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BELL GULLY

New Zealand-China Free Trade Agreement

Summary of key outcomes

APRIL 2008

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NEW ZEALAND-CHINA FREE TRADE AGREEMENT

New Zealand and China completed negotiations and signed a Free Trade Agreement in Beijing on 7 April 2008. The full text of the New Zealand-China Free Trade Agreement is available on the dedicated website maintained by the Ministry of Foreign Affairs and Trade (MFAT) www.chinafta.govt.nz.

The MFAT website also contains a comprehensive guide, *Navigating China*, which is designed to assist New Zealand businesses to manage business opportunities in China.

Bilateral and multilateral Free Trade Agreements (FTAs) are, in part, a response to the slow progress of the World Trade Organisation's efforts to liberalise global trade. In a New Zealand context, our first and best known FTA was the Australia-New Zealand Closer Economic Relations Agreement (CER) signed in 1983. As CER has demonstrated, FTAs are not intended to be a static arrangement and 20 years after it was first signed, CER continues to evolve as New Zealand and Australia develop the concept of a single trans-Tasman market for goods and services.

This guide is intended to provide an overview of the NZ-China FTA. More information is contained on the MFAT website referred to above, including the text of the various annexes, side letters and arrangements that must be read in conjunction with the FTA.

Implementation

The signing of the NZ-China FTA is followed by an implementation process and the FTA is expected to come into force on 1 October 2008. It has become common for bilateral agreements to be signed between governments prior to being submitted to domestic parliamentary processes in order to show commitment to the agreement but subject to ratification.

Generally, trade agreements such as FTAs are not directly incorporated into New Zealand law. Instead, in order to come into force, New Zealand's domestic parliamentary procedures require the text of the FTA, along with the texts of the Memorandum of Understanding on Labour Cooperation (MOU) and the Environment Cooperation Agreement (ECA) - which are treaties between New Zealand and China - and the associated National Interest Analysis to be presented to Parliament for consideration, and released publicly.

The FTA, MOU and ECA will be examined by a select committee which may call for public submissions. After the select committee process, legislation to implement New Zealand's obligations under the FTA (eg. tariff cuts) will need to be passed before New Zealand is able to ratify the FTA.

The final step in the process is an exchange of notes with China, indicating the completion of domestic legal procedures so that the FTA can be entered into force in both countries.

Structure

The FTA comprises the FTA itself along with 14 annexes, two side letters, an arrangement governing the establishment of a working holiday scheme and the MOU and ECA.

The FTA also includes a number of significant exceptions that enable either party to enact laws to protect national security and other interests.

The FTA can also be amended by agreement in writing by the parties, with amendments coming into force 60 days after the parties have completed the necessary domestic legal procedures. In keeping with most bilateral agreements, the FTA can also be terminated by a party by giving 180 days' written notice of the intention to terminate.

While specific provisions in the FTA have review processes built into them, the FTA does not contain a review mechanism. Instead, the parties have established the New Zealand - China Free Trade Area Joint Commission which may meet at the level of senior officials, or ministers to consider matters relating to the implementation of the FTA and conduct a review of the operation and implementation of the FTA within two years of entry into force of the FTA (and at least every three years thereafter). The FTA Joint Commission may consider proposals to amend the FTA, oversee its further elaboration and consider issues referred to it by the committees and working groups established under the FTA or by either party.

Government procurement

Government expenditure is an important component of total economic activity in both China and New Zealand.

Despite this, government procurement is not addressed under the FTA. China has not yet completed negotiations on its accession to the World Trade Organisation (WTO) Agreement on Government Procurement and wanted to wait until after that process before addressing government procurement in a FTA.

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 it will begin bilateral negotiations on government procurement with New Zealand.

Pending this, China is obligated to conduct its government procurement in a transparent manner and extend most favoured nation treatment to all WTO members including New Zealand.

Any agreement on government procurement which granted most-favoured-nation status would be likely to require the Chinese and New Zealand governments to be non-discriminatory over the nationality of Chinese and New Zealand businesses when making decisions on awarding contracts.

OVERVIEW

The key outcomes for New Zealand businesses seeking access to the Chinese market are summarised below.

Trade in Goods

OVERVIEW	The FTA provides for the phasing out of tariffs on all but certain sensitive products by 2019, with tariffs on some goods being removed immediately and others being removed over a period of five-to six years.
MEAT	Tariffs on sheep and beef will be phased out by 2016.
DAIRY PRODUCTS	Tariffs on butter, liquid milk and cheese will be phased out by 2017, other milk products by 2019.
FRUIT AND VEGETABLES	Tariffs on apples will be phased out by 2012, kiwifruit by 2016.
SEAFOOD	Tariffs on seafood will be phased out by 2012 - other than products with tariffs of 5% or less, which will become duty free immediately.
WOOL	A country specific tariff quota (CSTQ) is created for New Zealand wool, providing for duty-free treatment for 25,000 tonnes per annum with a growth rate of 5% per annum until 2017. The initial level of the CSTQ provides duty free access for approximately 75% of current exports. Exports outside the CSTQ will be able to access China's global wool quota.
FORESTRY PRODUCTS	China's current zero tariff rate on logs and sawn timber (approximately 80% of New Zealand's current wood exports to China) is made binding, and additional tariff preferences are provided on a limited number of radiata pine products. Tariff liberalisation will not apply to certain wood and paper products (approximately 4% of New Zealand's current exports to China) because of China's accession to the WTO requires any preferential treatment on such products to be extended to all WTO members.
MANUFACTURED GOODS	Tariffs on non-agricultural goods (excluding certain processed wood and paper products) to be phased out by 2013 with the majority being duty free by 2012.

