2009 AGREEMENT ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

1.The objectives of this Agreement are to: progressively liberalise and facilitate trade in goods among the Parties through, inter alia, progressive elimination of tariff and non-tariff barriers in substantially all trade in goods among the Parties; progressively liberalise trade in services among the Parties, with substantial sectoral coverage; facilitate, promote and enhance investment opportunities among the Parties through further development of favourable investment environments; establish a co-operative framework for strengthening, diversifying and enhancing trade, investment and economic links among the Parties; and provide special and differential treatment to ASEAN Member States, especially to the newer ASEAN Member States, to facilitate their more effective economic integration.

2.The Parties hereby establish, consistent with Article XXIV of GATT 1994 and Article V of GATS, an ASEAN, Australia and New Zealand Free Trade Area.

3.Except as otherwise provided in this Agreement, 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 in Annex 1 (Schedules of Tariff Commitments).

4.Nothing in this Agreement shall preclude all Parties from negotiating and entering into arrangements to accelerate and/or improve tariff commitments made under this Agreement. An agreement among all Parties to accelerate and/or improve tariff commitments shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions). Such acceleration and/or improvement of tariff commitments shall be implemented by all the Parties.

5.Two or more Parties may also consult to consider accelerating and/or improving tariff commitments set out in their schedules of tariff commitments in Annex 1 (Schedules of Tariff Commitments). An agreement between these Parties to accelerate and/or improve their respective tariff commitments under this Agreement shall be incorporated into this Agreement, in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions). Tariff concessions arising from such acceleration and/or improvement of tariff commitments shall be extended to all Parties.

6.A Party may, at any time, unilaterally accelerate the reduction and/or elimination of customs duties on originating goods of the other Parties set out in its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments). A Party intending to do so shall inform the other Parties before the new rate of customs duties takes effect, or in any event, as early as practicable.

7.Consistent with their rights and obligations under the WTO Agreement, each Party agrees to eliminate and not reintroduce all forms of export subsidies for agricultural goods destined for the other Parties.

8.Each Party shall accord national treatment to the goods of the other Parties in accordance with Article III of GATT 1994. To this end, Article III of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

9.Each Party shall ensure that fees and charges connected with importation and exportation shall be consistent with its rights and obligations under GATT 1994.

10.Each Party shall make available details of the fees and charges that it imposes in connection with importation and exportation and, to the extent possible and in accordance with its domestic laws and regulations, make such information available on the internet.

11.A Party may not require consular transactions, including related fees and charges, in connection with the importation of any good of any other Party.

12.Article X of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

13.In accordance with its domestic laws and regulations and to the extent possible, each Party shall make laws, regulations, decisions and rulings of the kind referred to in Paragraph 1 available on the internet.

14.No Party shall adopt or maintain 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, except in accordance with its WTO rights and obligations or this Agreement. To this end, Article XI of GATT 1994 shall be incorporated into and shall form part of this Agreement, mutatis mutandis.

15.Except as otherwise provided in this Agreement, a Party shall not adopt or maintain 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, except in accordance with its WTO rights and obligations or in accordance with this Agreement.

16.Each Party shall ensure the transparency of its non-tariff measures permitted under Paragraph 2 and shall ensure that any such measures are not prepared, adopted or applied with the view to or with the effect of creating unnecessary obstacles to trade among the Parties.

17.The Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) shall review non-tariff measures covered by this Chapter with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties. The Goods Committee shall submit to the FTA Joint Committee an initial report on progress in its work, including any recommendations, within two years of entry into force of this Agreement. Any Party may nominate measures for consideration by the Goods Committee.

18.Each Party shall ensure that all automatic and non-automatic import licensing measures are implemented in a transparent and predictable manner, and applied in accordance with the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement.

19.Each Party shall promptly notify the other Parties of existing import licensing procedures. Thereafter, each Party shall notify the other Parties of any new import licensing procedures and any modification to its existing import licensing procedures, to the extent possible 60 days before it takes effect, but in any case no later than within 60 days of publication. The information in any notification under this Article shall be in accordance with Article 5.2 and 5.3 of the Agreement on Import Licensing Procedures in Annex 1A to the WTO Agreement.

20.Upon request of another Party, a Party shall, promptly and to the extent possible, respond to the request of that Party for information on import licensing requirements of general application.

21.In exceptional circumstances where a Party faces unforeseen difficulties in implementing its tariff commitments, that Party may, with the agreement of all other interested Parties, modify or withdraw a concession contained in its schedule of tariff commitments in Annex 1 (Schedules of Tariff Commitments). In order to seek to reach such agreement, the relevant Party shall engage in negotiations with any interested Parties. In such negotiations, the Party proposing to modify or withdraw its concessions shall maintain a level of reciprocal and mutually advantageous concessions no less favourable to the trade of all other interested Parties than that provided for in this Agreement prior to such negotiations, which may include compensatory adjustments with respect to other goods. The mutually agreed outcome of the negotiations, including any compensatory adjustments, shall apply to all the Parties and shall be incorporated into this Agreement in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions).

