



A comparison of New Zealand's trade agreements in SE Asia

Key considerations for New Zealand exporters

Report to MFAT

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Key points

Purpose of report

- Following the conclusion of the Malaysia-New Zealand Free Trade Agreement (Malaysia FTA) and ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), New Zealand exporters to some markets in the South East Asia region are now facing a situation where more than one set of trade rules could potentially apply to their activities. This creates the potential for firms to pick and choose between the provisions of the various agreements to ensure that they maximise the commercial opportunities on offer.
- This short report highlights the key differences and overlaps between New Zealand's trade agreements in South East Asia, and suggests – where possible – which agreement New Zealand exporters should use in each market.
- The report takes as a start point, a comparison of areas of overlap between AANZFTA and the other trade agreements in question. In doing so, we should not lose sight of AANZFTA as a whole. AANZFTA is a comprehensive high quality trade agreement giving improved access to major new markets with whom we do not have overlapping agreements, most notably Indonesia, Vietnam and the Philippines. It adopts high quality regional ROO provisions, a single schedule approach, and measures to improve business flows and promote cooperation over a broad range of economic areas of mutual interest to the parties. AANZFTA is a building block towards New Zealand's wider goal of multilateral trade liberalisation.

Five markets require close attention for goods exporters

- At this stage, there are only five situations where New Zealand merchandise firms have to make a conscious decision about which trade agreement to operate under. In tariff terms, goods exporters to these five markets will be generally better off if they use the provisions of bilateral agreements/P4¹ rather than AANZFTA. Firms, however, will need to look at the whole package and their own particular circumstances before deciding which agreement to use; other factors may be at play. Side letters between New Zealand and Singapore, Malaysia and Brunei respectively provide that exporters can choose the 'best' of the provisions in the bilateral/P4 agreements and the AANZFTA provisions.
- The bilateral FTAs and the P4 all contain provisions that allow exporters to 'self-declare' the origin of their products. This is an improvement (in terms of transaction costs) on the AANZFTA outcomes, whereby an approved third party must be used. This is relevant for exporters, especially SMEs, to Malaysia, Singapore, Thailand and Brunei.

¹ P4 is the shorthand name for the Trans-Pacific Strategic Economic Partnership Agreement between New Zealand, Singapore, Chile and Brunei Darussalam.

Table 1 Overlapping FTAs

Market	Choice of agreements	Preferred choice
Malaysia	Malaysia FTA or AANZFTA	Malaysia FTA unless an RVC option is needed
Thailand	Thai CEP or AANZFTA	Generally Thai CEP for goods (depending on accumulation rules); AANZFTA for services and investment.
Singapore	Singapore CEP, P4 or AANZFTA	All tariff free
Brunei	P4 or AANZFTA	P4
Australia	CER or AANZFTA	Generally CER unless an RVC option is needed

Source: NZIER

- New Zealand firms trading with Indonesia, Philippines, Vietnam, Myanmar, Cambodia and Laos will almost always want to use the AANZFTA preferential rates over the Most Favoured Nation (MFN) tariff rates applied by these countries. However, firms should keep an eye out for significant unilateral reductions that occur from time to time.

Goods exporters need to look at the whole package, not just the tariff

- While the table above is true for most products, it is important for exporters to examine the FTAs' goods provisions as a package of rules before deciding which agreement to use. The key elements of the package are:
 - the tariff itself
 - the application of special safeguard measures or tariff rate quotas
 - the rate at which it is reduced over time (the 'phase out', if any)
 - the Rules of Origin (ROO), especially those related to textiles, clothing and footwear products²
 - the declaration of origin process (i.e. self declared or not)

Services exporters

- For Singapore, an exporter can choose any combination of the provisions offered under the bilateral, P4 and AANZFTA. Similarly, for Brunei an exporter can choose any combination of the provisions offered under P4 or AANZFTA. The services provisions under P4 were completed on a negative list,³ which is an improvement on the bilateral CEP and AANZFTA.

² AANZFTA provides more liberal Rules of Origin in certain product lines than the bilateral agreements (apart from Malaysia) which may well negate the slower tariff phase outs in the AANZFTA agreement.

³ A negative list approach is one that covers "the comprehensive inclusion of all service sectors, unless otherwise specified in the list of reservations, under the specific disciplines of the services chapter and the general disciplines of the trade agreement. A negative list approach requires that discriminatory measures affecting all included sectors be liberalized unless specific measures are set out in the list of reservations" (http://www.sice.oas.org/dictionary/SV_e.asp).