Trade in services

OVERVIEW	Subject to certain reservations, the FTA establishes general obligations of “market access” and “national treatment” which will entitle New Zealand suppliers to access China without being subject to quotas, and with the ability to operate on the same basis as domestic suppliers.
SERVICE SUPPLIERS	China’s commitments extend to the following sectors: <ul style="list-style-type: none"> • computer services • services related to management consulting • education – including a commitment to keep the names of New Zealand educational institutions on China Ministry of Education ‘Study Abroad’ website and a joint study on quality assurance for qualifications which include a distance delivery component (including a joint working party on possibilities for mutual recognition of vocational qualifications) • environmental services • sporting and recreational services • air transport services (excluding air traffic rights) - aircraft repair and maintenance and computer reservation services • road transport - freight transport by road, maintenance and repairs, storage and warehousing and freight forwarding.
MOVEMENT OF NATURAL PERSONS	Expeditious processing of visas for business visitors. Better treatment for New Zealand service suppliers in the areas included in the services schedule, including: <ul style="list-style-type: none"> • entry for up to three months for installers and servicers • increased maximum stay for business visitors of up to six months (currently 90 days) • up to three years for senior employees on intra-corporate transfers.
INVESTMENT	<ul style="list-style-type: none"> • National treatment and most favoured nation status. • Investor protection mechanism – providing for recourse to arbitration (including recourse to compulsory settlement of disputes between foreign investors and the government of the country in which the investment is made). • China provides New Zealand investments approved and established in China the same level of post-settlement and protection as that provided to Chinese nationals.

New Zealand commitments to China

<p>Goods</p>	<p>New Zealand to eliminate tariffs on products of Chinese origin (with time being allowed for adjustment, by phasing out tariffs on import-sensitive manufacturing sectors, including textiles, apparel, footwear and carpets). Tariffs on most textiles, apparel, footwear and carpets will be phased out in 2014-2016 while tariffs on all other products (including steel, whiteware, plastics and furniture) will be phased in on 2012-2013.</p>
<p>Services</p>	<p>New Zealand's commitments incorporate or exceed existing WTO commitments, including in the areas of:</p> <ul style="list-style-type: none"> • education services • environmental services • computer services • photographic/duplicating services • construction services (consultancy relating to construction).
<p>Temporary entry for business people</p>	<ul style="list-style-type: none"> • Entry for Chinese business people and installers/services for up to three months per year • Executives and managers for up to three years (through intra-corporate transfers) • Senior specialists for up to 12 months and, subject to labour market test, other specialists for up to three years (through intra-corporate transfers) • In some sectors, Chinese executives and managers may extend three year stay for up to a further three years (on proven need). In the same sectors, specialist personnel may enter for three years extendable (on proven need) for up to a further three years.
<p>Temporary employment entry</p>	<p>Entry without labour market testing or specific qualifications of up to:</p> <ul style="list-style-type: none"> • 200 traditional Chinese medicine practitioners • 200 Chinese chefs • 150 Mandarin teaching aides • 150 martial arts coaches • 100 Chinese tour guides. • Entry without labour market testing or specific qualifications of up to 1,000 entrants in 20 specified skilled occupations (limit of 100 per occupation) in which New Zealand has identified a skills shortage.
<p>Working holiday scheme</p>	<p>New Zealand has established a scheme allowing a maximum of 1,000 Chinese nationals aged 18-30 to enter New Zealand in the areas of tourism and incidental employment.</p>

