

NEW ZEALAND – MALAYSIA FREE TRADE AGREEMENT

(AND ASSOCIATED INSTRUMENTS)

NATIONAL INTEREST ANALYSIS

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EXECUTIVE SUMMARY

Background

On 31 March 2005 the Prime Ministers of New Zealand and Malaysia agreed to launch negotiations on a bilateral Free Trade Agreement (FTA) between the two countries – the *Malaysia-New Zealand Free Trade Agreement* (MNZFTA). Negotiations commenced thereafter and were substantively concluded in Kuala Lumpur on 30 May 2009. The Agreement was signed in Kuala Lumpur, Malaysia on 26 October 2009.

Malaysia is an important and growing market. It is New Zealand's eighth most important export destination, accounting for \$949 million of merchandise exports in 2008, making Malaysia a larger export market for New Zealand than either India, Singapore or Germany. Furthermore, Malaysia's importance as an export destination is growing. For instance, New Zealand's exports to Malaysia have grown by over 80 percent since 2004, more than double the rate of New Zealand's export growth to the world over the same period.

New Zealand's services trade with Malaysia is also growing strongly in a range of sectors, including private education, environmental services, Information and Computer Technology (ICT) services, engineering, amongst others.

In particular, Malaysia is an important and growing education market for New Zealand education providers. Between 2003-2008, the number of fee-paying Malaysian students in New Zealand increased by over 70%, making it New Zealand's third largest source of fee-paying university students and second largest source of PhD students.

The investment relationship between Malaysia and New Zealand has also been growing rapidly in recent years – albeit off a low initial base. Between 2003 and 2008 (March years), New Zealand's total stock of investment in Malaysia increased by an average annual rate of 77 percent to over \$450 million.

In conjunction with the MNZFTA negotiations, New Zealand also concluded binding treaty-level labour and environmental cooperation agreements with Malaysia – the *Malaysia-New Zealand Labour Cooperation Agreement* (Labour Agreement) and the *Malaysia-New Zealand Environmental Cooperation Agreement* (Environment Agreement), in Kuala Lumpur, on 29 May 2009. Taken together these two instruments constitute further concrete contributions towards strengthening and expanding the existing bilateral economic and political relationship with Malaysia. The instruments were signed in October 2009 .

This National Interest Analysis (NIA) assesses the MNZFTA and associated instruments from the perspective of their impact on New Zealand and New Zealanders. The Environment and Labour Agreements are considered together in this NIA as they are both treaty-level instruments negotiated in the context of the MNZFTA. The NIA does not seek to address the impact of such instruments on Malaysia or other economies.

Reasons for New Zealand becoming a party to the treaties

The main reasons for New Zealand entering into the MNZFTA, and associated instruments, with Malaysia are that they build on the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (AANZFTA) to provide greater certainty and improved access for New Zealand exporters of goods and services to the Malaysian market as well as establishing sound frameworks under which trade and investment can expand through:

- faster tariff elimination of more of Malaysia's tariffs on New Zealand exports;
- facilitating trade under the MNZFTA through least-cost customs procedures including self-declaration of origin and 48 hour customs clearance for New Zealand exports;
- ensuring that New Zealand goods and services exporters and investors enjoy a 'level playing field' or are treated as well as Malaysia's other FTA partners, and in some areas better;
- giving New Zealand exporters an important 'first mover' advantage over competitors that do not enjoy preferential treatment under a bilateral FTA;
- 'binding in' Malaysia's current levels of openness in goods and services access;
- ensuring that New Zealand's service exporters, in key sectors (i.e. in the areas of private education, environmental, engineering, computer and related services, and services incidental to mining), and New Zealand investors, will not be left at a disadvantage should Malaysia extend more favourable treatment in future FTAs;
- providing New Zealand investors and investments with greater certainty and security, including through the recourse to binding investor-state arbitration procedures;
- securing greater certainty and transparency for New Zealand businesses operating in Malaysia through enhanced regulatory cooperation around non-tariff barriers such as sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT) as well as intellectual property and competition policy to facilitate trade; and,
- giving New Zealand businesses and business interests a greater profile in the Malaysian market.