- For Thailand, services have not been included in the bilateral CEP (yet), so AANZFTA is the preferred option by default.
- The Malaysia FTA secured services market access outcomes that were an improvement on AANZFTA, as outlined in the table below. As well as extensions to market access commitments, the Malaysia FTA also provides an MFN clause on key sectors of commercial interest, meaning that New Zealand services exporters in those sectors will not be disadvantaged when compared to competitors from third countries. Malaysia also offered some improvements on its AANZFTA temporary entry for business persons commitments in the bilateral FTA.
- No commitments over and above those already provided in the GATS have yet been made on the movement of natural persons (Mode 4) in the P4, so business people providing services in Singapore can choose between AANZFTA or the bilateral CEP.
- Other provisions related to competition policy, government procurement, sanitary and phytosanitary policies⁴, technical barriers to trade⁵ and other areas do not differ significantly between New Zealand's bilateral and regional agreements and are unlikely to be a deciding factor for a firm in the choice of which agreement to export under.

⁴ Rules on how countries can protect the health of their people, animals and plants, while facilitating trade.

⁵ Domestic technical regulations, standards and conformity assessment procedures that exported products need to comply with.

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1. Purpose of report

NZIER has been commissioned to examine the provisions of New Zealand's South East Asian trade agreements to:

- Highlight key differences and overlaps for New Zealand exporters.
- Suggest which agreement's provisions are best suited for use under which circumstances.

The agreements covered were:

- Singapore CEP (implementation date 2001)
- Thai CEP (2005)
- P4 (2005)
- AANZFTA (2010)
- Malaysia FTA (2010)

Our focus has largely been on what we deem as being important to New Zealand firms operating under these FTAs: market access and the key rules governing trade.¹

2. Approach

We used a combination of desk-based research and interviews to generate the information we needed for this study. The desk-based portion of the work centred on reviewing the texts of the agreements proper and their associated National Impact Analyses (NIAs). This was augmented with interviews with officials from MFAT, MED and Customs who have been involved in the negotiation or implementation of the agreements.

Our initial plan was to develop tables that explain and compare the provisions of each chapter of each FTA. However, this was not practical: there are too many nuances, exceptions, fishhooks and examples of technical language to prepare comparison tables that would be useful for MFAT and New Zealand firms. Instead we took a more qualitative approach and have pulled out what we see as the most important pieces of information for New Zealand exporters. Firms seeking more information should refer to the resources in the last section of this report.

The report takes as a start point, a comparison of areas of overlap between AANZFTA and the other trade agreements in question. In doing so, we should not lose sight of AANZFTA as a whole. AANZFTA is a comprehensive high quality trade agreement giving improved access to major new markets with whom we do not have overlapping agreements, most notably Indonesia, Vietnam and the Philippines,. It adopts high quality

¹ As well as direct market access improvements, our negotiators have added certainty to our competitive position through securing MFN wherever feasible; and made procedural improvements around some of the less visible chapters of the texts (e.g. dispute settlement, customs, etc) that reduce the risk of New Zealand exporters being unfairly treated in overseas markets (or at least make it easier for problems to be addressed).

regional ROO provisions, a single schedule approach, and measures to improve business flows and promote cooperation over a broad range of economic areas of mutual interest to the parties. AANZFTA is a building block towards New Zealand's wider goal of multilateral trade liberalisation.

3. The overlaps

Table 2 Countries and agreements

Singapore	Thailand	Malaysia	Brunei	Indonesia	P'pines	Vietnam	Cambodia	Laos	Myanmar	Chile	Australia	US	Peru
AANZFTA	AANZFTA	AANZFTA	AANZFTA	AANZFTA	AANZFTA	AANZFTA	AANZFTA	AANZFTA	AANZFTA		AANZFTA		
Singapore CEP	Thai CEP	Malaysia FTA									CER		
P4			P4			*				P4	*	*	*

Notes: (1) * denotes a country negotiating the TPP as an extension to P4. Vietnam is an 'associate member' of the TPP with the option to remain in the group after joining three rounds of negotiations.