Other provisions

<p>Rules of origin</p>	<p>Products must meet rules of origin criteria to qualify for preferential tariff treatment.</p> <ul style="list-style-type: none"> • Certification of origin required for exports to China (with certificates to be issued by authorised bodies approved by the New Zealand Government and approved by China) • Following existing practice, New Zealand will not require certificates of origin to accompany imports from China.
<p>Customs rulings</p>	<p>New Zealand exporters will be able to apply for advance rulings on origin and tariff classification for goods entering China.</p>
<p>Trade remedies</p>	<ul style="list-style-type: none"> • New Zealand can continue to take trade remedy actions against goods which are the subject of allegations of dumping or unfair subsidy and which injure New Zealand producers. • There is a prohibition on export subsidies in bilateral trade.
<p>Technical barriers to trade</p>	<p>The FTA establishes a framework for co-operation among regulators and development of mutual recognition agreements to facilitate the removal of technical barriers. An initial outcome has been a mutual recognition agreement in respect of electrical and electronic equipment.</p>
<p>Intellectual property</p>	<p>The provisions of the WTO TRIPS Agreement are incorporated into the FTA (enabling rights and obligations to be actioned in a bilateral context).</p> <ul style="list-style-type: none"> • China is required to notify New Zealand of any new laws in relation to intellectual property and exchange of information on development of enhancements of enforcement of intellectual property rights. • Establishment of a consultation mechanism enabling New Zealand to request consultation to seek a timely solution to any intellectual property issue within the scope of the FTA.
<p>Memorandum of Understanding on Labour Co-operation</p>	<ul style="list-style-type: none"> • MOU objectives to improve understanding and encourage dialogue on labour matters, promote sound labour policies and practices including to promote a better understanding and observance of the principles of the ILO Declaration on Fundamental Principles and Rights at Work. • New Zealand and China:

	<ul style="list-style-type: none"> ○ respect their sovereign rights to determine their own policies and priorities regarding their own labour laws ○ recognise it is inappropriate to set or use labour laws for trade protection ○ recognise it is inappropriate to encourage trade or investment by weakening the protection of domestic labour laws ○ recognise the desirability of clear and well understood labour policies and practices (and the need for broad consultation with national stakeholders when formulating such policies) ● areas of co-operation may include labour laws, policies and practices, compliance, working conditions, training, and protection of the rights of migrant workers. ● The MOU provides mechanisms for resolving issues and scope for non-government sector and relevant organisations to be consulted and/or participate in matters related to the MOU.
<p>Environmental Co-operation Agreement</p>	<ul style="list-style-type: none"> ● The ECA is aimed at encouraging sound environmental practices and improving the capacity of each country to address environmental matters through co-operation and dialogue. ● New Zealand and China: <ul style="list-style-type: none"> ○ respect their sovereign rights to determine their own policies and priorities regarding their own environmental laws ○ recognise the primary purpose of environmental laws is to achieve environmental objectives – to be administered in a manner that achieves mutual support aimed at sustainable development ○ recognise the desirability of clear and well understood environmental development policies and practices (and the need for broad consultation when formulating such policies). ● Areas of consultation (on research, information exchange and expertise) may include: <ul style="list-style-type: none"> ○ water management ○ coastal ecology/pollution control ○ air pollution control and monitoring ○ improvement of environmental awareness ○ management and disposal of waste ○ environment and trade ○ biodiversity conservation

TRADE IN GOODS

Elimination of customs duties

Except as expressly provided in the FTA (including each party's respective tariff schedule in Annex 1):

- neither party may increase any existing customs duty, or adopt any new customs duty, on originating goods of the other party; and
- each party shall eliminate its customs duties on originating goods of the other party.

The highlights, by sector, of the tariff changes are set out below.

Meat	Tariffs on sheep and beef will be phased out by 2016.
Dairy products	Tariffs on butter, liquid milk and cheese will be phased out by 2017. Tariffs on milk powders (skim milk and whole milk) will be removed over 12 years ending in 2019, subject to a mid-term review which (if triggered) could extend the phase out by a further 12 months). Dairy products will also be subject to a quantity-based safeguard for a further five years after tariffs have been removed, which could result in duties being levied on volumes above safeguard levels.
Fruit and vegetables	Tariffs on apples phased out by 2012, kiwifruit by 2016.
Seafood	Tariffs on seafood will be phased out by 2012 except for products with tariffs of 5% or less which will become duty free immediately.
Wool	A country specific tariff quota (CSTQ) is created for New Zealand wool, providing for duty-free treatment for 25,000 tonnes of wool and 450 tonnes of wool tops per annum with an annual growth rate of 5% per annum until 2017. The initial level of the CSTQ provides duty free access for approximately 75% of current exports. Exports outside the CSTQ will be able to access China's global wool quota.

<p>Forestry products</p>	<p>China's current zero tariff rate on logs and sawn timber (approximately 80% of New Zealand's current wood exports to China) is made binding and additional tariff preferences are provided on a limited number of radiata pine products.</p> <p>Tariff liberalisation will not apply to certain wood and paper products (approximately 4% of New Zealand's current exports to China) because China's accession to the WTO requires any preferential treatment on such products to be extended to all WTO members.</p>
<p>Manufactured goods</p>	<p>Tariffs on non-agricultural goods (excluding certain processed wood and paper products) to be phased out by 2013 with the majority being duty free by 2012.</p>

Accelerated tariff elimination

At the request of either party, New Zealand and China shall consult to consider accelerating the elimination of customs duties on originating goods as set out in the tariff schedules annexed to the FTA.

An agreement by the parties to accelerate the elimination of customs duties on originating goods shall supersede any duty rate for such goods and shall enter into force following approval by each party in accordance with their respective applicable legal procedures.