As well as commercial benefits, the MNZFTA provides New Zealand with strategic benefits through:

- enhancing New Zealand's bilateral relationship with Malaysia – an influential player in the Asian economic integration processes in which New Zealand also seeks to participate;
- signalling New Zealand's commitment to a liberal global trading environment at a time when the threat of rising protectionism is a concern; and,
- Environment and Labour Agreements that allow for more effective discussion and cooperation on labour and environment matters in line with New Zealand's sustainable development objectives.

Taken together, the MNZFTA is expected to contribute to New Zealand's economic performance by promoting the flow of goods, services, capital, people, knowledge and technology as well as New Zealand's wider strategic interests in sustainable economic development, economic integration and trade liberalisation. Entering into the MNZFTA, therefore, is in New Zealand's national interest.

Advantages and disadvantages to New Zealand of the treaty actions

Advantages

The goods market access provisions of the MNZFTA will provide New Zealand exporters with commercially meaningful duty saving benefits, over and above those provided for under the AANZFTA. This also gives New Zealand exporters a 'first mover' advantage over competitors from other countries in many areas of the Malaysian market.

In particular, the MNZFTA provides for tariff elimination on New Zealand's key exports to Malaysia and, for a number of key exports, faster elimination than the AANZFTA provides for. Based on current trade, tariff elimination under the MNZFTA will save New Zealand exporters over \$10 million in duties per annum.¹

This tariff elimination will deliver significant benefits to exporters including the:²

- removal of tariffs on entry into force (2010), as well as reconfirming the AANZFTA outcome by 'binding in' Malaysia's current levels of openness, on \$821 million of current exports to Malaysia encompassing; butter, milk powder, cheese, wool, kiwifruit, apples and some manufactured products. This covers 95.1 percent of total current exports to Malaysia;³
- removal of tariffs from 2011-2012 on \$27.9 million of current exports encompassing; electrical parts, fibreboard, chocolate and some manufactured products. This covers 3.2 percent of New Zealand's total current exports to Malaysia. By 2012, 98.3 percent of total current exports to Malaysia will be duty free; and,
- removal of tariffs between 2013-2016 on \$10.2 million of current exports to Malaysia encompassing; paper products, plastics, paints, whiteware, iron and steel. This accounts for 1.2 percent of New Zealand's total current exports. By 2016, 99.5 percent of total current exports to Malaysia will be duty free.

The phase-out of domestic duties is also expected to benefit New Zealand producers who use imported Malaysian 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.

This market access outcome is complemented by Rules of Origin (ROO) and custom procedures outcomes that ensure New Zealand businesses can take advantage of the preferential treatment provided by the MNZFTA, with the minimum of compliance costs. In particular, the MNZFTA ROO, the most liberal ROO New Zealand has secured in any of its FTAs, ensures that New Zealand exporters will be able to take advantage of the MNZFTA's tariff reductions. Furthermore, self-declaration and the 48 hour customs clearance requirement improve on the AANZFTA outcome to further simplify and expedite customs procedures.

1 Based on 2008 trade volumes.

2 Based on average 2007/08 Malaysian Customs trade data.

3 93.1 percent of which consists of 'binding in' current duty-free access.

The MNZFTA provides new opportunities and greater certainty for New Zealand's services exporters, particularly for providers of education, environmental, tourism, veterinary, maritime and management consulting services. These all expand on Malaysia's commitments in the WTO General Agreement on Trade in Services (GATS) and the AANZFTA.

A significant advantage of the MNZFTA services outcome is that New Zealand has secured Most Favoured Nation (MFN) treatment for key services sectors (i.e. in the areas of private education, environmental, engineering, computer and related services, and services incidental to mining). This ensures that New Zealand businesses will never be disadvantaged in the future relative to competitors in these services sectors.

The MNZFTA also further facilitates the movement of New Zealand business people, investors and traders into Malaysia, to help ensure that they are able to make the most of the MNZFTA's trade and investment opportunities.

New Zealand investors will operate in a more certain investment environment as a result of the MNZFTA. An Investor-State Dispute Settlement (ISDS) mechanism will allow for the enhanced resolution of potential investment issues.