Source: NZIER

Decisions that New Zealand firms need to make

There are relatively few occasions – at this stage – where New Zealand firms have to make conscious decisions about which trade agreement to operate under. These are listed below:

- When exporting to **Singapore**, do I export under the provisions of Singapore CEP, the P4 or AANZFTA?
- When exporting to **Thailand**, should I use the bilateral Thai CEP or AANZFTA?
- When exporting to **Malaysia**, should I use the Malaysian bilateral FTA or AANZFTA provisions?
- When exporting to **Brunei**, should I use the P4 or AANZFTA?
- When exporting to **Australia**, should I use the CER or AANZFTA?

4. Comparative analysis: which should you use?

Goods

Bilateral/P4 tariff outcomes generally better for goods exporters...

- In tariff terms, New Zealand goods exporters will find the tariff provisions under bilateral agreements and the P4 generally more favourable than under AANZFTA.
- Given Singapore's tariff free status, it makes little difference which agreement is chosen. Exporters have the right to choose and combine any of the provisions of the CEP, the P4 or AANZFTA.
- The goods provisions under the Thai CEP are generally more advantageous than under AANZFTA. Some specific instances of this are in milk powder, non-electrical machinery, and wood and paper products. Under the Thai CEP a significant number of products became duty free on 1 January 2010. Examples of products that would otherwise have faced duty, including under AANZFTA are some: lamb and sheep meat; seafood products, transport equipment, machinery, and vegetables.
- The goods provisions under the Malaysia FTA are more generous than under AANZFTA in a number of areas such as forestry products, steel and paints. The provisions under the Malaysia FTA for all lines are at least as good as under the AANZFTA, although AANZFTA's accumulation rules need to be taken into consideration for some exporters.
- For those exporting to Brunei, the P4's tariff commitments are generally more ambitious and liberalising than the AANZFTA. Examples of relevant products include some electrical machinery, manufactures, transport equipment, and minerals and metals. However, there are some products where AANZFTA has more liberal tariff commitments. Examples of these products include wooden office furniture, non-electrical machinery, and some transport equipment.
- Clearly New Zealand firms trading with Indonesia, Philippines, Vietnam, Myanmar, Cambodia, and Laos will want to use the AANZFTA preferential rates over the Most Favoured Nation (MFN) rates.

...but firms need to look at the whole package, not just the tariff

- It is important for exporters to examine the FTAs' goods provisions as a package of rules before deciding which agreement to use. The key elements of the package are:
 - the tariff itself
 - the application of special safeguard measures or tariff rate quotas
 - the rate at which it is reduced over time (the 'phase out', if any)
 - the Rules of Origin (ROO), especially those related to textiles, clothing and footwear products¹

¹ AANZFTA provides significantly more liberal Rules of Origin than the bilateral agreements (apart from Malaysia) which may well negate the slower tariff phase outs in the AANZFTA agreement.

- the declaration of origin process (i.e. self declared or not)
- The bilateral FTAs and the P4 all contain provisions that allow exporters to ‘self-declare’ the origin of their products. This is an improvement (in terms of transaction costs) on the AANZFTA and China outcomes, whereby an approved third party must be used. This is relevant for exporters, especially SMEs, to Malaysia, Singapore, Thailand and Brunei.

Rules of Origin (ROO) and the potential for accumulation are important

- The ability to include New Zealand products as part of the AANZFTA local content makes New Zealand products an attractive supply option for businesses trading within the region. If a New Zealand exporter is selling goods (either primary products or elaborately transformed manufactures) that are then used in the production of another good in an ASEAN country or Australia, their New Zealand good can be counted as AANZFTA content when that final good is traded on to the other AANZFTA party.
- The exporter can use the best option (bilateral or AANZFTA) for exporting the input good into the ASEAN country. For example New Zealand beef and vegetables could be exported under bilateral or AANZFTA preferences into an AANZFTA party. These inputs could then be further processed into a packaged meal product (such as instant rice/noodles) in the AANZFTA party and exported under AANZFTA preference to another AANZFTA party or Australia. This development is an important step for New Zealand firms participating in supply chains that span several trading partners in the region.
- The reduction of tariffs into ASEAN markets is a valuable outcome from AANZFTA. In essence, New Zealand exports have become a more attractive supply option.
- The ROO in the Malaysia FTA take the best aspects of the AANZFTA ROO and the best parts from the CER and blend them together. The Malaysia ROO have now become the template for new FTA negotiations. In some very few circumstances an exporter may find they cannot meet the rule of origin. The AANZFTA should be explored in these instances because it provides a regional content alternative rule that New Zealand exporters should be able to meet.
- The P4 ROO for Singapore are based on a change in tariff classification (CTC). This is an improvement on the regional value content (RVC) rules contained in the Singapore CEP as CTC rules are generally recognised as being more trade facilitating than RVC rules.
- The ROO in the Thai CEP and P4 are generally CTC apart from a requirement to also achieve a 50% RVC threshold on textiles, clothing, footwear and carpet items. AANZFTA ROO provides for a “co-equal” set of ROO that allow the exporter to choose between a CTC rule and a 40% RVC rule and thus delivers greater flexibility for New Zealand firms.
- In addition to the differences in tariff rates under overlapping FTAs, firms need to take a close look at the ROO to ensure they are choosing the ROO that best suits their production or supply chain model.