A party may at any time accelerate unilaterally the elimination of customs duties on originating goods of the other party. A party considering doing so shall inform the other party as early as practicable before the new rate of customs duty takes effect.

Administrative fees and formalities

Each party shall ensure, in accordance with its General Agreement on Tariffs and Trade 1994 (GATT) obligations, that all fees and charges (other than customs duties, charges equivalent to an internal tax or other internal charges applied consistently with GATT 1994, and anti-dumping and countervailing duties) imposed on or in connection with imports or exports are limited in amount to the approximate cost of services rendered and do not represent an indirect protection of domestic goods or a taxation on imports or exports for fiscal purposes.

Agricultural export subsidies

New Zealand and China record:

- a shared objective of the multilateral elimination of export subsidies for agricultural goods;
- undertakings to:
 - work together towards an agreement in the WTO to eliminate those subsidies and prevent their re-introduction in any form; and
 - not introduce or maintain any export subsidy on any agricultural good destined for the territory of the other party.

Non-tariff measures

New Zealand and China agree not to adopt or maintain any non-tariff measures on the importation of any goods of the other party or on the exportation of any good destined for the territory of the other party except in accordance with its WTO rights and obligations or in accordance with other provisions of FTA.

Consumer protection

New Zealand and China affirm their concern to provide protection in their respective territories from deceptive practices or the use of false or misleading descriptions in trade. In particular, each party shall provide the legal means to prevent the sale of products within the party's territory which, under the laws of that party, are labelled in a manner which is false or misleading or is likely to create a false impression about the character, composition, quality, or origin of the product.

Special agricultural safeguard measures

China may apply a special safeguard measure to certain agricultural goods specified in Annex 2 (dairy products, including certain milk and milk products, butter and cheese).

If during any given calendar year the volume of imports from New Zealand of those goods exceeds the trigger level for that product, China may apply a special safeguard measure to that product (an additional customs duty) during the balance of the relevant calendar year.

The sum of the additional customs duty and any other customs duties applied to the product in question, shall not exceed the lesser of the most-favoured-nation applied rate of customs duty or the base rate. Any such additional duty shall be applied in a transparent manner, with China ensuring that the volume of imports is published regularly in a manner which is readily accessible to New Zealand, and shall give notice in writing to New Zealand as far in advance as may be practicable and in any event within 10 days of the implementation of additional duty being imposed.

Mid-term review

The Committee on Trade in Goods established under the FTA shall conduct a review in 2013-2014 to determine whether increased imports as a result of the tariff reductions implemented under the FTA have caused an overall negative impact on the Chinese dairy industry. The factors to be considered in that mid-term review are set out in Annex 3 to the FTA and could result in the phase-out of duties being extended by 12 months.

Committee on Trade in Goods

The Committee on Trade in Goods, made up of representatives from each party, shall meet on the request of either party to consider issues arising from Chapters three (Trade in Goods), four (Rules of Origin and Operational Procedures), five (Customs Procedures and Cooperation) or six (Trade Remedies). The committee's functions shall include:

- promoting trade in goods between the parties - including through consultation on accelerating tariff elimination under the FTA; and
- addressing barriers to trade in goods between the parties - especially those related to the application of non-tariff measures.

TRADE IN SERVICES

Limitations

The measures adopted under the FTA relating to trade in services do not apply to:

- matters affecting procurement of services by government agencies for governmental purposes (and not with a view to commercial resale or use in the supply of services for commercial sale);
- services supplied in the exercise of governmental authority;
- subsidies or grants provided by a party (except certain changes under the General Agreement on Trade in Services or as a result of a request by a party which considers it is adversely affected by a subsidy);
- measures affecting natural persons seeking access to the employment market of a party; and
- air traffic rights, however granted, or services directly related to the exercise of air traffic rights (other than aircraft repair and maintenance services, sales and marketing of air transport services and computer reservation system services).

National treatment

New Zealand and China, subject to certain conditions and qualifications, shall treat services and service providers of the other party no less favourably than its own similar services and service suppliers.

Most-favoured-nation treatment

For a list of services sectors (education services, environmental services, services incidental to agriculture and forestry, computer services, certain tourism services and construction services (consultancy relating to construction)) each party shall treat the services and service suppliers of the other party no less favourably than it treats similar services and service suppliers of a third country. Note however that:

- the parties reserve the right to adopt or maintain any measure that accords differential treatment to third countries under any free trade agreement or multilateral international agreement that was in force or signed prior to the date of entry into force of the NZ-China FTA; and
- this includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements.

Service providers to China

China's commitments in relation to New Zealand service providers extend to the following sectors:

- computer services;
- services related to management consulting;

- education – including a commitment to keep names of New Zealand educational institutions on the China Ministry of Education ‘Study Abroad’ website and conduct a joint study on quality assurance for qualifications, including a distance delivery component, which includes a joint working party on possibilities for mutual recognition of vocational qualifications;
- environmental services;
- sporting and recreational services;
- air transport services (excluding air traffic rights) – aircraft repair and maintenance and computer reservation services; and
- road transport- freight transport by road, maintenance and repairs, storage and warehousing and freight forwarding.

