaration for the goods and commercial documents such as invoices and bills of lading, and much of the information they would use to determining whether the good meets the AANZFTA ROO would also be available in HS 2012 (e.g. they would use the HS 2012 six digit sub-heading for a product recorded at import for non-originating materials they have imported or obtained from other suppliers). This imposes additional time and compliance costs on business, as they need to refer to detailed transposition tables or obtain the advice of HS experts to ensure they are AANZFTA compliant. This situation also increases the risk that they will inadvertently make a mistake and make incorrect declarations about the origin of the goods (which could lead to problems with contractual arrangements with their buyers if the latter is refused FTA tariff treatment by the importing Party and/or subjected to penalties for falsely claiming preferential tariff treatment); and
 - b) Currently importers need to be in possession of a COO supplied to them by the exporter of the goods where the origin of the goods will be recorded using HS 2007. However, the importer needs to fill out the import declaration using HS 2012. As the importer is claiming the financial advantage of AANZFTA tariff treatment, it is very important that they ensure that goods covered by the COO match the HS 2012 product identified in the import declaration, as otherwise their claim for preferential tariff treatment could be refused and/or they could be subject to penalties.

(SAFTA); the Thailand-Australia FTA (TAFTA); the Australia-United States FTA (AUSFTA); the Australia-Chile FTA (ACIFTA) and the Malaysia-Australia FTA (MAFTA). All of these FTAs, except for SAFTA, set out the detailed ROO for individual products in a consolidated PSR Annex. SAFTA's ROO are *sui generis* and are quite different from any of Australia's other FTAs. SAFTA is not used by Australian exporters – except perhaps for a few shipments – as Singapore's applied tariffs are zero for almost all products. Imports from Singapore using SAFTA are small and would only involve a relatively small subset of imports – see the figures in Table 2 in relation to imports.

ONGOING SAVINGS FOR EXPORTERS AND IMPORTERS

Ongoing Savings for Exporters

5. The savings from the First Protocol for exporters have been estimated using a conservative estimate of a 10 minute saving in labour costs for each shipment using AANZFTA. This 10 minute savings reflects:
 - a) no need to include the FOB value for most shipments;
 - b) use of the same ROO system as for other Australian FTAs (i.e. a consolidated PSR Annex); and
 - c) use of the HS 2012 for all trade information requirements.
6. Most of the 10 minute time savings would be due to paragraph 5.c), and partly to b), and the time saving for item a) would probably be very small. An example of the current process and time taken can be found in **Box 1**.
7. Information supplied by Australia's two COO issuing authorities, ACCI and Ai Group, indicate that around 20,000 AANZFTA COOs are issued to Australian exporters each year. The average annual savings for exporters have therefore been calculated on the following basis:
 - a) average earnings for non-managerial employees per hour: \$34.20.
 - b) scaling up of these earnings to account for non-wage labour costs: $\$34.20 \times 1.75 = \59.85
 - c) labour costs for 10 minutes: \$9.98
 - d) 20,000 shipments \times \$9.98 = \$199,600

Box 1. An Example of the Ongoing Savings for Exporters

The Protocol is expected to create time savings for exporters by enabling them to streamline the administrative process behind applying for an AANZFTA COO. The following is a simple example that demonstrates time saving by businesses due to changes noted in paragraph 5.

Example

A hypothetical Australian food producer makes, amongst other things, smoked octopus. The smoked octopus is manufactured from fresh chilled octopodes which are imported from China, not a party to AANZFTA.

These are imported under HS 2012 Code 0307.51 “- Octopus (Octopus spp.): live, fresh or chilled”.

The company then smokes the octopodes and exports them to Vietnam under HS Code 0307.59.30 “- Octopus - - - Smoked” which has an MFN tariff of 25 per cent (as at 2013). The company has worked out that they only add an additional 35 per cent to the value of the octopodes based on the AANZFTA Rules of Origin.

However, under AANZFTA the Vietnamese tariff on the product is 15 per cent for 2014. If the exporter wants to take advantage of this 10 percentage points difference, it will need to provide the importing company a valid AANZFTA COO so that AANZFTA tariff preference can be claimed.

