



# NEW ZEALAND - KOREA FTA GUIDE



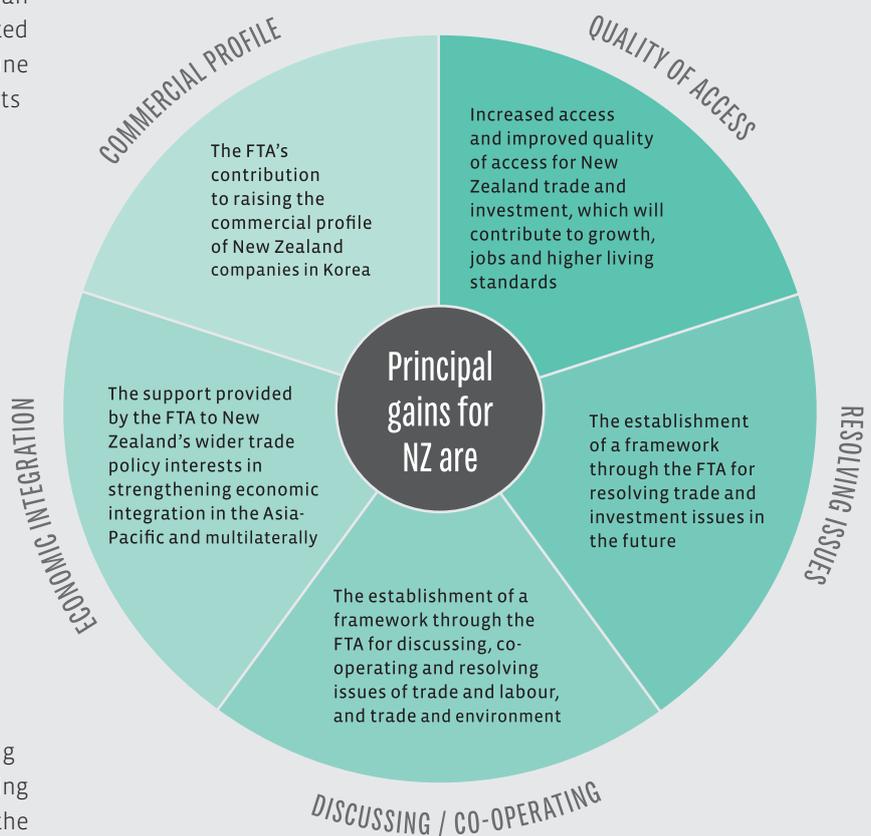
NEW ZEALAND  
FOREIGN AFFAIRS & TRADE

The Korea-New Zealand Free Trade Agreement (FTA) is a high quality agreement covering both goods and services traded between the two countries.

Korea is New Zealand's sixth largest export destination, taking more than NZ\$2 billion of New Zealand exported goods and services in the year to June 2014. The value of New Zealand imports from Korea is also about NZ\$2 billion, making Korea New Zealand's eighth largest source of imports.

The FTA will boost bilateral trade and investment links and provide benefits to exporters and consumers in both countries. The FTA also provides a platform for further co-operation in the areas of agriculture, education, trade facilitation, science and technology, and film and television.

The FTA will build upon the strong economic and political ties that already exist between Korea and New Zealand. Our two countries have a long history of working together, stretching back to the Korean War. The FTA will set the platform for an even closer relationship into the future.



## // Korea will eliminate tariffs for New Zealand exporters in stages.

### Market access for goods

A major outcome of this FTA is keeping New Zealand exporters competitive in the Korean market.

Korea's average Most-Favoured Nation (MFN) tariff rate is 13.3 percent, but agricultural imports face an average tariff of 52.7 percent. Some of New Zealand exporters' main competitors already have reduced tariffs in the Korean market under existing FTAs. It is estimated that New Zealand exporters currently pay around \$229 million in duties each year to Korean authorities.