Market access

New Zealand and China shall treat services and service suppliers of the other party no less favourably than under the terms specified in each party’s Schedule of Specific Commitments on Services (Annex 8).

Unless otherwise specified in its Schedule of Specific Commitments, a party shall not maintain or adopt any measures which:

- limit the number of service suppliers;
- limit the total value of service transactions or assets;
- limit the total number of service operations or on the total quantity of service output;
- limit the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ;
- restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Domestic regulation

In sectors where specific commitments are undertaken, each party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

Recognition

To fulfil standards or criteria for the authorisation, licensing, or certification of service suppliers, a party may recognise, or encourage its relevant competent bodies to recognise, the education or experience obtained, requirements met, or licences or certifications granted in the other party.

Qualifications Recognition Cooperation

Both parties acknowledge existing work on qualifications recognition taking place under the auspices of the New Zealand-China Education Joint Working Group (JWG) and

encourage the JWG to further explore cooperation in mutual recognition of respective academic degrees and qualifications.

The Ministry of Labour and Social Security of China and the New Zealand Qualifications Authority shall establish a joint working group to strengthen cooperation and explore possibilities for mutual recognition of respective vocational qualifications.

Payments and transfers

Except as provided in the International Monetary Fund obligations of a party, a party shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

Denial of benefits

A party may deny benefits under the FTA to service suppliers of the other party which are owned or controlled by persons of a non-party and the supplier has no substantive business operations in the territory of the other party. This is subject to prior notification and consultation.

Committee on services

Under the FTA, the parties agree to establish a Committee on Trade in Services (Services Committee) that shall meet on the request of either party or the FTA Joint Commission. The Services Committee's functions shall include:

- reviewing the implementation and operation of the FTA;
- identification and recommendation of measures to promote increased services trade between the parties; and
- considering other trade in services issues of interest to a party.

Modification of schedules

A party may modify or withdraw any commitment in its Schedule of Specific Commitments at any time after three years have elapsed from the date on which that commitment entered into force, provided that:

- it notifies the other party no later than three months before the intended date of implementation of the modification or withdrawal; and
- upon notification of a party's intent to make such modification, the parties shall consult and attempt to reach agreement on the appropriate compensatory adjustment.

Monopolies and exclusive service suppliers

Each party shall ensure that any monopoly supplier of a service in its territory does not act in a manner inconsistent with that party's obligations under the specific commitments in the FTA.

Review

Within two years of entry into force of the FTA and at least every three years thereafter, the parties are to review the implementation of measures affecting services and consider

other services issues of mutual interest, including the extension of most-favoured-nation treatment to additional services sectors with a view to the progressive liberalisation of the trade in services between them.

RULES OF ORIGIN

Preferential treatment for originating goods

To be afforded preferential tariff treatment under the FTA, goods must originate in either New Zealand or China and must be delivered directly from the exporting country to the importing country. The goods must not be in transit, trans-shipment or temporary storage for more than six months. During that time, the goods must not enter into trade or commerce in the third country and the goods must not be subject to anything other than unloading and reloading, repacking or operations required to keep the goods in correct condition.

Originating goods

There are three categories of originating goods:

- Goods that are wholly obtained or produced in either New Zealand or China. There are 10 situations listed to identify when a good will be considered to be wholly obtained or produced in a country.
- Goods produced entirely in New Zealand or China exclusively from materials which are in the first category of originating goods.
- Goods that are produced in New Zealand or China using materials that have not originated from New Zealand or China (non-originating materials) but that confirm to a change in tariff classification (CTC), a regional value content (RVC) (as determined by a specified formula which - mostly in the region 30%-40%), a process requirement or other specified requirements.

Rules relating to origin

The FTA contains a number of detailed rules relating to determining the origin of goods, including:

- **De Minimis:** Goods may be originating goods if the value of non-originating materials does not exceed 10% of the value of the goods.
- **Accumulation:** Originating goods or materials in one country (e.g. China) that are incorporated into a good in the other country will be regarded as originating in the latter.
- **Minimal operations:** Operations or processes (including packaging or transport) which contribute minimally to the essential characteristics of goods, such as freezing, packing or washing do not confer origin.
- **Accessories, spare parts and tools:** Accessories, spare parts, tools, instructional and information materials presented with a good are to be disregarded in determining the origin of goods – although they may be relevant in calculating the RVC of the goods.
- **Neutral elements:** Neutral elements used in the production, testing or inspection but not physically incorporated into the good, such as fuels, moulds or lubricants, do not determine origin.

Evidence of origin

A Certificate of Origin or Declaration of Origin or any other document evidencing origin required by the importing country must be supplied in order to obtain preferential tariff treatment. If the required documents are not provided, non-preferential import customs duty or deposits may be refunded – subject to an application being made within 12 months of importation.

New Zealand has indicated that it will maintain its established practice of not requiring certificates of origin to accompany imports from China.

