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FTA UPDATE

Australia-ASEAN- New Zealand FTA

There is clear political commitment on all sides to try to finish this FTA by the time of the joint ASEAN Economic Ministers/CER Ministers meeting in Singapore on 28 August.

The pressure is on and the countdown to completion has begun.

Brisbane 21–25 April

The meetings were constructive and made real progress, narrowing the issues down for Ministers to focus on at the subsequent Bali meeting, as set out below.

The Chapter on **Intellectual Property** was finalised. It is reported by Australian negotiators to include some substantive commitments eg on **copyright** and to have good architecture in that links it to other international treaty obligations in WIPO.

It is understood to include a consultation committee process and to move beyond what ASEAN agreed in the FTA with Japan.

On the downside, the Philippines was reported to have taken some of its services offers off the table, as a result of unhappiness over Australia and New Zealand's offers on Movement of Natural Persons.

Bali 2 May

Following the Brisbane round, The Australian Minister for Trade, Simon Crean reportedly took 5 key outstanding issues for resolution at Bali.

- (1) The level of **tariff elimination**
- (2) **MFN** for services and investment
- (3) **Rules of Origin** (Australia and New Zealand are seeking full cumulation)
- (4) **Government Procurement**
- (5) **Competition Policy** (Australia has lowered its level of ambition and the chapter is likely to involve nothing more than a low-level exchange of information)

The Minister reportedly commented after the Bali meetings, that in his view, none of these is beyond resolution.

Government Procurement

There is no chapter on Government Procurement. But Australia and New Zealand are trying to "future proof" the Agreement via an annexed understanding that consultations will be triggered if ASEAN as a group enters into discussions on Government Procurement with any other party. But ASEAN countries had no mandate to negotiate on this. This has now been rectified, so negotiations can now get into full swing in this area.

MFN

ASEAN continues to resist MFN provisions on services. At Bali, ASEAN Ministers said that the basic problem is that they do not have MFN applying internally.

Australian negotiators report that MFN does however apply, under the ASEAN Framework Agreement, to Investment under Article 8.

So the question of how to include an MFN provision in the FTA will be dealt with separately under the Services and the Investment Chapters.



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With respect to Services, ASEAN is reported, after Bali, to be more willing to “explore the middle ground”.

In essence, ASEAN preferred way of handling this is include a provision which allows parties to the FTA to consult on a case-by-case basis, in the event that one party enters into an agreement with a third party in an “area of interest” to the other party.

New Zealand, on the other hand, prefers to try to run with the ‘Sectoral’ approach to MFN which they achieved in the China/New Zealand FTA.

In the FTA between China and New Zealand, it was agreed that the MFN clause would apply to 17 services sub-sectors, including;

- services incidental to agriculture,
- construction services,
- engineering services, computer and related services,
- tourism and travel-related services,
- environmental services.

These sectors added to a 15 percent coverage of the services sectors covered in the agreement.

New Zealand Trade Minister Phil Goff, reportedly considers this approach a “silver bullet”.

New Zealand accepts, in the case of ASEAN, there might need to be different lists of agreed services sub-sectors for each ASEAN country.

Australia is holding New Zealand back on this for the time being, in an effort to be more ambitious and explore other possible options.

Australian negotiators are considering the possibility of perhaps trying to combine the ASEAN and New Zealand approaches ie taking a sectoral approach for a given number of services sub-sectors – and then making it obligatory to consult with respect to all other sub-sectors in the event that future liberalisation takes place in a sector of interest.

Meanwhile, the idea of a third party MFN clause applying across the entire agreement, ie including Goods, has been ruled out by Australia and New Zealand, as giving the ASEANs a potential future free ride, for example in the event that in some future FTA, Australia might agree, to a more rapid phase out of tariffs on entry into force.

(It is likely, for example, that Australia will agree to a faster phase out of tariffs for Chile than it will for ASEAN, given the paucity of ASEAN offers, and the sensitivity of some particular manufactures vis-à-vis ASEAN suppliers.)

Ministers Crean and Goff have reportedly had extensive discussions on how to handle MFN.

Emergency Safeguard Measures for Services (EMS)

ASEAN countries continue to insist on the inclusion of language or Emergency Safeguards for Services.

Following receipt of the letter from the Australian Services Roundtable, Australian negotiators say that this issue as a second order priority and has been ratcheted to be a higher priority.

Australian officials accept that they had perhaps underestimated the importance of this issue including in the WTO context. Officials report that it is clearly extremely politically important, however, for ASEAN to have an outcome on this.



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Simon Crean apparently made it clear to his ASEAN counterparts at Bali that the key to resolving both MFN and EMS would lie in improved services market access offers.

Apparently some revised services offers, judged to be of some interest, were already forthcoming at Brisbane and since Brisbane in areas relevant to Australia's priority requests.

Other Outstanding Issues

There is no agreement yet over the 4 auxiliary services texts proposed for the FTA by Australia and New Zealand.

Financial Services; A text of sorts seems to be emerging though it is reported not to go far beyond the GATS.

Telecommunications; This remains seriously problematic, with negotiators far from agreeing even to a set of regulatory principles.

E- Commerce; This remains a problem chiefly because of regulatory responsibility is so dispersed in the ASEAN countries.

Movement of Natural Persons; This is reported to be extremely difficult all round but chiefly because of internal ASEAN difficulties

In all four of these areas, ASEAN prefers to take a plurilateral approach whereby countries can "opt in" if they are willing.

Australia and New Zealand are insisting that the texts must cover all parties and must be seen as part of the overall package.

Next Steps

The expectation is that the **Hanoi round of negotiations on 2-8 June** will be the last. DFAT will hold consultations with services industry stakeholders in Canberra on 14 May.

DFAT expectations are that the text agreed in Hanoi will still probably have square brackets around two issues, namely both **MFN and Emergency Safeguards** for Services.

This reflects Australian and New Zealand industry pressures on both governments.

The most likely outcome is that Australia and New Zealand will then embark, post Hanoi, on a

series of bilateral visits to ASEAN Capitals.

The key to a successful outcome will lie, then, in ASEAN preparedness to improve their services offers.

A special Trade Negotiating Committee may need to meet prior to the Singapore meeting to resolve the final text.

The Australian Services Roundtable may need to engage again at Ministerial level to ensure our interests are reflected in the final outcome

Join the Australian Services Roundtable

Find out more from ceo@servicesaustralia.org.au

The Australian Services Roundtable is the peak business body for the services industries in Australia.

Our mission is to secure Australia's place in the global services economy.