Under the FTA, around 98 percent of New Zealand's current exports to Korea will have duties eliminated. Korea will eliminate tariffs for New Zealand exporters in stages. Beginning at entry into force (EIF), tariffs will be progressively phased out through linear reductions.<sup>1</sup> This staged tariff elimination will deliver exporters the following outcomes:

- On EIF (2015), current duty-free access will be "bound in" and existing tariffs will be eliminated on \$793.7 million (or 48.3 percent) of exports including wine, cherries, hides and skins, some forestry products, some aluminium and many industrial goods.
- Between two and five years after EIF, tariffs will be eliminated on \$312.7 million (or 19 percent) of exports including kiwifruit, buttercup squash (in-season), methanol, some food preparations, some fisheries, dairy spreads, milk albumins, race horses and aluminium. Five years after EIF, 67.4 percent of New Zealand's total current exports to Korea will enter duty and quota free.
- Between six and 10 years after EIF, tariffs will be eliminated on \$195.0 million (or 11.9 percent) of exports including cheddar cheese, timber, butter, sheepmeat, caseinates, avocados, apple juice, beer and some fisheries. Ten years after EIF, 79.3 percent of New Zealand's total current exports to Korea will enter duty and quota free.
- Between 11 and 15 years after EIF, tariffs will be eliminated on \$304.5 million (or 18.6 percent) of exports including beef, mozzarella and all other cheese, processed deer velvet, fibreboard, frozen cream, infant formula, meat extracts and other meat products. Fifteen years after EIF, 97.8 percent of New Zealand's total current exports to Korea will enter duty and quota free.
- Between 16 and 20 years after EIF, tariffs will be eliminated on \$1.8 million (or 0.1 percent) of exports including liquid milk and sheep offal. Twenty years after EIF, 97.9 percent of New Zealand's total current exports to Korea will enter duty and quota free.

The phase-out of tariffs on New Zealand imports also has advantages for New Zealand producers who use imported Korean components or capital equipment in the production of their goods. Lower import costs on these factors of production will lower many New Zealand firms' costs and improve their international competitiveness. Consumers will benefit directly from cheaper products.

<sup>1</sup>Note that tariffs are eliminated in Year 6, which because of the structure of the tariff phasing is roughly five years after EIF. Year 1 of phasing is EIF, Year 2 is 1 January of the year following EIF, Year 3 is 1 January of the next year and so on.

## Key outcomes for major goods exports to Korea



### Kiwifruit

New Zealand's main horticulture export to Korea currently faces a 45 percent tariff. In the year ending June 2014, New Zealand exported \$44.3 million worth of kiwifruit to Korea. Under the FTA, New Zealand kiwifruit exporters will have duty-free access to the Korean market five years after EIF.<sup>1</sup>



### Dairy

New Zealand exported \$219.8 million of dairy products to Korea in the year ending June 2014. Dairy tariffs range from 36 percent to 176 percent. Under the FTA New Zealand's largest dairy exports to Korea (including cheese and butter) will have tariffs eliminated between six to 14 years after EIF. During the phasing period, New Zealand exporters will also have access to transitional tariff rate quotas (TRQs) with zero in-quota duty for cheese, butter and infant formula, as well as a permanent TRQ on milk powder.



### Meat and meat products

Korea represents New Zealand's fifth-largest beef export market with exports of \$120.6 million in the year ending June 2014. New Zealand beef exporters currently face a 40 percent tariff and many of their competitors have preferential rates into Korea. The FTA will stop this tariff disadvantage from increasing, as tariffs will start to be reduced for New Zealand exporters on EIF and will be duty and safeguard<sup>2</sup> free 15 years after EIF. Other meat products such as offal and meat preparations will see tariffs as high as 72 percent eliminated in the same timeframe. Sheep meat will see the 22.5 percent tariff eliminated within 10 years.



### Fisheries

Mussels, one of New Zealand's major fisheries exports to Korea, currently face a 20 percent tariff. Under the FTA, New Zealand exporters of mussels will have access to a permanent TRQ with zero in-quota tariff rates for the main traded line, with volumes starting at 1600 tonnes and a 6 percent annual growth rate capped at 3999 tonnes 15 years after EIF. All other mussel tariff lines will have the tariff eliminated two years after EIF. Other fish lines (livers, roe and frozen fish including fillets) will have the 10 percent tariff eliminated in 10 years or less. Salmon will see the 20 percent tariff removed in Year 3. Live eels with a 27 percent tariff will receive tariff elimination in Year 10. Frozen squid and live abalone were excluded by Korea from tariff elimination.