CUSTOMS PROCEDURES AND COOPERATION

Each party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade.

Customs procedures of each party shall, where possible and to the extent permitted by their respective customs law, conform with the trade-related instruments of the WTO which each party is bound to comply with.

To the extent permitted by their domestic laws, the customs administrations of the parties shall assist each other.

Release of goods

Each party shall adopt or maintain procedures which allow goods to be released within 48 hours of arrival unless the importer fails to provide information required by the importing party or comply with the necessary customs formalities.

Advance rulings

Applicants may apply up to three months in advance for an advance ruling on tariff classification and origin of goods, with rulings to be granted within 60 days (tariff classification) and 90 days (origin).

Appeal

Each party shall provide for the right of appeal without penalty in regard to customs administrative rulings, determinations or decisions by the importer, exporter or any other person affected by that administrative ruling, determination or decision.

TRADE REMEDIES

General provisions

Under the FTA, the parties maintain their rights and obligations under the WTO Agreement regarding imports which are the subject of allegations of dumping or unfair subsidies which injure producers in the importing country.

Subsidies and countervailing measures

The FTA provides that neither party shall introduce or maintain any form of export subsidy on any goods destined for the territory of the other party.

Anti-dumping

The parties also agree not to take any anti-dumping action pursuant to the WTO Agreement in an arbitrary or protectionist manner.

Notification must be provided on the initiation by one party of an anti-dumping investigation in respect of goods from the other party.

Safeguard measures

The FTA maintains the ability of the parties to:

- impose bilateral safeguards, including the suspension of further reductions in duties and the payment of compensation, in the event of an export subsidy being proven; and
- implement global safeguard action by excluding imports of an originating good from the other party if certain criteria are met.

SANITARY AND PHYTOSANITARY MEASURES

Although the FTA only sets out broad principles and guidelines in relation to Sanitary and Phytosanitary (SPS) measures, it provides a mechanism for implementing a series of arrangements to establish more specific principles and criteria through the establishment of a Joint Management Committee.

The objective of the Joint Management Committee is to facilitate bilateral trade in goods affected by SPS measures and to achieve this by the establishment and monitoring of the application of Implementing Arrangements relating to:

- the undertaking risk analyses;
- the recognition and development of pest or disease-free areas or areas of low pest prevalence;
- the determination of equivalence;
- conditions under which audit and verification procedures will be carried out;
- guidelines for sanitary or phytosanitary certifications to accompany products;
- the frequency of import checks; and
- understandings on technical assistance and co-operation projects.

The FTA also includes obligations on the parties to notify each other if there is a change in health status, risk to human, animal or plant health, or scientific findings of new diseases or pests.

TECHNICAL BARRIERS TO TRADE

One of the objectives of the FTA is to provide a framework for co-operation between regulators aimed at removing technical barriers to trade. Such technical barriers come in the form of performance-based standards to manage risks to health, safety and the environment.

Regulatory co-operation may include recognising the standards of the other party or mutual adoption of international standards. As an initial step, a Mutual Recognition Agreement on Electrical and Electronic Equipment has been agreed, providing suppliers in each country with an alternative means of demonstrating compliance with the technical requirements of the other.

MOVEMENT OF NATURAL PERSONS

Objective

Measures relating to the movement of people reflect the preferential trading relationship between New Zealand and China and a mutual desire to facilitate temporary entry and temporary employment entry of natural persons. The objective of the measures in the FTA is to establish transparent criteria and streamlined procedures for temporary entry and temporary employment entry while recognising the need to ensure border security and protection of the domestic labour force.

Expeditious application procedures

Each party is required to expeditiously process applications for immigration formalities for natural persons of the other party to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under the FTA. Decisions relating to requests for temporary entry or temporary employment entry are generally required to be notified within 10 working days.

Temporary entry and temporary employment entry

New Zealand and China have made similar commitments to temporary entry including:

Business visitors	Maximum stay of six months
Intra-corporate transferees	Up to three years
Installers and servicers	Up to three months

New Zealand's commitments to temporary employment entry include limits on overall numbers, a maximum stay of three years and rollovers:

Traditional Chinese medical practitioners	Up to 200 at any one time
Chinese chefs	Up to 200 at any one time
Mandarin teaching aides	Up to 150 at any one time
Chinese martial arts coaches	Up to 150 at any one time
Chinese tour guides	Up to 100 at any one time

New Zealand and China are also to work on an exchange of letters governing entry to New Zealand (again for periods of up to three years) by skilled Chinese workers in specified occupations drawn from sectors in which New Zealand has an identified skills shortage.

INVESTMENT

Implications of the FTA for bilateral investment between New Zealand and China

In terms of current and ongoing bilateral investment between New Zealand and China, the investment provisions of the FTA specify a number of objectives aimed at encouraging and promoting the flow of investment between the parties (including by ensuring the protection and security of investments within each party's territory).

The investment provisions apply to all investments made by investors of a party in the territory of the other party, whether made before or after entry into force of the FTA.