Making a claim based on HS 2007, partial PSR and with FOB value

In order to make a claim based on HS 2007 the business will need to determine the HS Codes for both the imported product and the final product. Table 1.1 below summarises where the products are now classified, and where they were classified in HS 2007.

Table 1.1. HS Codes for fresh chilled and smoked octopus

Product	HS Code 2012	HS Code 2007
Fresh Chilled Octopus	0307.51	0307.51
Smoke Octopus	0307.59	1605.90

It should be noted that the smoked octopus was not always classified in 0307.59. It was originally classified in 1605.90 in HS 2007, but smoked products were moved to Chapter 03 of the HS in the update to HS 2012.

This means that the business should not check the Product Specific Rule of Origin for smoked octopus by looking at the HS Code 0307.59, which they include on their export documentation. The COO needs to be completed in HS 2007 and therefore they need to look at HS Code 1605.90.

HS Code 1605.90 is listed in the AANZFTA Product Specific Rules of Origin, with a rule of origin of “RVC(40) or CC” (i.e. a Regional Value Content of 40 per cent or a change in tariff code at the HS Chapter (two digit) level). In this instance there is no need to refer to the general rule as the HS Code could be found in the Product Specific Rules of Origin. Given the exporter’s earlier calculation of a 35 per cent RVC, they will not be able to use this component of the Product Specific Rules of Origin.

While based on the HS 2012 Codes, there is no change to the tariff classification at the two digit level; it is the HS 2007 Codes that companies need to look at to make this assessment.

As the non-originating material – the fresh chilled octopus – are in HS Chapter 03 and the HS Chapter of the smoked octopus is HS Chapter 16, these goods meet the CC rule.

The exporter completes the AANZFTA COO stating the HS Code for the smoked octopus is 1605.90 and the origin conferring criteria is PSR(CTC). The exporter also has to write down the FOB value for the shipment in Box 9 of the COO.

However, most companies do not have access to Table 1.1 in its entirety. At best they have access to only the type of product and the HS 2012 Code information that is on their import and export documentation (see Table 1.2 below). Businesses are required to identify the HS 2007 Code for their inputs and final products either themselves, or by consulting tariff classification experts. Both are time consuming processes. The use of an expert to help classify the goods would incur an additional cost to the business.

There exists no easy method to rapidly transpose a product’s classification from HS 2012 to HS 2007 other than methodical reading of the HS nomenclature itself. The simple addition of the word “smoked” to specific HS Chapter 03 headings in HS 2012 moved a large range of seafood products that were classified in HS Chapter 16 under HS 2007 to HS Chapter 03 under HS 2012.

It would be reasonable to expect that a business would spend at least five minutes per product to classify a good in HS 2007. Hence a simple one input - one output process would take 10 minutes to classify. This process becomes further complicated as more inputs are added.

Making a claim based on HS 2012, consolidated PSR and no FOB for goods not claiming preference based on an RVC criteria

In order to make a claim based on HS 2012 the business will only need the HS Codes from their existing import and export documentation. These can be found in Table 1.2

Table 1.2. Known HS Codes for fresh chilled and smoked octopus

Product	HS Code 2012
Fresh Chilled Octopus	0307.51
Smoke Octopus	0307.59

The company then looks up the HS Code 0307.59 in the new Schedule of Product Specific Rules of Origin. They find that the rule is “WO or No change in tariff classification is required provided that the good is smoked in the territory of a Party”.

While they know that the octopodes are not wholly produced or obtained, they meet the specific process rule of being smoked in the territory of a Party.

The exporter completes the COO stating the HS Code for the smoked octopus is 0307.59 and the origin conferring criteria is PSR(OTHER). There is no requirement to include the FOB value as an Regional Value Content rule is not used.

There is no additional requirement to identify the HS Codes as these are found on other documentation used for the import and export process.