### Forestry

New Zealand exported \$503.1 million of forestry and forestry products to Korea in the year ending June 2014. Over 99 percent of New Zealand's exports will be duty free within 10 years. Two of the 543 forestry product tariff lines are excluded from tariff elimination (unworked particleboard and 12mm to 15mm plywood).



### Other horticulture

New Zealand is the largest supplier of buttercup squash to Korea, exporting \$10.8 million in the year ending June 2014. Under the FTA the 27 percent tariff will be eliminated four years after EIF for New Zealand's export season (December through May). The out-of-season period will remain at 27 percent. Other products with tariff elimination outcomes include cherries, which will have the 24 percent tariff removed on EIF; apple juice, which will have the 45 percent tariff eliminated six years after EIF; and avocados, which will have the 30 percent tariff eliminated nine years after EIF.

<sup>1</sup>Note that tariffs are eliminated in Year 6, which because of the structure of the tariff phasing is roughly five years after EIF. Year 1 of phasing is EIF, Year 2 is 1 January of the year following EIF, Year 3 is 1 January of the next year and so on.

<sup>2</sup>The safeguard volume is set at 37,000 tonnes. The safeguard volume will grow at 2 percent per year and if triggered the duty rate reverts to the 40 percent MFN rate over the first five years. This then reduces to 30 percent (six to 10 years), 24 percent (11 to 15 years) and is removed in Year 16.

## There are three avenues through which goods can qualify for preferential tariff treatment

### 1 WHOLLY OBTAINED

The goods are wholly obtained or produced in New Zealand or Korea

### 2 PRODUCED EXCLUSIVELY

The goods are produced entirely in New Zealand or Korea exclusively from originating materials from one or both of the Parties

### 3 THIRD PARTY INPUTS

The goods are produced in New Zealand or Korea using third-party inputs

## Rules of origin

The Rules of Origin Chapter sets out rules for determining whether goods traded between the parties qualify as originating goods and therefore qualify for bilateral tariff preferences.

This Chapter uses a change of tariff classification (CTC) approach to determine origin. Under the CTC approach, a good will qualify for preferential tariff treatment if all third party inputs used in its production have undergone a specified change of tariff classification. Annex 3-A to FTA details the precise form of CTC that will apply to a particular good.

For some products, there are optional regional value content (RVC) rules. Under the RVC approach, a good will qualify for preferential tariff treatment provided the value of originating inputs is equal or greater than the specified RVC threshold for that good. These rules are optional and allow the producer to choose which rule best suits their particular business model.

For any good to qualify for the tariff preferences, it must be consigned directly between the two Parties. If transported through a third party, the good must not enter into the trade or commerce there or undergo any operation there other than unloading and reloading, repacking, or any operation required to preserve them in good condition or to transport them to the importing Party.

Importers wanting to make a claim for preferential tariff treatment under the FTA may do so based on:

- A written or electronic declaration of origin by the exporter or producer;
- A written or electronic certificate of origin by the exporter or producer; or
- Other evidence to substantiate the tariff preference.

The Chapter includes the establishment of a Committee on Outward Processing Zones on the Korean Peninsula. This Annex is similar to what Korea has previously agreed with its other FTA partners. The Committee allows for a dialogue between Korea and New Zealand to discuss the possibility of including trade partially manufactured in outward processing zones, such as the Kaesong Industrial Complex. Any requests to include such goods, and the criteria under which they could be included, will be subject to further negotiation. The first Committee meeting shall take place within 12 months of EIF.

## Customs procedures and trade facilitation

The Customs Chapter involves a range of commitments on trade facilitation and customs co-operation.

These commitments include:

- ensuring customs procedures and practices are predictable, consistent, and transparent (e.g. providing customs valuations, using internationally accepted tariff classifications and providing advanced rulings) to ensure efficient administration and the expeditious clearance of goods;
- encouraging the use of international best practice on customs and facilitating the use of automated systems, express consignments and providing for the electronic submission of import requirements in advance of the arrival of the goods, to expedite the procedures for the release of goods. In the normal course of events, customs administrations in both parties are required to release originating products within 48 hours of arrival;
- encouraging customs co-operation and providing for contact points and consultations to discuss any issues which might arise; and
- publishing customs laws and administrative procedures.