Malaysia has also agreed to provide New Zealand investors MFN treatment. This means should Malaysia extend any future FTA partners better investment-related treatment in a future FTA, this will automatically be extended to New Zealand investors and their investments. This provision will become operational following the conclusion of negotiations on schedules of non-conforming measures.⁴ These negotiations will be completed six months after entry into force of the MNZFTA. Investment MFN represents a key benefit of the MNZFTA outcome.

Importantly, the MNZFTA promotes regulatory cooperation. This is expected to reduce the transaction costs of doing business in Malaysia through more streamlined customs procedures as well as encourage greater dialogue and cooperation on a range of matters, including competition policy, intellectual property rights, sanitary and phytosanitary (SPS) measures and technical barriers to trade (TBT).

The MNZFTA also establishes a framework for economic cooperation to help expand and enhance the commercial benefits of the Agreement for both Parties.

The Environment and Labour Agreements recognise the important links between trade, labour and the environment. Together they support New Zealand's broader objectives of promoting the improvement of working conditions, quality of life for workers and sustainable development.

Disadvantages

Tariff Elimination

Although the MNZFTA is a high quality, comprehensive FTA that is AANZFTA-plus in many regards, New Zealand would have preferred an even more ambitious goods market access outcome. Owing to Malaysian domestic and religious sensitivities however, New Zealand had to accept some non-elimination (and tariff rate quota) outcomes for 0.5 percent of its current exports to Malaysia in order to reach agreement on the overall negotiated package.

⁴ A non-conforming measure is any law, regulation, procedure, requirement or practice which violates certain articles of the investment agreement.

In particular, Malaysia refused to make any tariff reduction/elimination commitments on 88 products (mostly alcoholic products, but also including tobacco, firearms and tyres) based on religious, safety or environmental grounds. Of these, alcoholic beverages is the only item of significant export interest to New Zealand with exports worth NZ\$1.6 million in 2008. To address this, New Zealand and Malaysia have agreed to provide the opportunity for a review of the MNZFTA's treatment of alcoholic beverages two years after the Agreement enters into force.

Malaysia has also maintained its Tariff Rate Quota (TRQ) system on a range of domestically sensitive products including, liquid milk, live swine and poultry, hens' and duck eggs as well as some pork. Of these products, the only item of substantive New Zealand export interest is liquid milk (this accounts for around 0.4 percent of our total dairy exports to Malaysia). New Zealand was able to secure commercially significant improvements to the existing TRQs in-quota volume, growth rate as well as in-quota tariff elimination. This will help facilitate the export of New Zealand liquid milk to Malaysia.

Trade liberalisation also has long-term positive effects for New Zealand's productivity and efficiency as the economy adjusts away from less productive areas towards areas of comparative advantage. In the short-term however, tariff removal may bring adjustment costs for domestic producers as a result of increased exposure to foreign suppliers. In order to help mitigate the potential for any negative adjustment effects in New Zealand, the MNZFTA includes longer phase-out periods for import sensitive sectors relative to other sectors. Examples of sensitive products afforded longer phase-out periods under the MNZFTA include margarine, clothing, footwear, carpets, some textiles and some manufactured products such as some steel, plasterboard and most wooden furniture. It is also important to note that the AANZFTA already provides for the reduction of tariffs on Malaysian imports in many of these sensitive areas, albeit over a longer period of time. Additional MNZFTA related adjustment costs therefore, are unlikely to be significant.

Trade Remedies

As with many FTAs, the MNZFTA has a bilateral safeguard mechanism under which either Party can temporarily either suspend tariff reductions or increase the tariff rate if increased imports are causing or threatening to cause serious injury to the domestic industry as a result of tariff reductions under the MNZFTA. Given New Zealand's small market share in Malaysia however, the risk that this mechanism will be used to temporarily suspend or increase the tariffs New Zealand exports face is limited. To counter this risk, the MNZFTA bilateral safeguard mechanism contains a number of features designed to minimise the possibility that it is used in an overly protectionist manner.