Ongoing Savings for Importers

8. The savings from the First Protocol for importers have been estimated using a conservative estimate of a five minute saving in labour costs for each shipment using AANZFTA. This five minute savings reflects the use of HS 2012 on the COO, consistent with all other information and documentary requirements for importing goods. Based on the example in **Box 1**, an importer only needs to check HS Code classification of one product, the product they import.
9. In calendar year 2013, goods valued at \$4,191,905,811 were imported by Australia using AANZFTA tariff treatment. To derive the number of shipments, it has been assumed that the value of each shipment averaged about \$45,000.³ The annual average savings for importers have therefore been calculated on the following basis:
 - a) average earnings for non-managerial employees per hour: \$34.20.
 - b) scaling up of these earnings to account for non-wage labour costs:
 $\$34.20 \times 1.75 = \59.85
 - c) labour costs for five minutes: \$4.99
 - d) $\$4,191,905,811 \div \$45,000 = 93,153$ shipments
 - e) $93,153 \text{ shipments} \times \$4.99 = \$464,833$

TRANSITIONAL COSTS AND UNREALISED BENEFITS

Transitional costs for Exporters

10. AANZFTA Parties are currently seeking to reach agreement on arrangements for introducing the provisions of the First Protocol to minimize any costs for business during the change-over from the current arrangements to the new arrangements. However, it is possible that there could be some transitional costs for business if the First Protocol does not enter into force for all AANZFTA Parties at the same time. To take account of these possible transitional costs a worst case scenario has been assumed of a six-month period during which the First Protocol has come into force for Australia, New Zealand and four ASEAN Member States (the minimum required for the First Protocol to enter into force), but does not enter into force for some other major ASEAN Member State trading partners until six months later, so that there is a time cost for business to ensure that it has the correct documentation for each set of Parties.

³ Sufficient data is not available on the import side to estimate an average shipment value using imports. Therefore export data was used to calculate an average shipment value. The average value per shipment to the other 11 AANZFTA Parties for 2012-2013 was \$21,744, but if only shipments to the 10 ASEANs are counted the average value per shipment was \$56,197. Given that most imports using AANZFTA come from ASEAN countries rather than New Zealand, it seems reasonable to choose a figure closer to the average value per shipment to ASEAN i.e. \$45,000

11. The transitional costs for exporters have been estimated on the basis of a worst-case scenario that it takes five minutes of labour costs for each shipment to check the list of AANZFTA Parties, distinguishing between those Parties for which the First Protocol already applies and those Parties for which the First Protocol does not yet apply. This worst-case scenario assumes that an importing AANZFTA Party will only accept COO consistent with the new arrangements (i.e. no FOB value requirement for most shipments and use of HS 2012 PSR) once the First Protocol has entered-into-force for it. The transitional costs for the first year following entry-into-force of the First Protocol have therefore been calculated on the following basis:
- a) average earnings for non-managerial employees per hour: \$34.20
 - b) scaling up of these earnings to account for non-wage labour costs:
 $\$34.20 \times 1.75 = \59.85
 - c) labour costs for five minutes: \$4.99
 - d) $(20,000 \text{ shipments} \times \$4.99) \div 2 = \$49,900$
12. This transitional cost of \$49,900 for the first year has been turned into an average annual cost for a 10 year period by being divided by 10, i.e. the average annual cost is \$4,990.⁴
13. No transitional costs have been estimated for importers. The importer makes use of the COO supplied by the exporter – so that it is the exporter and the COO issuing authority in the Party of export who have to determine whether the importing Party is applying the new arrangements under the First Protocol.

Unrealised benefits for exporters and importers

14. As there is a possibility of a transitional period, then it follows that some of the benefits for that period will be unrealised while this occurs. As the First Protocol will only enter-into-force following Australia, New Zealand and at least four ASEAN Member States completing their necessary domestic processes, it is assumed that approximately half of the trade will benefit from the First Protocol during the transition period. This implies that half will not. Therefore, for half of the first year, half the benefits should be deducted.
- a. Total benefits for one year: $\$199,600 + \$464,833 = \$664,433$
 - b. Benefits for half the number of Parties $\$664,433 \div 2 = \$332,216$

⁴ The First Protocol provides for a two year transition period for Burma and Cambodia to implement the removal of the FOB value requirement for most shipments. However, any transitional costs for Australian exporters are likely to be very small (and statistically insignificant) given the small amount of trade with these two countries, and the limited number of companies involved. Total Australian exports to Burma and Cambodia in 2013 were \$144 million, which was only 0.44% of total Australian exports to AANZFTA Parties in 2013 (\$32.4 billion).

c. Benefits for half a year: $\$332,216.5 \div 2 = \$166,108$

15. The unrealised benefits of \$166,108 for the first year has been turned into an average annual cost for a 10 year period by being divided by 10, i.e. the average annual cost is \$16,611.