## Sanitary and phytosanitary measures

Sanitary and phytosanitary (SPS) measures are used to protect human, animal or plant life or health by preventing the introduction of pests and diseases, and to help ensure food is safe for consumption.

The FTA provides a framework for enhanced dialogue and co-operation on the Parties' application of SPS measures. The objective is to facilitate trade in goods affected by SPS measures, and to provide a means to improve transparency, communication and consultation on SPS issues.

## Technical barriers to trade

Standards, regulations and conformity assessment procedures can act as technical barriers to trade (TBT).

The FTA aims to reduce unnecessary TBTs between New Zealand and Korea by establishing a framework of provisions and mechanisms to enable the resolution of issues as and when they arise.

These include:

- International standards, guidelines and recommendations are to be used as the basis for technical regulations whenever possible;
- The Parties are encouraged to accept each other's technical regulations as being equivalent, so that satisfying one set is equivalent to satisfying the other;
- The Parties are encouraged to use a broad range of mechanisms to facilitate the acceptance of conformity assessment procedures conducted in the area of the other Party; and
- Regulatory cooperation is encouraged in recognition of the fundamental link between good regulatory practices and the removal of trade barriers.

There are also provisions for greater transparency, cooperation and information sharing that are designed to facilitate trade and reduce transaction costs for people doing business between New Zealand and Korea. These include the establishment of a TBT Committee that has responsibility for monitoring the implementation and administration of the Chapter. More specifically, the TBT Committee is responsible for ensuring steps are taken to address any TBT issues or concerns and for developing work programmes where a Party proposes an arrangement in a specific sector.

## Trade remedies

The Trade Remedies Chapter retains both Parties' ability to use trade remedies in accordance with WTO rules on anti-dumping, countervailing measures and safeguards.

The Chapter also provides for the possibility of either country excluding imports from the other country from a WTO global safeguard action if such imports are non-injurious. This 'non-injury' exemption clause, if invoked by Korea, will mean that New Zealand exporters are not needlessly caught by a Korean WTO global safeguard measure where their exports have not been a cause of the action. This is consistent with the approach that New Zealand has taken in other recent trade agreements.

The FTA provides for enhanced transparency rules. Under the Chapter, Korea and New Zealand have also confirmed, in the interests of transparency, existing practices affecting the implementation of the WTO agreement on anti-dumping concerning calculation of dumping margins and application of the lesser duty rule (by which a Party only imposes a lesser amount of duty than the full dumping margin if this is all that is necessary to remove injury to the domestic industry).

The FTA also establishes a bilateral transitional safeguard mechanism, which is available to both New Zealand and Korea. The rationale for transitional safeguard measures within an FTA is similar to that for global safeguards under the WTO rules, in that it provides for the ability of a Party to respond to unforeseen increases in imports caused by tariff reductions, in order to temporarily pause or claw back such reductions.

## Competition and consumer policy

The Competition and Consumer Policy Chapter takes a similar principles-based approach to competition chapters in New Zealand's other trade agreements and is consistent with New Zealand law, policy and practice.

The Chapter supports New Zealand and Korea's objective of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare.

New Zealand and Korea have committed to applying their competition laws to all forms of business activity. The Parties have agreed to maintain competition laws proscribing anti-competitive business conduct, including anti-competitive agreements, abuse of market power and anti-competitive mergers. These laws and their enforcement are to be consistent with the principles of transparency, non-discrimination, comprehensiveness and procedural fairness. Both Parties have also agreed to maintaining an authority or authorities responsible for the enforcement of its competition laws. Any exemptions provided under a Party's competition laws must be transparent and undertaken on the grounds of public policy or public interest.

The Parties have agreed to cooperate in the enforcement of their respective competition laws and policy, including through notification and information exchange and may engage in technical cooperation activities. The Parties are, at the request of either Party, to enter into consultations on any competition-related issue adversely affecting trade or investment between Parties.

The Parties have agreed to cooperate in the enforcement of their consumer protection laws and to provide protection in their territories from deceptive practices or the use of false or misleading descriptions in trade. Each Party is to provide the legal means to prevent the sale of products that are labelled in a manner which is false, deceptive or misleading or is likely to create an erroneous impression about the product

**“ The commitments in this Chapter all fall within current New Zealand regulatory settings and are generally in line with previous trade agreements.**

## Intellectual property

The Intellectual Property Rights Chapter promotes the importance of intellectual property rights in fostering trade between New Zealand and Korea.