Services Market Access

As with the trade in goods outcome, New Zealand would have preferred a more ambitious services market access outcome. In particular, Malaysia refused to make services commitments on the basis of a 'negative list' approach, nor agree to a comprehensive services MFN provision (rather than MFN treatment for specific sectors). Malaysia has, however, agreed to renegotiate its MNZFTA services commitments with New Zealand on a negative list basis, if and when it concludes a negative list with another country in the future. In any case the MNZFTA's services commitments will be reviewed within two years of the Agreement's entry into force. This review includes a review of the MFN sectoral coverage (with a view to extension of MFN to additional service sectors).

A limited emergency services safeguard was also included in the Agreement. This provision enables Malaysia to request consultations with New Zealand if it considers the implementation of the MNZFTA to have caused a negative impact on its domestic services sector. These consultations require the parties to endeavour to reach a *mutually acceptable* solution within a reasonable time.

New Zealand would have preferred not to have included such a provision; however, this was regarded by Malaysia as an important element of the MNZFTA services outcome and necessary in order to reach agreement on the overall package that allowed both sides to conclude the FTA.

Legal obligations under the MNZFTA and associated instruments

Key MNZFTA obligations commit New Zealand to:

- reduce and eventually eliminate all customs duties on goods originating from Malaysia, with longer transitional periods for some goods;
- establish MNZFTA Rules of Origin (ROO), or the criteria under which goods qualify for the preferential tariff rates under the MNZFTA. (The MNZFTA's ROO are based primarily on a Change of Tariff Classification (CTC),⁵ but also allow exporters and importers to use Qualifying Value Content (QVC) and specified process rules for some products);
- establish a bilateral transitional safeguard mechanism to address situations of serious injury to New Zealand industry (caused by increased imports as a result of tariff reductions under the MNZFTA). In these situations, action may include suspending further tariff reductions or reverting to higher tariffs for a certain period;
- grant Malaysian services providers national treatment and new market access commitments, over and above New Zealand's existing AANZFTA commitments;
- provide Malaysia with Most Favoured Nation (MFN) treatment in some services sectors. This means New Zealand is required to extend to Malaysia any better treatment relating to services that New Zealand extends to third countries in future FTAs or services agreements;
- provide MFN treatment to investments and investors from Malaysia, requiring New Zealand to extend to Malaysia any better treatment relating to investors and their investments that New Zealand provides to third countries in future FTAs, or investment agreements;
- ensure investor protection disciplines; and,
- develop frameworks to enhance cooperation more broadly, as well as in specific areas of mutual interest such as customs, competition, intellectual property, SPS and TBT.

It is important to note that the obligations in the majority of areas of the MNZFTA are consistent with existing New Zealand law and practice. In addition, nothing in the MNZFTA will prevent New Zealand from taking measures it deems necessary fulfil its obligations to Māori under the Treaty of Waitangi or to support creative arts of national value.

⁵ Under a Change of Tariff Classification (CTC) approach, origin is conferred if the non-originating materials used in the production of a good have undergone a specified change in tariff classification within a territory. Under a Qualifying Value Content (QVC) approach, origin is conferred if the value added within a territory meets a specified threshold.

Finally, the Environment and Labour Agreements require New Zealand to commit to further cooperation on labour and environment issues, including establishing a cooperation programme and holding regular meetings between senior officials, in these areas, with Malaysia.

Alongside the MNZFTA, New Zealand and Malaysia have also agreed to an exchange of Ministerial letters which clarify the relationship between the pre-existing AANZFTA and the MNZFTA. These letters stipulate that the exporter, service supplier or investor is entitled to claim the more favourable treatment under either Agreement.

Economic, social, cultural and environmental effects

Economic effects

The MNZFTA is expected to make a positive contribution to the New Zealand economy through:

- expansion of trade in goods and services with Malaysia as a result of the reductions in tariff barriers, duty savings and new opportunities for New Zealand exporters;
- enhanced bilateral economic integration over time, including the expansion and facilitation of improved investor and business links with Malaysia which will trigger further efficiency and productivity gains; and,
- improvements in productivity as a result of dynamic effects, including the potential for enhanced levels of investment, greater innovation, competition and additional momentum to further regional integration.