In terms of New Zealand businesses currently investing or looking to invest in China, the FTA offers the following two key benefits:

- **Most-Favoured Nation (MFN):** MFN status is bestowed on investors of each party who are investing in the other party's territory. This means New Zealand businesses and investors will receive at least the same treatment with respect to investments in China as China gives to investors from other nations. If another nation negotiates better investment terms in a trade deal with China, those terms will also apply to New Zealand investors. MFN status extends to activities associated with investments (i.e. investment management).
- **National Treatment:** meaning that New Zealand enterprises are entitled to the same treatment with respect to investments and activities associated with investments in China as China gives to its own enterprises.

The FTA looks to further promote bilateral investment by requiring the free transfer of all payments relating to an investment.

The benefits for New Zealand investors are subject to a number of provisos (carve-outs) which mean improved investment conditions may be denied or delayed in certain circumstances, including those relating to:

- existing non-conforming measures maintained within a party's territory – noting that the parties agree to progressively remove such non-conforming measures;
- any FTA or multilateral international agreement already in force and, in the case of agreements relating to fisheries and maritime matters, any such agreements signed after the date of the FTA;
- the provisions relating to the free transfer of investment-related payments are subject, in the case of payments relating to investments in China, prevailing laws and regulations of China relating to exchange control; and
- expropriation or nationalisation – which is limited to matters undertaken according to applicable domestic law, for a public purposes, and in a non-discriminatory manner (and which will be the subject of compensation).

Legal disputes concerning investments by investors of one party in another party are, as far as possible, to be settled amicably through consultation and negotiation, which may include the use of non-binding third party procedures (if applicable).

INTELLECTUAL PROPERTY

Intellectual property protection and enforcement has long been a source of contention between China and foreign investors. China has over the past few years taken steps to update its intellectual property laws and to improve enforcement of these laws. While China now has a reasonably comprehensive legal system relating to intellectual property right protection, in the enforcement area there is still room for improvement.

Although the intellectual property provisions in the FTA are very general in nature, the inclusion of a chapter on intellectual property rights (i.e. copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and plant varieties) does keep the spotlight on the importance of intellectual property rights in promoting trade, investment and commercial relationships.

The approach taken in the FTA to intellectual property is essentially one of reaffirming rights established under the TRIPS Agreement (the WTO Trade Related Aspects of Intellectual Property Agreement) of which both China and New Zealand are members. The FTA incorporates the TRIPS Agreement and makes it part of the FTA.

In general terms the FTA provides for enhanced government to government co-operation on IP rights to provide more certainty over protection and enforcement of intellectual property rights, to minimise compliance costs, and to facilitate trade through dissemination of ideas and technology.

To aid in the achievement of these general aims, the FTA provides for specific notification and exchange of information between the parties and in particular for each party to:

- notify the other of new intellectual property laws that enter into effect;
- exchange information relating to intellectual property policy developments;
- inform the other party of changes to, and developments in, the implementation of intellectual property systems aimed at promoting effective and efficient registration or grant of intellectual property rights; and
- exchange information regarding enhancement of intellectual property rights.

The FTA also contains an agreement for the parties to co-operate to increase capacity in the development of intellectual property policy and to eliminate trade in goods which infringe intellectual property rights, subject to respective laws. In particular the parties agree that they shall:

- encourage and facilitate development of contacts and co-operation between their governmental agencies, education institutions and other organisations interested in intellectual property;
- build and strengthen co-operative ties between the State Intellectual Property Office of China and other relevant Chinese institutions and the Intellectual Property Office of New Zealand;
- agree on mutually acceptable terms and, subject to available funds, co-operate on:
 - initiatives to promote awareness of intellectual property rights and systems;
 - educational and information dissemination projects on the use of intellectual property as a research and innovation tool; and

- o training and courses for public servants on intellectual property rights.

Protection of genetic resources, traditional knowledge and folklore is given special mention in the FTA with a very broad statement that the parties may, subject to international obligations, establish measures to protect these.

Finally, there are provisions providing a mechanism for consultation to resolve intellectual property issues within the scope of the FTA, including provisions for recourse to a dispute settlement regime set out in the FTA.

It remains to be seen whether these provisions result in a more vigorous regime of enforcement of intellectual property rights in China - an achievement of which would help create an attractive environment for investment by New Zealand businesses.

TRANSPARENCY

The FTA seeks to promote improved transparency between the parties by imposing information dissemination obligations on each party.

The key obligations of each party include:

- Ensuring prompt publication of laws, regulations, procedures and administrative rulings (collectively measures) regarding any matter in the FTA so that the other party can become acquainted with them. Where possible each party will also publish measures that it proposes to adopt, and provide the other party and its interested persons a reasonable opportunity to comment.
- Where possible, providing reasonable notice and information to persons of the other party directly affected by an administrative proceeding concerning measures, and give such persons a reasonable opportunity to present their position prior to final determination.
- Having impartial and independent review procedures for final administrative actions, independent of the administrative enforcement authority itself, regarding matters in the FTA. These procedures should provide all parties with the right to support or defend their respective positions, and the right to a decision based on evidence and submissions of record or the record compiled by the administrative authority.
- Having contact point(s) for matters covered in the FTA who are able to organise responses to the other party concerning matters in the FTA.
- Following a without prejudice process to notify and inform the other party, to the extent possible, of proposed or actual measures that might materially affect the operation of the FTA or substantially affect a party's interests under the FTA.