Services

- For Singapore, an exporter can choose any combination of the provisions offered under the bilateral, P4 and AANZFTA. Similarly, for Brunei an exporter can choose any combination of the provisions offered under P4 or AANZFTA. The services provisions under P4 were completed on a negative list,² which is an improvement on the bilateral CEP and AANZFTA.
- For Thailand, services have not been included in the bilateral CEP (yet), so AANZFTA is the preferred option by default.
- The Malaysia FTA secured services market access outcomes that were an improvement on AANZFTA, as outlined in the table below. As well as extensions to market access commitments, the Malaysia FTA also provides an MFN clause on key sectors of commercial interest, meaning that New Zealand services exporters in those sectors will not be disadvantaged when compared to competitors from third countries. Malaysia also offered some improvements on its AANZFTA temporary entry for business persons commitments in the bilateral FTA.
- No commitments over and above those already provided in the GATS have yet been made on the movement of natural persons (Mode 4) in the P4, so business people providing services in Singapore can choose between AANZFTA or the bilateral CEP. Note that Singapore's commitments on Mode 4 under AANZFTA (related to transparency, expeditious processing, etc) are more liberal than those under the Singapore CEP.

² A negative list approach is one that covers "the comprehensive inclusion of all service sectors, unless otherwise specified in the list of reservations, under the specific disciplines of the services chapter and the general disciplines of the trade agreement. A negative list approach requires that discriminatory measures affecting all included sectors be liberalized unless specific measures are set out in the list of reservations" (http://www.sice.oas.org/dictionary/SV_e.asp).

Table 3 Services outcomes: AANZFTA vs. Malaysia

Sector	Improvement in Malaysia FTA outcomes relative to AANZFTA
Private education	New commitments on distance learning; improved joint venture outcomes by 2015; MFN
Environmental services	Not included in AANZFTA; new commitments in wastewater management, cleaning services of exhaust gases, nature and landscape protection and noise abatement services; MFN
Tourism services	Adds commitments in tourist guide services
Veterinary services	Covers entire veterinary sector as opposed to just equine in AANZFTA
Management consulting	Extended to include HR management consulting and PR services
Maritime services	New commitment in cargo handling; improved joint venture equity outcomes
Air transport	Includes ground handling services
Engineering	MFN
Computer services	MFN
Services incidental to mining	MFN
Mode 4 Movement of business persons	Wider definition of business visitors; faster application processing and policy notification times; no labour market testing for senior intra-corporate transferees in sectors covered by commitments; length of time financial services suppliers can operate in Malaysia doubled to 10 years

Source: NZIER

Investment

- The P4 agreement does not contain an investment chapter; however, P4 contains our most ambitious commitments to date on mode 3 services (commercial presence or investment in services) as these are provided for in the Service Chapter.
- The Singapore CEP provisions on investment cover investment in goods. In terms of treatment for investors, Singapore's investment commitments under the AANZFTA investment chapter are more comprehensive than those under the bilateral CEP in a number of ways:
 - There are comprehensive investment protections in AANZFTA, including on expropriation, fair and equitable treatment and full protection and security, that aren't present in the bilateral CEP with Singapore.
 - AANZFTA provides for compulsory investor state dispute settlement against a party that breaches some of the investment chapter's obligations. The Singapore CEP does not allow an investor to directly pursue such international arbitration.
- AANZFTA's investment protection provisions (related to the free transfer of payments, protection against arbitrary expropriation, regime transparency and Compulsory Investor State Dispute Settlement) are additional to or stronger than those under the Thai CEP.
- The MFN commitment in relation to investment provisions secured under the Malaysia FTA is comprehensive and an improvement over AANZFTA (where MFN

was not secured, although this matter is on the forward work agenda for AANZFTA). Under the bilateral FTA, the MFN commitment will not be operational until market access schedules are negotiated.