The overall outcome of the MNZFTA will strengthen economic ties with Malaysia – a key partner in the region. This will further contribute to New Zealand’s objectives of enhanced integration with the wider Asia-Pacific region.

Social effects

The MNZFTA and associated instruments, including the Environment and Labour Agreements, are not expected to have any discernible negative social effects in New Zealand.

Cultural effects

The MNZFTA contains safeguards to ensure that there are no adverse effects on New Zealand cultural values, including Māori interests in relation to the Treaty of Waitangi. There is also an explicit recognition in the MNZFTA of the importance of supporting creative arts of national value.

Environmental effects

The MNZFTA, and the Environment Agreement, are expected to positively contribute to outcomes for New Zealand on the environment and sustainable development more broadly. The Environment Agreement advances the objective of harmonising and ensuring the mutual supportiveness of trade and environment. It will also provide opportunities to enhance capacity in Malaysia and New Zealand for improved environmental management and may assist in further promoting trade in goods and services that benefit the environment.

In addition, improvements in market access for environmental services have been secured. The investment chapter further establishes the importance of the environment with a provision that provides, subject to certain disciplines, that nothing in the MNZFTA prevents a party from ensuring investment is undertaken in a manner sensitive to environmental concerns.

Costs

In 2008 the revenue collected on imports from Malaysia was \$8.25 million. As tariffs are phased out over time under the MNZFTA, the New Zealand Customs Service will progressively collect less and by 2016, no revenue from duty payments on imports from Malaysia will be collected.

It is important to note however, that the loss of tariff revenue will be minimal given the existence of the AANZFTA. That is, New Zealand has already committed under the AANZFTA to eliminate tariffs on Malaysia's exports to New Zealand under that agreement by 2020. So, even without the MNZFTA, the future stream of tariff revenue on Malaysian imports will be progressively reduced to zero by 2020. The MNZFTA's faster tariff elimination timeframe however, will lead to a faster reduction and elimination of tariff revenue than under the AANZFTA.

One-off costs associated with the implementation of the MNZFTA are estimated to amount to up to \$110,000 for promotion and outreach activities (including processes and documentation required to support the legislative process). There will also be the ongoing costs of meeting New Zealand's obligations under the MNZFTA, including staffing, establishment of new institutions, developing implementing arrangements, technical assistance and implementation costs. These costs are expected to be within the baseline of implementing agencies. Specific Cabinet approval will be sought for any future activities unable to be resourced through baseline funding.

Subsequent Protocols and/or amendments to the treaty

There is general provision for review and amendment in the MNZFTA, subject to the agreement of the Parties. New Zealand would consider proposed amendments on a case-by-case basis. Any decision to accept an amendment would be subject to New Zealand's normal domestic approvals and procedures for such matters.

The Environment and Labour Agreements similarly have scope for amendment, as agreed by the Parties.

Implementation

Legislative and regulatory amendments are required to align New Zealand's domestic regime with the rights and obligations created by the MNZFTA in relation to the tariffs, the rules of origin and the bilateral transitional safeguard outcomes.

There are no legislative or regulatory amendments required for New Zealand to implement the Environment and Labour Agreements.

Consultation

The study, preparation and negotiating phases of the MNZFTA and associated instruments involved extensive consultation between government agencies and with non-government stakeholders throughout New Zealand. A communication and outreach programme kept stakeholders informed of progress in the negotiations and provided regular opportunities for input.

1 NATURE AND TIMING OF PROPOSED TREATY ACTIONS

Negotiations on the *Malaysia-New Zealand Free Trade Agreement* (MNZFTA) were concluded on 30 May 2009 and the Agreement was signed by New Zealand in Kuala Lumpur, Malaysia, on 26 October 2009. The MNZFTA will enter into force on a date agreed by the Parties, formalised through an exchange of notes, indicating that both parties have completed their respective domestic requirements for ratification of the Agreement (Chapter 18, Article 18.10).

Negotiations on the *Malaysia-New Zealand Labour Cooperation Agreement* and *Malaysia-New Zealand Environmental Cooperation Agreement* (Labour and Environment Agreements), were concluded on 29 May 2009 and were signed by New Zealand in October 2009. Both the Environment and Labour Agreements will enter into force following an exchange of notes indicating completion of the relevant domestic requirements for such instruments.

