

KEY OUTCOMES: NEW ZEALAND-CHINA FREE TRADE AGREEMENT

Summary

- The New Zealand-China Free Trade Agreement (FTA) is the first FTA China has concluded with a developed country.
- It is also the first comprehensive FTA China has concluded covering goods, services and investment as a 'single undertaking' from the outset of the agreement.
- The removal of trade barriers under the FTA will provide new opportunities for New Zealand exporters and investors with New Zealand's third largest individual trading partner.
- The FTA provides a platform for enhanced regulatory cooperation to facilitate trade and reduce associated transactions costs in both goods and services trade.
- The FTA also provides a framework for resolving trade issues that might arise between the two countries in the future.
- The upfront commitments on goods, services and investment and the mechanisms which provide for further development of the agreement over time should help keep New Zealand at the forefront of the evolution of trade and investment relationships with China.
- In addition to the FTA China and New Zealand have also concluded legally binding agreements on labour and environment. Key outcomes of the Memorandum of Understanding on Labour Cooperation and the Environment Cooperation Agreement are summarised in later sections of this document.



Trade in Goods: Principal Outcomes for New Zealand

Overall outcomes

- The FTA provides for elimination over time of tariffs on 96 percent of New Zealand's current exports to China, which on full implementation will equate to an annual duty saving of NZ\$115.5 million based on current trade.
- For other than specified 'sensitive' products:¹
 - On entry into force, 35 percent of imports from New Zealand (which currently face tariffs of 5 percent or less) will be duty free;
 - Duties (in the range of 6–20 percent) on a further 31 percent of China's imports from New Zealand will be phased out over five years (2012);
 - Tariffs greater than 20 percent will be reduced to 20 percent on day one, and then phased out over six years (2013).
- Remaining tariffs will be phased out by 1 January 2019.
- By the end of the tariff phase-out period, tariffs on all but \$80 million of current trade will have been eliminated.

Manufactured goods

- Tariffs on all non-agricultural goods, other than milking machines (9 years) and certain processed wood and paper products (see below), will be phased out over a maximum of 6 years with the majority of trade in manufactured products being duty free in 5 years (2012).

Forestry products

- The FTA binds China's current applied zero tariff rate on logs and sawn timber (which represent approximately 80 percent of New Zealand's wood exports to China) and provides some additional tariff preferences for New Zealand on a limited number of products made from radiata pine.
- Tariff liberalisation under the FTA will not apply to certain processed wood and paper products that account for approximately 4 percent of New Zealand's current exports to China.²

¹'Sensitive' products include kiwifruit, certain meat products, sheepskins, dairy products, and products subject to global tariff quota regimes including wool.

² This is because as part of its accession to the WTO, China agreed that any preferential commitments it makes on wood and paper products in an FTA must then be offered to all WTO members.

Dairy

- China's tariff on butter, liquid milk and cheese will be phased out over 10 years (2017).
- Tariffs on skim and whole milk powders will be removed over 12 years (2019). Milk powders are subject to a mid-term review mechanism that, if triggered, could extend the phase out by a maximum of 1 year.
- Dairy products facing a 10 or 12-year phase out will be subject to a quantity-based safeguard, which extends 5 years after the tariffs have been eliminated (i.e. for up to 15 or 17 years in total). Duties can be applied on sendings above the safeguard trigger levels.

Meat

- Tariffs on beef and sheep meat, and edible offal will be phased out over 9 years (2016).

Seafood exports

- Other than products for which current tariffs are 5 percent or less (which become duty free immediately), tariffs on seafood products will be phased out over a period of 5 years (2012).

Fruit and vegetables

- Tariffs on apples will be phased out over 5 years (2012), while kiwifruit tariffs will be phased out over 9 years (2016).

Wool

- The FTA creates a country-specific tariff quota (CSTQ) for New Zealand wool. This will provide duty free treatment for an initial quantity (in 2009) of 25,000 tonnes of wool and 450 tonnes of wool tops, with an annual growth rate of 5 percent over 8 years through to 2017.
- The initial level of the CSTQ provides New Zealand exporters with duty-free access for approximately 75 percent of current exports (which equates to an average of \$122 million per year).
- For exports outside the CSTQ, New Zealand exporters will still be able to access China's global wool quota.