The Chapter incorporates the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS). Included in the Chapter are specific commitments concerning protection for trademarks, copyright and related rights, technological protection measures and electronic rights management information, enforcement of intellectual property rights, sharing of information and co-operation. It also retains flexibility for the Parties to deal with issues related to the protection of traditional knowledge, folklore and genetic resources.

The commitments in this Chapter all fall within current New Zealand regulatory settings and are generally in line with previous trade agreements.

## Transparency

The FTA’s Transparency Chapter contains obligations that ensure that each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application.

Each Party commits to providing impartial administrative proceedings, reviews and appeals in accordance with its law. The FTA provides for notification should any proposed or actual measure materially affect the operation of the FTA or substantially affect the other Party’s interests.

## Investment

Up until now, New Zealand has not had an international agreement in place to safeguard the interests of New Zealand investors in Korea.

This Chapter establishes a modern high quality rules-based framework that will facilitate free and open flows of investment between New Zealand and Korea. These include rules against discrimination (national treatment or Most-Favoured Nation treatment), nationality requirements imposed on senior managers and boards of directors of foreign companies, and trade distortive performance requirements. These rules are designed to assist foreign investors to enter the market and compete on an equal footing with domestic investors and international competitors. There are also rules designed to protect investments from unjustified expropriation, or arbitrary or unfair conduct by a Party, and to facilitate the transfer of capital related to investment.

Of the established rules, commitments concerning ‘national treatment’ and ‘MFN treatment’ are particularly important for New Zealand.

The ‘National Treatment’ provision requires Korea to accord New Zealanders investing in Korea to treatment no less favourable than that accorded to Korean investors in ‘like circumstances’ (subject to any exceptions).

Under the ‘MFN treatment’ provision any better treatment relating to market access for investment agreed by Korea with third countries will automatically be extended to New Zealand investors. Certain exceptions apply for both Korea and New Zealand, including preferences granted under prior FTAs and for specific sectors such as maritime, fisheries and aviation where specific international treaty frameworks exist. Aside from these exceptions, the MFN provision future-proofs the investment commitments and ensures that the level of treatment afforded to New Zealand investors will not fall behind as Korea agrees new commitments with other countries.

Both New Zealand and Korea have exceptions from these obligations as set out in a schedule of investment ‘non-conforming measures’ (Annexes I and II). These exceptions either preserve existing discriminatory laws and regulations that do not conform to the obligations of particular provisions (Annex I) or reserve policy space to allow the introduction of such measures in the future (Annex II). Exceptions

which relate to existing measures are subject to a ‘ratchet’ mechanism under which any improvement in such measures is automatically provided to New Zealand investors. Access for New Zealand investors into the Korean market has been secured on a basis that is broadly in line with Korea’s commitments to other FTA partners, save for investment in certain service sectors (such as postal services), for which access is subject to equivalent exceptions retained by New Zealand. Korea has retained policy flexibility around investment in farmland, consistent with Korea’s established approach under past agreements with the United States and others.

The FTA also includes a mechanism which can be used by investors for the settlement of disputes arising under the FTA with Korea. The scope of the Investor-State Dispute Settlement provisions does not go beyond that established under New Zealand’s concluded FTAs, and standard safeguards and limitations have been built in to preserve the Government’s right to regulate for legitimate public policy purposes, such as:

- an investor must firstly enter into consultations with the Government for at least six months before a claim may be brought;
- frivolous claims may be challenged and discussed at an early stage of arbitration;
- an investor may only bring a claim for an alleged breach of the obligations of the FTA’s Investment Chapter;
- provisions in the Investment Chapter explicitly refer to the protection of legitimate public welfare measures, such as public health, safety and the environment;
- a decision by the Government to refuse foreign investment may not be challenged;
- the Government may call on the FTA Joint Commission to issue a binding interpretation on any aspect of the Agreement if a tribunal is considered to be applying the Agreement incorrectly; and
- tribunal hearings will be open to the public.

## Services and investment market access

The first part of the Cross-Border Trade in Services and Investment joint schedule (Annex I) sets out existing measures (laws, regulations, decisions, practices and procedures) that restrict the access of foreign service suppliers and investors – for example, by imposing quotas that restrict market access and/or caveat national treatment.