2 REASONS FOR NEW ZEALAND BECOMING A PARTY TO THE TREATIES

2.1 Background

On 5 September 2004, the Trade Ministers of New Zealand and Malaysia agreed to conduct parallel, but separate studies on whether the two countries should proceed to Free Trade Agreement (FTA) negotiations. The New Zealand study concluded that there were strong reasons for New Zealand to negotiate an FTA with Malaysia and recommended that negotiations begin as soon as possible.

On 31 March 2005 the Prime Ministers of New Zealand and Malaysia agreed to launch negotiations for a bilateral FTA between the two countries.

The first round of *Malaysia-New Zealand Free Trade Agreement* (MNZFTA) negotiations was held in May 2005. In total, ten rounds of negotiations were held in both Malaysia and New Zealand. Negotiations were temporarily suspended in April 2006 due to disagreements between New Zealand and Malaysia on a number of key issues, but resumed in September 2008. The negotiations were concluded in Kuala Lumpur on 30 May 2009.

The New Zealand study on the benefits of a Malaysia-New Zealand FTA identified sustainable development as a core national objective for both New Zealand and Malaysia.⁶ It is against this background that, in addition to the MNZFTA itself, New Zealand has also concluded bilateral treaties with Malaysia covering a range of labour and environment-related issues. The value of the trade and labour and trade and environment agreements is referenced in the preamble of the MNZFTA.

2.2 Benefits from enhanced trade and economic links

This section sets out the direct and indirect benefits of MNZFTA in each key area.

2.2.1 Direct benefits from enhanced trade and economic links with Malaysia

The MNZFTA secures a number of direct benefits for New Zealand. These include the potential for modest productivity gains; commercial benefits for New Zealand goods exporters, services suppliers and investors as well as further deepening and broadening New Zealand's economic integration into the rapidly evolving East Asian architecture.

A strategic trade-related priority for the New Zealand Government is to lift New Zealand's long-term growth by removing barriers to trade and innovation – enabling resources to shift to their most productive use – as well as building more internationally competitive New Zealand firms by improving their access to markets, ideas, finance and the skills they need to grow and succeed.

To this end, a core objective of New Zealand's trade policy is to agree FTAs with key trading partners, such as Malaysia, that broaden and deepen the opportunities available to exporters by removing and reducing barriers to trade and investment, as well as to establish frameworks through which trade and investment linkages can evolve and expand.

⁶ New Zealand-Malaysia Free Trade Agreement: A Study on the Benefits of a Free Trade Agreement between New Zealand and Malaysia. (March 2005). Available at: <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/Malaysia/0-chapterone.php>

This trade policy objective is reflected in the *Ministry of Foreign Affairs and Trade's* long term policy objective – to promote New Zealand's "economic growth and international competitiveness through international connections".⁷

The MNZFTA is expected to contribute to New Zealand's economic performance by reducing tariffs and other costly barriers to trade and investment into Malaysia, while facilitating the flow of skill and technology to New Zealand.

Further trade liberalisation of the New Zealand market will also deliver ongoing productivity benefits by facilitating the more efficient allocation of resources, improved domestic competition, and greater access to international markets, ideas, finance and skills. These productivity effects are discussed in section 6.1.

As well as contributing to New Zealand's overall economic performance, the MNZFTA is expected to benefit New Zealand goods and services exporters and investors by levelling and enhancing the 'playing field' for New Zealand businesses (*vis-à-vis* Malaysia's other FTA partners) competing in Malaysia. (It is important to note that Malaysia has already concluded FTAs with Japan and Pakistan as well as ASEAN-based FTAs with China, Korea, Japan and Australia (as part of AANZFTA) and is looking to progress bilateral FTA negotiations with the United States, Australia, India, Chile and the GCC among others.) Further to this, the MNZFTA will help to tip the 'playing field' in New Zealand's favour by improving, in many cases, on what Japan, Pakistan and others had secured with Malaysia in their previous FTAs.