Trade in Services: Principal Outcomes for New Zealand

Overall outcomes

- In sectors included in each country's services schedule and subject to specific reservations as set out in those schedules, the FTA establishes the general obligations of 'market access' and 'national treatment'. In sectors where they apply, these obligations will entitle New Zealand service suppliers access to China's market (without quotas) and an ability to operate in China on the same basis as domestic suppliers.
- The FTA also includes a reciprocal Most Favoured Nation (MFN) clause that applies in specified sectors. This means that, in the sectors specified, New Zealand service suppliers will automatically receive the benefit of any commitments China makes in future FTAs that are more liberal than those in the New Zealand-China FTA. This will help to ensure that the competitive position in the China market of New Zealand exporters of these services is not eroded.
- MFN applies to the following sectors: environmental services, construction, agriculture and forestry³, engineering, integrated engineering, computer and related services, and tourism.
- The FTA uses a positive list approach to scheduling services commitments similar to that used in the WTO General Agreement on Trade in Services (GATS).
- The obligations on services do not apply in respect of subsidies or government procurement.

For New Zealand service suppliers to China

- The FTA incorporates China's existing WTO services commitments.
- China has also made commitments (across modes 1, 2 and 3)⁴ going beyond its WTO commitments in the following sectors:
 - Computer and Related Services – including software implementation services, data processing services, and input preparation services;
 - Services related to management consulting;
 - Education – a binding commitment to keep names of key New Zealand educational institutions on the China Ministry of Education "Study Abroad Website", and a commitment

³China's commitment for this sector is limited to the treatment it extends to other OECD countries. It could, therefore, under any future FTAs it might conclude with non-OECD countries, provide better treatment to suppliers of services related to agriculture and forestry from any such non-OECD country than it provides to New Zealand exporters of the same service.

⁴ The four 'modes' of service supply referred to in this document are: Mode 1: Cross-Border Trade: the service is supplied by a provider physically located in one country, to a consumer in another; Mode 2: Consumption Abroad: a customer travels to another country to consume a service; Mode 3: Commercial Presence: a foreign service supplier establishes a presence in another country to provide a service, through incorporation, branch offices, a joint venture or other form of business entity; and Mode 4: Movement of Natural Persons: the temporary movement of a person into a country in order to supply a service directly.

to initiate joint work on quality assurance criteria for qualifications which include a distance delivery component;

- Environmental services – an improved Mode 3 (investment in environmental services) commitment permitting wholly foreign-owned enterprises;
 - Sporting and other recreational services;
 - Air transport services - aircraft repair and maintenance services, and air travel computer reservation services; and
 - Road Transport services - freight transportation by road in trucks or cars; maintenance and repair of motor vehicles; storage and warehousing services; and freight forwarding agency services.
- China has made a commitment to include on the China Ministry of Education “Study Abroad Website” the eight New Zealand universities, the twenty Institutes of Technology and Polytechnics, Te Wananga o Aotearoa, Te Whare Wananga o Awanuiarangi and Te Wananga o Raukawa, and six degree conferring Private Training Establishments duly approved and accredited by NZQA.
 - Both parties have agreed to establish a Joint Working Group to explore possibilities for mutual recognition of respective vocational qualifications.
 - Alongside the FTA there is also a reciprocal New Zealand-China Doctoral Research Scholarships programme, which provides 10 scholarships each way each year for 5 years.

Movement of Natural Persons: Principal Outcomes for New Zealand

- China has agreed to expeditious processing of visas applications by New Zealanders visiting China for business purposes, including services suppliers, investors and good sellers, and to greater transparency in processing the applications.
- In the sectors included in China’s services schedule (see above), New Zealand services suppliers will receive better or more certain treatment than those of other countries in the following areas:
 - a commitment providing entry of up to three months for installers and servicers;
 - an improved commitment covering business visitors providing for a maximum period of stay of six months as compared to the 90 days maximum under China’s GATS commitments.

Investment: Principal Outcomes for New Zealand

Overall outcome

- The principal obligations of the FTA in the area of investment concern national treatment and MFN non-discrimination, together with a range of investment protection disciplines and provision for investor recourse to arbitration procedures.⁵ As in the case of services, the obligations on investment do not apply in respect of subsidies or government procurement.
- Section Two of the Investment Chapter provides a mechanism for the compulsory settlement of disputes between foreign investors and the government of the country in which the investment is made.
- If such a dispute cannot be settled within six months through consultation and negotiation, and unless the parties to the dispute agree otherwise, the investor is able to submit the issue to conciliation or arbitration by the International Centre for the Settlement of Investment Disputes (ICSID) or arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).

For New Zealand investors in China

- China is committed to providing to New Zealand investments approved and established in China the same level of post-establishment treatment and protection as it provides to Chinese nationals investing in China, subject to an exception for existing non-conforming measures.⁶
- The Investment Chapter also provides for MFN treatment for New Zealand investors. Any better treatment relating to either market access or protection for investment agreed by China with third countries will automatically be extended to New Zealand investors.⁷
- The FTA provides for additional protections for New Zealand investments in China (including both for New Zealand citizens and New Zealand permanent residents). These include protection from unjustified expropriation; compensation for losses arising from war, armed conflict and similar situations; provisions to allow the free transfer of investment funds; and the incorporation of minimum international law standards of fair and equitable treatment and full protection and security.