22.Each Party shall designate a contact point to facilitate communication among the Parties on any matter relating to this Chapter.

23.Where a Party considers that any proposed or actual measure of another Party or Parties may materially affect trade in goods between the Parties, that Party may, through the contact point, request detailed information relating to that measure and, if necessary, request consultations with a view to resolving any concerns about the measure. The other Party or Parties shall respond promptly to such requests for information and consultations.

24.The Parties hereby establish a Committee on Trade in Goods (Goods Committee) consisting of representatives of the Parties. The Goods Committee may meet at the request of any Party or the FTA Joint Committee to consider any matter arising under this Chapter, or under: Chapter 3 (Rules of Origin).

25.The functions of the Goods Committee shall include: reviewing implementation of, and measures taken pursuant to, the Chapters referred to in Paragraph 1; receiving reports from, and reviewing the work of: the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin); the SPS Sub-Committee established pursuant to Article 10 (Meetings Among the Parties on Sanitary and Phytosanitary Matters) of Chapter 5 (Sanitary and Phytosanitary Measures); and the STRACAP Sub-Committee established pursuant to Article 13 (Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures) of Chapter 6 (Standards, Technical Regulations and Conformity Assessment Procedures); implementing the work programme provided for in Article 7.4 (Quantitative Restrictions and Non-Tariff Measures); identifying and recommending measures to promote and facilitate improved market access, including any acceleration of tariff commitments under Article 2.1 (Acceleration of Tariff Commitments); and reporting, as required, to the FTA Joint Committee.

26.The Goods Committee may agree to establish subsidiary working groups or refer issues for consideration to the ROO Sub-Committee established pursuant to Article 18 (Sub-Committee on Rules of Origin) of Chapter 3 (Rules of Origin).

27.The meetings of the Goods Committee may occur in person, or by any other means as mutually determined by the Parties.

28.Each Party shall take such reasonable measures as may be available to it to ensure observance of the provisions of this Chapter by the regional and local governments and authorities within its territories.

29.

30.For the purposes of this Chapter, a good shall be treated as an originating good if it is either: wholly produced or obtained in a Party as provided in Article 3 (Goods Wholly Produced or Obtained); not wholly produced or obtained in a Party provided that the good has satisfied the requirements of Article 4 (Goods Not Wholly Produced or Obtained); or produced in a Party exclusively from originating materials from one or more of the Parties, and meets all other applicable requirements of this Chapter.

31.A good which complies with the origin requirements of Paragraph 1 will retain its eligibility for preferential tariff treatment if exported to a Party and subsequently reexported to another Party.

32.For the purposes of Article 2.1(b) (Originating Goods), except for those goods covered under Paragraph 2, a good 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 as described in Article 5 (Calculation of Regional Value Content), and the final process of production is performed within a Party; or all non-originating materials used in the production of the good 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.

33.In accordance with Paragraph 1, a good subject to Product Specific Rules shall be treated as an originating good if it meets those Product Specific Rules.

34.For a good not specified in Annex 2 (Product Specific Rules), a Party shall permit the producer or exporter of the good to decide whether to use Paragraph 1(a) or (b) when determining if the good is originating.

35.If a good is specified in Annex 2 (Product Specific Rules) and the relevant provisions of that Annex provide a choice of rule between a regional value content based rule of origin, a change in tariff classification based rule of origin, a specific process of production, or a combination of any of these, a Party shall permit the producer or exporter of the good to decide which rule to use in determining if the good is originating.

36.For the purposes of Article 4 (Goods Not Wholly Produced or Obtained), the formula for calculating the regional value content will be either: Direct Formula(AANZFTA Material Cost+Labour Cost+Overhead Cost+Profit+Other Costs/FOB×100%)

37.The value of goods under this Chapter shall be determined in accordance with Article VII of GATT 1994 and the Agreement on Customs Valuation.

38.For the purposes of Article 2 (Originating Goods), a good which complies with the origin requirements provided therein and which is 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.

39.Where a claim for origin is based solely on a regional value content, the operations or processes listed below, undertaken by themselves or in combination with each other, are considered to be minimal and shall not be taken into account in determining whether or not a good is originating: ensuring preservation of goods in good condition for the purposes of transport or storage; facilitating shipment or transportation; packaging[[1]](#footnote-0) or presenting goods for transportation or sale; simple processes, consisting of sifting, classifying, washing, cutting, slitting, bending, coiling and uncoiling and other similar operations; affixing of marks, labels or other like distinguishing signs on products or their packaging; and mere dilution with water or another substance that does not materially alter the characteristics of the goods.