In addition to giving New Zealand's goods and services exporters a greater competitive advantage in the Malaysian market, the MNZFTA also 'future-proofs' New Zealand's defensive interests. That is, the MNZFTA ensures that New Zealand exporters, service suppliers in key sectors, and investors cannot be left at a disadvantage if and when Malaysia concludes its bilateral FTA negotiations with future FTA partners. This is achieved through the negotiation of forward-looking Most Favoured Nation (MFN) provisions for services and investment, 'binding in' Malaysia's current levels of openness, as well as an Agreement-wide review mechanism to ensure that New Zealand's interests are safeguarded going forward. These outcomes are a key benefits of the MNZFTA for New Zealand.

There are also longer term strategic benefits to entering into the MNZFTA. Trade forms a vital part of the relationship between countries and FTAs serve to link economies more closely together, fostering cultural exchange, commercial interaction and government-to-government and civil society links. The MNZFTA, therefore, will set a new benchmark in the bilateral relationship and reinforce the perception of New Zealand as a natural and fully engaged partner in Asia – a region with which New Zealand's future economic prosperity is closely tied.

The specific benefits, or key reasons for New Zealand to become a Party to the MNZFTA and its associated instruments, are summarised in Table 1 below.

⁷ See Ministry of Foreign Affairs and Trade's 'Statement of Intent' 2009-2012 Long Term Policy Outcome II. The 'Statement of Intent' is available on the MFAT website (www.mfat.govt.nz).

TABLE 1 SUMMARY OF REASONS FOR NZ BECOMING A PARTY

Area	Benefits
Goods trade	<ul style="list-style-type: none"> • Faster tariff elimination than provided for by the AANZFTA, particularly for kiwifruit, some manufactured goods and in-quota liquid milk. • Existing duty free access 'locked in'. • No special safeguard for agricultural products (an important precedent for future negotiations that helpfully builds on a similar outcome in the AANZFTA). • Best access to preferential treatment ever achieved by NZ in an FTA guaranteed under flexible and trade facilitating Rules of Origin (ROO). • Enhanced regulatory cooperation to reduce transaction costs associated with trade (including in TBT and SPS areas).
Services trade	<ul style="list-style-type: none"> • Broader and deeper commitments made by Malaysia than in the AANZFTA, particularly in areas of commercial interest to New Zealand, including in education, environmental services and business management services. • MFN provision agreed requiring all future preferential commitments made by Malaysia in any FTA to be accorded to NZ exporters in certain services sectors. • Facilitates the movement of New Zealanders to Malaysia for business purposes.
Investment	<ul style="list-style-type: none"> • MFN provision agreed requiring all future preferential investment commitments made by Malaysia in any FTA to be accorded to NZ investors and their investments. • Improved protections for NZ investors and their investments in Malaysia, with recourse to Investor-State Dispute Settlement (ISDS) if required.
Customs	<ul style="list-style-type: none"> • Procedures streamlined (including self-declaration), reducing transaction costs for NZ firms. • NZ exports to be cleared through Malaysian customs within 48 hours of submission of all relevant documents.
Intellectual Property (IP)	<ul style="list-style-type: none"> • Enhanced cooperation and consultation on IP arrangements and enforcement, thereby providing greater certainty for NZ exporters regarding their IP.
Economic cooperation	<ul style="list-style-type: none"> • Work programme developed to deepen bilateral cooperation in areas of mutual interest, including a range of areas where this will further facilitate bilateral trade and investment flows.
Indirect benefits	<ul style="list-style-type: none"> • Reduction in trade diversion resulting from being excluded from each other's existing and future FTAs. • Signal's New Zealand's commitment to trade liberalisation at a time of 'creeping protectionism' internationally. • The comprehensive MNZFTA contributes to supporting and generating momentum in trade liberalisation in multilateral setting including the WTO. • Demonstrates that New Zealand can be a natural and constructive participant for further regional integration, including through avenues such as the Closer Economic Partnership of East Asia (CEPEA) and/or FTA of the Asia Pacific.
Trade and Labour Cooperation	<ul style="list-style-type: none"> • Mechanisms established for ongoing cooperation on labour-related matters and to support adherence to core trade and labour principles.
Trade and Environment Cooperation	<ul style="list-style-type: none"> • Mechanisms established for ongoing cooperation on environmental issues combined with a shared commitment to the core trade and environment principles.