⁵ The national treatment and MFN obligations of the investment chapter do not apply to services investment that falls within the scope of the 'Mode 3' (commercial presence) category of service suppliers. For services 'Mode 3' investment those obligations are dealt with under the services chapter. The protection disciplines apply to all investment including those made in services sectors.

⁶ 'Non-conforming measures' are those existing discriminatory laws and regulations that do not conform to the obligations of particular provisions.

⁷ An exception for preferences either Party grants under prior FTAs means New Zealand investors will not automatically receive the benefit of any preferences China grants ASEAN countries, Chile, Pakistan, or under any other FTA that China signs prior to entry into force of the New Zealand-China FTA.

New Zealand's Commitments to China

Goods

- Under the FTA New Zealand will eliminate tariffs on all products of Chinese origin, while providing time for any resulting adjustment in import-sensitive manufacturing sectors (such as the textile, apparel, footwear and carpet sectors) through tariff phase-out programs.
- New Zealand currently provides duty free access for 37 percent of imports from China. Approximately an additional 2 percent of China's exports (on which tariffs as at 1 January 2005 were 5 percent or less) will become duty free on entry into force of the FTA.
- Tariffs on most textile, apparel, footwear and carpet products will be phased to zero over 7 years (2014) or 9 years (2016). Tariffs on the most heavily traded items in the area of clothing and footwear will be phased out by 2016. Tariffs on the less traded clothing, footwear, textile and carpet items will be phased out by 2014.
- Tariffs on all other products (including steel, whiteware, plastics, and furniture) will be phased out over 5 or 6 years (2012 or 2013) with the majority of such tariffs being eliminated by 2012.

Services

- The FTA incorporates New Zealand's existing WTO services commitments.
- New Zealand has also made commitments (across modes 1, 2 and 3) that go beyond our current WTO commitments including:
 - Other Education Services
 - Environmental Services
 - Computer Services (Maintenance and Repair of office machinery and equipment, including computers; and other computer services)
 - Photographic Services
 - Duplicating Services
 - Construction services (consultancy related to construction services)
- New Zealand's commitments require no change to legislative settings.

Temporary entry for business people

- New Zealand's commitments provide for entry of Chinese business visitors and installers/servicers for up to three months in any calendar year. Executives and managers are permitted

to enter, as intra-corporate transferees, for up to three years. Also as intra-corporate transferees, senior specialists are permitted to enter for up to 12 months and other specialists – subject to labour market tests – for up to three years.

- In each of the sectors where New Zealand has made GATS-plus commitments in respect of Modes 1-3, Chinese executives or managers may extend their initial three-year stay for up to a further three years if the need for the executive or manager still exists. Specialist personnel may also enter in these sectors for an initial period of up to three years, again extendable for up to a further three years if the need for the specialist still exists.⁸

Temporary employment entry

- The FTA includes commitments that provide for entry from China as employees for up to three years, without labour market testing and subject to specified qualifications requirements, of up to:
 - 200 entrants at any one time in each of the occupations of Traditional Chinese Medicine (TCM) Practitioners (including nurses) and Chinese Chefs;
 - 150 entrants at any one time in each of the occupations of Mandarin Teaching Aides and Chinese “Wushu” Martial Arts Coaches; and
 - 100 entrants at any one time in the occupation of Chinese Tour Guides.
- Commitments also provide for entry as employees for up to three years, without labour market testing and subject to specified qualifications requirements, of up to 1000 entrants at any one time across 20 specified skilled occupations. Within the overall limitation of 1000, the number of entrants in any of the specified occupations is limited to a maximum of 100 at any one time.
- The 20 specified occupations are all occupations in which New Zealand has an identified skills shortage and which appear currently on New Zealand’s long-term skills shortages list.⁹
- The quantitative and skill-based features of these commitments, together with the requirement as employees to observe New Zealand labour market conditions, are designed to avoid commitments under the FTA being used to displace New Zealand workers while offering economic opportunity to China.

⁸ ‘Specialist Personnel’ are defined as natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of an organisation’s operation in New Zealand, and whose skills are assessed in terms of the applicant’s employment experience, qualifications and suitability for the position.