CO-OPERATION

Measures in the FTA aim to facilitate close co-operation between New Zealand and China for the purpose of enhancing the FTA and creating new opportunities for trade, investment and growth.

Cooperation and bilateral trade by small and medium-sized enterprises (SMEs) is envisaged through building the capacity of SMEs to trade effectively under the umbrella of the FTA. A practical example of a strategy designed to promote a favourable trading environment for the development of SMEs is the organisation of trade fairs and investment markets.

New Zealand and China have also agreed to enhance their communication and cooperation on labour and environment matters through:

- a Memorandum of Understanding on Labour Co-operation; and
- an Environment Cooperation Agreement.

ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS

The FTA establishes a New Zealand–China Free Trade Area Joint Commission, which will:

- convene annually and at other times at the request of either party;
- consider matters relating to the implementation of the FTA;
- consider matters referred to it by committees, working parties or by either party; and
- explore measures for the further expansion of trade and investment between the parties.

The FTA Joint Commission’s powers include:

- establishing additional committees and working groups as necessary;
- resolving differences or disputes in relation to the interpretation of application of the FTA; and
- approving modifications of various rules and Schedules to the FTA, including, for example, accelerating the elimination of customs duties.

For any FTA issues New Zealand businesses may wish to explore, MFAT is likely to be the first point of enquiry. MFAT is likely to provide the senior officials who will represent New Zealand on the FTA Joint Commission.

DISPUTE SETTLEMENT

The FTA contains a detailed dispute settlement mechanism for the resolution of disputes that may arise concerning the interpretation or implementation of the FTA. The objectives of that mechanism are to:

- encourage the parties to endeavour to reach a mutually satisfactory resolution of disputes through cooperation and consultation; and
- provide an effective, efficient and transparent process for consultation and settlement of disputes between the parties.

If consultation fails to resolve a dispute within specified timeframes, then there is scope for a dispute to be referred to an arbitral tribunal. The function of an arbitral tribunal would be to make an objective assessment of the dispute, including an objective assessment of the facts of the case and the applicability of and conformity with the FTA, and make such factual findings necessary for the resolution of the dispute.

It is noted that:

- the arbitral tribunal cannot make findings which add to or diminish the rights and obligations provided in the FTA; and
- the dispute settlement provisions do not extend to interpretation of matters relating to the Treaty of Waitangi.

EXCEPTIONS

The exceptions to the parties' obligations under the FTA fall into a number of broad categories, which must be regarded as reasonably standard for FTAs.

Underpinning each of these broad categories of exception is also a general understanding that neither party will use an exception as a means to avoid obligations under the FTA, impose arbitrary or unjustified discrimination on the citizens of the other party, or as a disguised restriction on trade in goods and services.

The broad categories of exception are:

1. **General exceptions:** relate to the parties' obligations under the WTO's General Agreements on Tariffs and Trade. Particularly with regard to environmental measures necessary to protect human, animal or plant life and UNESCO framework measures to protect national works or specific sites of historical or archaeological importance. Also, exceptions to support creative arts of national value or restrict the illicit importation of cultural property from the other party.
2. **Security exceptions:** to enable a party to decline to take actions or furnish information that it considers necessary to protect what it determines are its "essential security interests", as well as those under any UN Charter or to maintain international peace and security interests.
3. **Safeguarding balance of payments:** to enable a party to address serious balance of payments and external financial difficulties, so long as any measures are proportional, temporary and consistent with the requirements of the International Monetary Fund. Any such measures must be the subject of notification and consultation and may not be adopted to protect a particular sector.
4. **Prudential measures:** a party may take measures for prudential reasons, including to protect investors or the integrity and stability of the party's financial system.
5. **Taxation measures:** the FTA will not generally apply to taxation matters nor will it affect the parties' rights and obligations under any tax convention concerning double taxation in force between the parties.
6. **Disclosure of information:** parties are not required to disclose information that is contrary to the public interest, is contrary to legislation (e.g. privacy law), would impede law enforcement or would prejudice legitimate commercial interests.
7. **Treaty of Waitangi:** as with earlier FTAs entered into with Singapore and Thailand, nothing in the NZ-China FTA will preclude New Zealand from adopting measures it deems necessary to accord more favourable treatment to Maori, including fulfilment of Treaty of Waitangi obligations. (Note also that the NZ-China FTA will not cover Treaty of Waitangi interpretation.)

FURTHER INFORMATION

For further information on the New Zealand-China Free Trade Agreement, please contact your usual Bell Gully adviser or:

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