These reservations are subject to the so called ‘ratchet’ clause. This means that New Zealand is required to automatically extend the benefit of any future liberalisation of a measure listed in Annex I to Korea. The liberalisation becomes the new level of commitment in the FTA and cannot be taken away from Korean service suppliers – even if the measure is repealed or made more restrictive in the future. Unless specifically reserved against, Annex I reservations are also subject to the MFN obligation.

The second part of the schedule (Annex II) lists sectors and activities that are exempted from any or all of the market access, national treatment, MFN treatment, senior management and boards of directors, performance requirements and/or local presence obligations. The ‘ratchet’ clause does not apply to any measure captured by one of these reservations.

The list of exempted Annex II measures includes: social services covering childcare, health, income security and insurance, public education, public housing, public training, public transport, public utilities, social security and insurance and social welfare; public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages; water, including the allocation, collection, treatment and distribution of drinking

water; the sale and devolution of state-owned enterprises and assets; protected areas (including land and water) set up for heritage management purposes, public recreation, and scenery preservation, and species owned or protected under enactments by the Crown; animal welfare, and the preservation of plant, animal and human life and health and in particular food safety of domestic and exported food, animal feeds, food standards, biosecurity, biodiversity, and certification of the plant or animal health status of goods; measures in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and issuance of maritime concessions in the continental shelf; promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films; and cultural heritage of national value.

The current operation of the Overseas Investment Act 2005 is not impacted by the Agreement. New Zealand will continue to screen all inward investment for significant business assets above \$100 million, sensitive land and fishing quota under the Act. But New Zealand has committed not to screen Korean investment in significant business assets if they fall below a \$50 million value.

## Cross-border trade in services

New Zealand services suppliers will benefit from substantially improved services market access commitments over and above Korea’s existing WTO commitments, including new commitments on:

- adult education services;
- legal services;
- tourist guide services;
- tour operator services;
- beverage serving services;
- packaging services;
- services incidental to mining;
- market research and public opinion polling services; and
- research and development services.

As a result, New Zealand services suppliers will not be disadvantaged in these areas relative to competitors from Australia, Canada, the European Union and the United States who have already secured the same improved market access commitments in their FTAs with Korea.

## Temporary entry of business persons

The commitments in the Temporary Entry of Business Persons Chapter guarantee access for New Zealand skilled service suppliers, intra-corporate transferees and business visitors to enter and stay temporarily in Korea; and facilitate New Zealand businesses taking up commercial opportunities under the FTA.

Under the FTA, Korea will provide access to:

- Business visitors for up to 90 days;
- Intra-corporate transferees for up to three years, which may be renewed for subsequent periods (this includes New Zealand personnel who are executives, managers and specialists); and
- Contractual Service Suppliers, in certain sectors, for up to one year.

The commitments on Contractual Services Suppliers are new commitments that go beyond Korea's existing WTO GATS commitments.

The Chapter commits Korea and New Zealand to provide streamlined and transparent procedures for applications. New Zealand business persons applying to enter Korea will benefit from Korea's commitment to publish all relevant information online, process applications for temporary entry without undue delay, and to keep any fees imposed at a reasonable, cost-based level.

## Government procurement

The Government Procurement Chapter establishes an agreed framework of rights and obligations relating to government procurement.

These are constructed around the fundamental commitments to open, competitive and non-discriminatory access to government contracting opportunities and include agreed minimum procedural standards based on fairness and transparency.

The approach in the Chapter is fully aligned to previous government procurement chapters in New Zealand's trade agreements, the WTO Agreement on Government Procurement (GPA) (to which Korea is a party and New Zealand is in the process of acceding to) and to New Zealand's government procurement policy and practice.

The Chapter secures a level of access to government contracts with Korea's central government entities that is equivalent to the access granted by Korea to GPA parties, including Australia, Canada and the United States.

Both parties have committed central government entities only. New Zealand has committed all 29 departments and ministries as well as the New Zealand Police and New Zealand Defence Force (consistent with the entities committed in previous FTAs). Korea has committed the central government entities listed in its annex to the WTO GPA. The value thresholds (contract value at which the commitments must be applied) are 130,000 SDRs<sup>1</sup> goods and services and 5,000,000 SDRs for construction services (including private public partnerships).