⁹ The list of occupations upon entry into force of the FTA is as follows (all occupations have attached qualification and experience requirements): Computer Application Engineer, Senior Test Analyst, Structural Engineer, Veterinarian, Fitter and Turner, Registered Nurse, Fitter Welder, University of Higher Education Lecturer, Early Childhood Teacher, Design Engineer - Electronics/Product Engineer, Auditor, Electronics Technician, Medical Diagnostic Radiographer, Medical Radiation Therapist, Nuclear Medicine Technologist, Boatbuilder, Film Animator, Electrician, Plumber, Automotive Electrician, Diesel Mechanic, Motor Mechanic.

Visa Facilitation

- The FTA provides China two new visa facilitation commitments by New Zealand: a commitment to provide a decision on Chinese student visa applications within 10 working days; and a commitment to create a new group transit visa for Chinese nationals.

Working Holiday Scheme

- Alongside the FTA, New Zealand has established a working holiday scheme with China. The scheme provides for a maximum of 1000 Chinese nationals aged between 18 and 30 to enter New Zealand per year. The scheme will allow young skilled Chinese to engage in tourism and incidental employment in New Zealand.

Other Provisions

Rules of origin

- Products must meet the rules of origin (ROO) criteria in order to qualify for preferential tariff treatment under the Agreement. The FTA rules of origin are based primarily on a change of tariff classification (CTC) approach and are designed to facilitate trade and minimise compliance costs for exporters.
- While CTC forms the basis for the rules of origin, supplementary Regional Value Content (RVC) apply to some products. Supplementary RVC rules are mostly in the range of 30 to 40 percent.
- The agreement introduces a requirement for certification of origin for exports to China in order to claim preference. The certificates of origin system is intended to facilitate trade and will provide New Zealand exporters with the ability to access the tariff benefits of the FTA if they follow the agreed processes. The certificates of origin will be issued by Authorised Bodies, approved by the New Zealand Government and notified to China.
- In accordance with long-established practice, New Zealand will not require that certificates of origin accompany imports from China.

Customs procedures

- In the normal course of events, goods entering China under the FTA are to be released within 48 hours of arrival. Traders will also be able to apply to customs authorities for advance rulings in respect of origin and tariff classification.
- New Zealand exporters can obtain a ruling on origin and enjoy the benefit of not needing a certificate of origin for goods covered by an advance ruling on origin from China.¹⁰

Trade remedies

- Under the Agreement New Zealand retains the ability to take trade remedy actions against un fairly traded imports from China which are dumped or subsidised and injure New Zealand producers, consistent with WTO rights and obligations.
- The ability to take global safeguard action is also retained, but the FTA provides for the possibility of excluding imports from the other party if such imports are non-injurious.
- The FTA also contains a clear prohibition on any form of export subsidy in bilateral trade. This provides for a bilateral course of action against any such measures.

Sanitary and phytosanitary measures (SPS)

- The SPS outcome includes new mechanisms for encouraging the recognition of equivalence of SPS measures and regionalisation that should allow for more streamlined and timely resolution of bilateral SPS issues.

Technical barriers to trade (TBT)

- The Agreement establishes a framework for cooperation among regulators and the development of Mutual Recognition Agreements aimed at facilitating the removal of technical barriers to trade.
- As part of the initial FTA outcome, China and New Zealand have agreed a Mutual Recognition Agreement on Electrical and Electronic Equipment (EEEMRA).
- Currently Chinese exports to New Zealand must be tested to New Zealand standards while New Zealand exports to China must be tested, inspected and certified by Chinese conformity

¹⁰ Applicants for advance rulings on tariff classification need to be registered with China Customs, which will generally require a presence in China. Applications for rulings may be made at least three months before the date of importation.

assessment bodies. The EEEMRA gives suppliers in both countries an alternative way to demonstrate compliance with electrical safety and electromagnetic compatibility (EMC) regulatory requirements.

- Under the EEEMRA, New Zealand exporters will be able to apply the CCC (China Compulsory Certification) mark to products in New Zealand on the basis of conformity assessments carried out by recognised New Zealand agencies, with such products recognised as meeting Chinese requirements on importation.
- A 'Users' Guide' to the EEEMRA is available on the China FTA.govt.nz website.

Intellectual Property

- The FTA incorporates the provisions of the WTO TRIPS Agreement as relevant to the bilateral context. This means that New Zealand rights and obligations vis-à-vis China under the TRIPS Agreement are actionable under the FTA, as well as in the WTO.
- The FTA also requires China to notify New Zealand of any new laws that enter into effect in relation to intellectual property and to exchange information on developments in its intellectual property policy and systems, including regarding enhancement of intellectual property rights enforcement.
- A consultation mechanism means that New Zealand can request consultations to seek a timely and mutually satisfactory solution on any intellectual property issue within the scope of the Agreement.