Other potential costs

16. It has been assumed that there are no or minimal learning costs for business in implementing the First Protocol, as it seems reasonable to assume that all, or virtually all, businesses making use of AANZFTA would already also be making use of one of Australia’s other FTAs. As the changes to AANZFTA bring it into alignment with the approach adopted in these other FTAs, businesses will already be familiar with this approach. Information on the extent of business use of Australia’s FTAs can be seen in Table 2.⁵

TABLE 2: AUSTRALIAN IMPORT CLEARANCES IN 2013

Free Trade Agreement (FTA)	Value of Import Clearances (\$)
AANZFTA (ASEAN-Australia-New Zealand FTA)	4,191,905,811
ACIFTA (Australia-Chile FTA)	92,286,680
ANZCERTA (Australia New Zealand Closer Economic Relations – Trade Agreement)	3,427,880,337
AUSFTA (Australia-United States FTA)	6,801,808,978
MAFTA (Malaysia-Australia FTA)	368,618,342
SAFTA (Singapore-Australia FTA)	186,403,646
TAFTA (Thailand-Australia FTA)	7,304,818,291
Total import clearances claiming tariff treatment under an FTA	22,373,724,085
Total import clearances (from all sources)	240,370,087,661

Source: Import clearance data publicly available from the Australian Bureau of Statistics (ABS). Import clearances are imports cleared for home use and which have been assessed for duty payable. Total import clearances differ slightly from total merchandise imports. Import clearance data, unlike merchandise import data, includes information on imports which have cleared Customs claiming preferential tariff treatment under a particular FTA.

The Issuing Authorities

17. It has been assumed that there are no ongoing savings for Australia’s two issuing authorities, ACCI and Ai Group, and that any transitional costs to them would be minimal. Currently, they issue around 20,000 AANZFTA COOs and around

⁵ It is not possible to compile similar information on Australia’s exports under each FTA as, of Australia’s FTA partners, only the United States (through the United States International Trade Commission website) makes information on import clearances publicly available. A project is currently underway in AANZFTA to begin the compilation of similar information for all AANZFTA Parties.

10,000 TAFTA COOs per annum, and perhaps a few under other Australian FTAs (for most other Australian FTAs, exporters fill out the relevant documentation, normally a declaration of origin, without the need to have it also certified by ACCI or Ai Group). Implementation of the First Protocol will introduce consistency between AANZFTA and TAFTA so that there should be no learning costs involved, although there may be some costs in initially introducing the changed arrangements through alterations to forms and systems.

18. The net benefits of implementation of the First Protocol are:

- a) Ongoing savings for exporters: \$199,600
- b) Ongoing savings for importers: \$464,833
- c) Transitional costs for exporters: \$4,990
- d) Unrealized benefits for importers and exporters during transition: \$16,611
- e) Net benefits = \$199,600 + \$464,833 - \$4,990 - \$16,611 = \$642,832

REGULATORY BURDEN AND COST OFFSET (RBCO) ESTIMATE TABLE

Average Annual Compliance Costs (from Business as usual)				
Costs (\$m)	Business	Community Organisations	Individuals	Total Cost
Total by Sector	(\$0.64)	\$	\$	(\$0.64)
Cost offset (\$m)				
Cost offset (\$m)	Business	Community Organisations	Individuals	Total by Source
Agency	\$	\$	\$	\$
Within portfolio	\$	\$	\$	\$
Outside portfolio	\$	\$	\$	\$
Total by Sector	\$	\$	\$	\$
Proposal is cost neutral?	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no			
Proposal is deregulatory	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no			
Balance of cost offsets	\$0.64 million			