The Chapter also gives New Zealand suppliers access to private public partnerships contracted by Korean central government entities. This will place New Zealand businesses on an equal footing with suppliers from GPA parties in respect of central government contracts and on a preferred footing with respect to private public partnerships where some GPA parties have not granted Korean suppliers with reciprocal access.

<sup>1</sup>Thresholds are expressed in IMF Special Drawing Rights (SDRs). The conversion from SDRs to New Zealand dollars may change periodically with currency fluctuations.

**// New Zealand and Korea have agreed that the cost of co-operative activities will be shared equally between us.**

## **Agriculture, forestry and fisheries co-operation**

The Agriculture, Forestry and Fisheries Co-Operation Chapter builds on existing co-operation arrangements.

It provides a vehicle for ongoing dialogue and information exchange between the Parties that is aimed at strengthening the trade and economic relationship in the agriculture, forestry and fisheries sectors, and advancing closer collaboration in areas of mutual interest.

This Chapter is intended to supplement existing government-to-government arrangements by providing a single platform for all co-operative discussions and activities related to agriculture, forestry and fisheries

Similar to other FTA co-operation chapters that New Zealand has negotiated, this one envisages a regular Committee meeting between the Parties. It also includes provision for separate consultations if export prohibitions or restrictions cause the importing country food security concerns.

Specific co-operative activities will occur in addition to regular dialogue and information sharing between officials. A separate Implementing Arrangement sets out these activities, which include:

- English language training for school students from rural and fishing communities;
- scholarships to study in the agriculture, forestry and fisheries fields; and
- disease risk analysis training.

New Zealand and Korea have agreed that the cost of activities will be shared equally between us. The activities will foster positive relationships and help to open up future economic opportunities.

**“ Co-operation on environmental issues may also prove beneficial in terms of cross-fertilisation over best practice in environmental management and environmental policy matters.**

## Labour

The FTA includes a chapter on Labour – the second time such a chapter has been included in the body of a New Zealand trade agreement.

In New Zealand’s other FTAs, this topic has usually been covered by side arrangements or agreements.

The provisions in the Chapter are intended to promote and enforce labour rights, improve working conditions and living standards, strengthen co-operation on labour issues and enhance labour capacity and capability through co-operation and dialogue.

The Chapter’s obligations ensure that Parties’ competitive advantage is not secured or maintained through labour exploitation or practices that are not consistent with internationally recognised labour standards. This, in turn, helps ensure that our exporters or local businesses (and the jobs of their employees) are not undercut or put at risk by unfair competition.

New Zealand’s commitment to these obligations will also have positive reputational effects amongst likeminded states, bolstering our standing in bilateral and multilateral relationships, including trade relationships.

Labour co-operation may also prove beneficial in terms of cross-fertilisation over best practice in labour administration and labour policy matters.

## Environment

As with the Labour Chapter, this is only the second time such a chapter has been included in the body of a New Zealand trade agreement.

In previous trade agreements, environment provisions have been included in side arrangements or agreements.

The Parties agree not to use their environmental laws, regulations, policies and practices for trade protectionist purposes. They also agree not to fail to effectively enforce their environmental laws, or waive or derogate from their laws or regulations, in a manner affecting trade or investment between them.

The Chapter provides for the Parties to co-operate on matters of common interest, which can include trade related aspects of environmental laws and policies, including those related to multilateral environmental agreements. Particular attention is given to energy related matters including renewable energy and energy efficiency. Non-government organisations (such as businesses, research institutes, and universities) may be involved in the selection of and participation in co-operative activities.

The FTA environmental provisions are intended to promote sound environmental policies to achieve a high level of environmental protection, and to advance the objectives for sustainable development. The obligations help ensure that neither Party can secure an unfair advantage by weakening or failing to enforce environmental laws, or by using such laws in a discriminatory manner.

Co-operation on environmental issues may also prove beneficial in terms of cross-fertilisation over best practice in environmental management and environmental policy matters.

## Audio-visual co-production

The Audio-Visual Co-Production Annex increases the scope for cultural and economic co-operation and collaboration between the New Zealand and Korean screen industries. It builds on the existing Korea-New Zealand Film Co-production Agreement, which covered feature films only.