Government Procurement

- In a joint understanding concluded in association with the FTA, China has agreed that as soon as possible following the completion of its accession to the WTO Government Procurement Agreement (GPA) it will begin negotiations on government procurement with New Zealand.
- In the interim, China is obligated to conduct its government procurement in a transparent manner and extend MFN treatment to all WTO members including New Zealand.

Cooperation

- The FTA sets out objectives and indicative activities for economic cooperation and cooperation on small and medium sized enterprises as a means to enhance the benefits of FTA.

Treaty of Waitangi

- As in New Zealand's previous agreements, the FTA contains a specific provision whereby New Zealand maintains its rights to take measures it deems necessary to accord more favourable treatment to Maori, including in fulfilment of its obligations under the Treaty of Waitangi.

Creative Arts

- As in New Zealand's previous agreements, the FTA will not preclude the Parties from taking measures necessary to protect national treasures or specific sites of historical or archaeological value or to support creative arts of national value.

Dispute Settlement

- The FTA includes a robust dispute settlement mechanism to resolve any disputes that arise regarding the interpretation or implementation of the FTA, with provision for the establishment of an arbitral tribunal should consultations fail to settle the dispute.

Reviews

- The FTA includes general provision for review and amendment subject to the agreement of the parties and completion of necessary domestic legal procedures

Key Outcomes: Memorandum of Understanding on Labour Cooperation

Objectives

The Memorandum of Understanding (MOU) aims to improve understanding encourage dialogue on labour matters, promote sound labour policies and practices and the capacity and capabilities of the partners. A further key objective is to promote better understanding and observance of the principles of the ILO Declaration on Fundamental Principles and Rights and its Follow-up (1998).

Key Undertakings

In support of these objectives, New Zealand and China:

- reaffirm their obligations as members of the ILO, including their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

- respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations.
- recognise that it is inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes.
- recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws, regulations, policies and practices.
- recognise the desirability of clear and well understood labour policies and practices and the utility of broad domestic consultation with national stakeholders in formulating these policies.

How will the MOU work?

Cooperative activities will play an important role in the operation of the MOU. Areas for cooperation may include: labour laws, policies and practices; compliance and enforcement systems and labour inspection; sound labour relations; working conditions; human capital development, training and employability; promotion and protection of the employment rights and obligations of migrant workers.

There are also mechanisms for resolving issues that may arise:

- Each country will designate a national contact point for labour matters. The countries will meet within one year at senior officials level to discuss cooperation activities, review the implementation of the MOU and address any issues.
- If an issue arises parties will seek to resolve it through dialogue, consultation and cooperation.
- A party may request consultations. If consultations fail to resolve the matter, a party may request a special meeting of the parties, which may include Ministers.

Public participation

- Each party may invite their non-government sector or relevant organisations to take part in cooperative activities.
- Each party may consult with its public and/or non-government sectors over the operation of the MOU.

Key Outcomes: Environment Cooperation Agreement

Objectives

- The Environment Cooperation Agreement (ECA) is aimed at encouraging sound environmental practices and improving the capacity of each country to address environmental matters through cooperation and dialogue.

Key Undertakings

In support of these objectives, New Zealand and China:

- respect the sovereign rights of each country to set its own policies and national priorities and to set, administer and enforce its own environmental laws and regulations.
- recognise that the primary purpose of their environmental laws, regulations, policies and practices should be to achieve environmental objectives and that these should be administered in a way that contributes to the mutual supportiveness of these and other policies to achieve sustainable development.
- recognise the desirability of clear and well understood sustainable development policies and practices and the utility of broad consultation in formulating these policies.

How will the ECA work?

- Cooperative activities will play an important role in the operation of the Agreement. The parties will encourage and facilitate collaborative research, exchange of information and exchange of environmental experts. Areas of cooperation may include:
 - Management of water environment;
 - Coastal ecological conservation and pollution control;
 - Air pollution control and monitoring;
 - Improvement of environmental awareness, including environmental education and public participation;
 - Management and disposal of waste including hazardous waste;
 - Environmental management of chemicals;
 - Environment and trade;
 - Biodiversity conservation.

There are also mechanisms for resolving issues that may arise:

- Each country will designate a national contact point for environmental matters. The parties will meet within six months at senior officials level to discuss cooperation activities, review the implementation of the Agreement and address any issues.

- If an issue arises parties will seek to resolve it through dialogue, consultation and cooperation.
- A party may request consultations. If consultations fail to resolve the matter, a party may request a special meeting of the parties.

Public participation

- Each party may invite their non-government sector or relevant organisations to take part in cooperative activities.