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41.A good that does not satisfy a change in tariff classification requirement pursuant to Article 4 (Goods Not Wholly Produced or Obtained) will nonetheless be an originating good if: for a good, other than that provided for in Chapters 50 to 63 of the HS Code, the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; for a good provided for in Chapters 50 to 63 of the HS Code, the weight of all non-originating materials used in its production that did not undergo the required change in tariff classification does not exceed 10 per cent of the total weight of the good, or the value of all non-originating materials used in the production of the good that did not undergo the required change in tariff classification does not exceed 10 per cent of the FOB value of the good; and the good meets all other applicable criteria of this Chapter.

42.The value of such materials shall, however, be included in the value of non-originating materials for any applicable regional value content requirement.

43.For the purposes of determining the origin of a good, accessories, spare parts, tools and instructional or other information materials presented with the good shall be considered part of that good and shall be disregarded in determining whether all the non-originating materials used in the production of the originating good have undergone the applicable change in tariff classification, provided that: the accessories, spare parts, tools and instructional or other information materials presented with the good are not invoiced separately from the originating good; and the quantities and value of the accessories, spare parts, tools and instructional or other information materials presented with the good are customary for that good.

44.Notwithstanding Paragraph 1, if the good is subject to a regional value content requirement, the value of the accessories, spare parts, tools and instructional or other information materials presented with the good shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

45.Paragraphs 1 and 2 do not apply where accessories, spare parts, tools and instructional or other information materials presented with the good have been added solely for the purpose of artificially raising the regional value content of that good, provided it is proven subsequently by the importing Party that they are not sold therewith.

46.The determination of whether identical and interchangeable materials are originating materials shall be made either by physical segregation of each of the materials or by the use of generally accepted accounting principles of stock control applicable, or inventory management practice, in the exporting Party.

47.Packing materials and containers for transportation and shipment of a good shall not be taken into account in determining the origin of any good.

48.Packing materials and containers in which a good is packaged for retail sale, when classified together with that good, shall not be taken into account in determining whether all of the non-originating materials used in the production of the good have met the applicable change in tariff classification requirements for the good.

49.If a good is subject to a regional value content requirement, the value of the packing materials and containers in which the good is packaged for retail sale shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

50.An indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

51.For the purposes of this Chapter, all costs shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the Party in which the goods are produced.

52.A good will retain its originating status as determined under Article 2 (Originating Goods) if the following conditions have been met: the good has been transported to the importing Party without passing through any non-Party; or the good has transited through a non-Party, provided that: the transit entry is justified for geographical, economic or logistical reasons.

53.A claim that goods are eligible for preferential tariff treatment shall be supported by a Certificate of Origin issued by an Issuing Authority/Body notified to the other Parties as set out in this Chapter’s Annex on Operational Certification Procedures.

54.The Customs Authority of the importing Party may deny a claim for preferential tariff treatment when: the good does not qualify as an originating good; or the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter.

55.The importing Party shall grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations and administrative practices.

56.For the purpose of the effective and uniform implementation of this Chapter, the Parties hereby establish a Sub-Committee on Rules of Origin (ROO Sub-Committee). The functions of the ROO Sub-Committee shall include: monitoring of the implementation and administration of this Chapter; discussion of any issue that may have arisen in the course of implementation, including any matters that may have been referred to the ROO Sub-Committee by the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) or the FTA Joint Committee; discussion of any proposed modifications of the rules of origin under this Chapter; and consultation on issues relating to rules of origin and administrative co-operation.

57.The ROO Sub-Committee shall consist of representatives of the Parties. It shall meet from time to time as mutually determined by the Parties.

58.The ROO Sub-Committee shall commence a review of Article 6 (Cumulative Rules of Origin) no earlier than 12 months, and no later than 18 months following entry into force of this Agreement. This review will consider the extension of the application of cumulation to all value added to a good within AANZFTA. The ROO Sub-Committee shall submit to the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) a final report, including any recommendations, within three years of entry into force of this Agreement.

59.The ROO Sub-Committee shall commence a review of the application of the chemical reaction rule and other chemical process rules to Chapters 28 to 40 of the HS Code and other Product Specific Rules identified by Parties, no earlier than 12 months and no later than 18 months, following entry into force of this Agreement. The ROO Sub-Committee shall submit to the Goods Committee established pursuant to Article 11 (Committee on Trade in Goods) of Chapter 2 (Trade in Goods) a final report, including any recommendations, within three years of entry into force of this Agreement.

60.The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently in order to achieve the spirit and objectives of this Agreement.

61.This Chapter may be reviewed and modified in accordance with Article 6 (Amendments) of Chapter 18 (Final Provisions) as and when necessary, upon request of a Party, and subject to the agreement of the Parties, and may be open to such reviews and modifications as may be agreed upon by the FTA Joint Committee.

1. This excludes encapsulation which is termed “packaging” by the electronics industry. [↑](#footnote-ref-0)