The Annex includes principles covering: approval; contributions; entitlement to benefits; rules of participation and engagement in a co-production; government facilitation; and implementing arrangements for the guidance of the competent authorities.

The Annex is that films (defined widely to include inter alia, videos, documentaries, mini-series or television dramas) will be considered to be 'national' productions entitled to all the benefits provided to such domestic productions by the legislation of each country. In New Zealand the main benefit accruing to domestic productions is qualification for financial assistance pursuant to section 18 of the New Zealand Film Commission Act 1978. Korea will likewise make any domestic production subsidies, tax breaks, or other financial incentives open to an official co-production. Each country's criteria for accessing such subsidies still apply.

The Audio-Visual Co-Production Annex provides for each country to facilitate the temporary entry of relevant personnel and the duty-free temporary admission of equipment necessary for making the official co-production. Facilitation does not, however, mean exemption from normal regulations - including payment of applicable fees for (temporary) work permits.

## Dispute settlement

The Dispute Settlement Chapter provides a mechanism for the resolution of disputes between Korea and New Zealand arising under the FTA.

The dispute settlement mechanism provides effective, efficient and transparent processes to settle any disputes with a focus on co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of the FTA.

This ensures that New Zealand is able to pursue a matter to arbitration should it consider that Korea has not acted in accordance with obligations under the FTA. Conversely, New Zealand may also be held to account if Korea considers that New Zealand has not fulfilled its obligations.

Each Party must allow adequate opportunity for consultation to resolve any disputes and may agree to alternative dispute resolution through good offices, conciliation or mediation. The Chapter also allows for Parties to select the WTO or any other dispute settlement mechanism in any other agreement to which both Parties are party as a forum for dispute settlement, rather than the FTA dispute settlement process, but once that selection is made the Parties must stick to their choice of forum. If the FTA mechanism is chosen, the Chapter sets out a process for the establishment of an arbitration panel, its functions, proceedings, termination of proceedings and reports. Parties must comply with the findings and rulings of the arbitration panel and in cases of non-compliance the complaining Party will be able to suspend the benefits of the FTA after following the procedures set out in Article 19.15.

## Protections under the FTA

### General exceptions

The FTA contains a range of exceptions to ensure that each Party retains decision-making powers to take measures in certain circumstances (such as to deal with an emergency or to achieve certain priority policy outcomes).

Provided that such measures are not used for trade protectionist purposes, the FTA will not prevent New Zealand from taking measures necessary to:

- protect human, animal or plant life or health;
- protect works or specific sites of historical or archaeological value; and
- provide support to creative arts of significant value to New Zealand.

The FTA will not prevent New Zealand from taking any actions necessary to protect its essential security interests, for prudential reasons, or to respond to serious balance of payments issues and external financial difficulties. Taxation measures are also largely excluded from the FTA, except to the extent that they are covered by the WTO.

Neither Party to the FTA will be required to disclose information if it considers that the disclosure would:

- be contrary to its domestic laws;
- impede law enforcement;
- be contrary to the public interest;
- prejudice legitimate commercial interests of particular persons; or
- prejudice fair competition between suppliers.

### Treaty of Waitangi

New Zealand has maintained a general exception to ensure that New Zealand maintains its ability to take measures to accord more favourable treatment to Māori, including in fulfilment of Treaty of Waitangi obligations, as long as such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade.

## Moving forward

The FTA establishes a Joint Commission to consider the implementation of the Agreement. In addition to the Joint Commission, the FTA provides for the establishment of sub-committees under specific chapters.

The Joint Commission meetings are an opportunity for either Party to raise issues arising in relation to the FTA. The Joint Commission will also be responsible for establishing any additional committees or working groups as required, and for exploring measures for further expansion of trade and investment between the Parties.

### Co-operation

A number of chapters of the FTA establish mechanisms that allow for future co-operation between New Zealand and Korea in areas of mutual interest. These include commitments relating to standards; technical regulations and conformity assessment procedures; education; trade facilitation; customs procedures; competition; intellectual property; and sanitary and phytosanitary measures.

There is also an undertaking to cooperate on mutually agreed trade and labour issues and to address trade-related environmental issues.