- For the investor, dispute settlement is broadly similar under the Malaysia FTA than AANZFTA. Both agreements include recourse to compulsory investor state dispute settlement.

Other provisions that may affect New Zealand firms

- The competition policy, intellectual property, sanitary and phytosanitary policies³, technical barriers to trade⁴, etc, provisions of New Zealand's FTAs in the South East Asia region affirm multilateral obligations and make a number of improvements to these obligations, including in relation to interagency cooperation and mutual recognition. These provisions do not differ significantly between New Zealand's bilateral and regional agreements and are unlikely to be a deciding factor for a firm in the choice of which agreement to export under.
- Government procurement is addressed most comprehensively in the P4, which established a market for government purchases of most goods and services above a certain monetary threshold. The government procurement provisions of the Thai CEP focuses on enabling transparency and information exchange on procurement policies, practises and procedures, rather than on immediate changes to market access for New Zealand firms. Government procurement is not covered by the AANZFTA or Malaysia FTA.
- New Zealand has trade and environment agreements with Thailand, Malaysia, Brunei and Singapore (the latter two under P4) and the Philippines (alongside AANZFTA) which recognise that there are links between trade practices and environmental outcomes. The cooperation provisions of these agreements provide an avenue for dialogue on these issues, and aim to encourage sound environmental practices. These agreements should reduce the risk to New Zealand firms of being unfairly discriminated against by these governments for purportedly environmental reasons.
- All of the agreements contain similar Treaty of Waitangi and Creative Arts exemptions.

³ Rules on how countries can protect the health of their people, animals and plants, while facilitating trade.

⁴ Domestic technical regulations, standards and conformity assessment procedures that exported products need to comply with.

5. Resources for New Zealand firms

Table 4 Tariff finders

Agreement	Website location
Malaysia	http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Malaysia/Tariff-locator/
AANZFTA	http://www.asean.fta.govt.nz/tariff-finder/
China	http://www.chinafta.govt.nz/2-For-businesses/2-Tools-and-resources/3-Tariff-finder/index.php
Hong Kong	http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Hong-Kong/Tariff-locator/index.php

Table 5 FTA guides

Agreement	Website location
General	http://www.mfat.govt.nz/downloads/trade/FTAart.pdf
Malaysia	http://www.mfat.govt.nz/downloads/trade-agreement/malaysia/mnzfta-guide-to-fta.pdf
AANZFTA	http://www.asean.fta.govt.nz/assets/AANZFTA-booklet3.pdf
P4/TPP	http://mfat.govt.nz/downloads/trade-agreement/transpacific/trans-pacificbooklet.pdf
China	http://www.chinafta.govt.nz/1-The-agreement/3-Publications/chinafta-booklet.pdf
Singapore	http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Singapore/0-cep-succeeding.php
Thailand	http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Thailand/0-exportguide.php
Hong Kong	http://www.mfat.govt.nz/downloads/trade-agreement/hongkong/nz-hk-cep-publicity-booklet.pdf

Table 6 Key outcomes of FTAs

Agreement	Website location
Malaysia	http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/Malaysia/Key-Outcomes.php
AANZFTA	http://www.asean.fta.govt.nz/what-is-the-asean-fta/
P4/TPP	http://mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Trans-Pacific/0-key-outcomes.php
China	http://www.chinafta.govt.nz/1-The-agreement/1-Key-outcomes/index.php
Thailand	http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Thailand/0-key-outcomes-exporters.php
Hong Kong	http://www.mfat.govt.nz/downloads/trade-agreement/hongkong/hk-cep-key-outcomes.pdf

Table 7 MFAT contact points

Agreement	Email address
Malaysia	asia@mfat.govt.nz
AANZFTA	asia@mfat.govt.nz
P4	amer@mfat.govt.nz
TPP	tplu@mfat.govt.nz
China	asia@mfat.govt.nz
Thailand	asia@mfat.govt.nz
Hong Kong	asia@mfat.govt.nz