3 ADVANTAGES AND DISADVANTAGES TO NEW ZEALAND OF THE TREATY ACTIONS

3.1 Advantages to New Zealand in entering into the MNZFTA

3.1.1 General

The MNZFTA provides a framework through which bilateral trade can be expanded above and beyond the commitments negotiated in the AANZFTA. This is a commercially significant FTA for New Zealand because of:

- the size of the Malaysian economy;
- its importance to New Zealand as an export market both now and in the future;
- the presence of some relatively high tariffs that remained in place under the AANZFTA for longer timeframes; and,
- the further enhancements in services market access and investment protections.

New Zealand's rights and obligations under the various WTO Agreements are also maintained and reinforced. In addition, the MNZFTA allows for greater cooperation and dialogue on a range of economic issues of common interest.

3.1.2 Trade in goods

The MNZFTA goods market access outcome secures commercially meaningful benefits for New Zealand exporters through duties saved and a 'first mover' advantage over competitors from countries that do not enjoy similar treatment from Malaysia.

Malaysia is a large and growing market for New Zealand's merchandise exporters. It is New Zealand's eighth most important export destination, accounting for \$949 million of merchandise exports in 2008, making Malaysia a larger and more important export market than either India, Germany or Singapore. Unlike New Zealand's exports to Singapore, however, exports to Malaysia attracted some \$12.6 million of duty in 2008. Despite these duties, New Zealand's exports to Malaysia have grown by 24.6 percent, or some \$160 million per annum, since 2005. This is more than double the rate of New Zealand's export growth to the world over the same period.

As Table 2 demonstrates, the MNZFTA secures tariff elimination on New Zealand's key export sectors faster than was possible through the AANZFTA. The MNZFTA outcome includes the removal of tariffs:⁸

- on entry into force (2010), as well as reconfirming the AANZFTA outcome by 'binding in' Malaysia's current levels of openness, on \$821 million of current exports to Malaysia encompassing; butter, milk powder, cheese, wool, kiwifruit, apples and some manufactured products. This covers 95.1 percent of total current exports to Malaysia;⁹
- from 2011-2012, on \$27.9 million of current exports encompassing; electrical parts, fibreboard, chocolate and some manufactured products. This covers 3.2 percent of New Zealand's total current exports to Malaysia. By 2012, 98.3 percent of total current exports to Malaysia will be duty free; and,

⁸ Based on average 2007/08 Malaysian Customs trade data. Valued vfd (value for duty – the value of imports before insurance and freight costs are added).

⁹ 93.1 percent of which consists of 'binding in' current duty-free access.

- from 2013-2016, on \$10.2 million of current exports to Malaysia encompassing; paper products, plastics, paints, whiteware, iron and steel. This accounts for 1.2 percent of New Zealand's total current exports. By 2016, 99.5 percent of total current exports to Malaysia will be duty free.

TABLE 2 COMPARISON BETWEEN MNZFTA AND AANZFTA GOODS OUTCOMES

Average, 2007-2008

	Percentage of New Zealand trade subject to tariff elimination		Percentage of Malaysia's tariff lines subject to elimination		Percentage of estimated duties paid by New Zealand exporters eliminated	
	MNZFTA	AANZFTA	MNZFTA	AANZFTA	MNZFTA	AANZFTA
2010	95.1%	94.8%	67.6%	67.4%	12.6%	7.4%
2011	96.9%	96.6%	73.1%	73.0%	25.1%	19.9%
2012	98.3%	97.8%	87.3%	83.9%	46.1%	36.2%
2013	98.6 %	98.0%	93.4%	90.0%	51.9%	42.1%
2014	98.6%	98.0%	93.4%	90.0%	51.9%	42.1%
2015	98.6%	98.0%	93.4%	90.2%	51.9%	45.9%
2016	99.5%	98.2%	99.0%	92.2%	85.9%	45.9%
2017		98.2%		92.2%		45.9%
2018		98.2%		92.2%		45.9%
2019		98.2%		92.2%		45.9%
2020		99.4%		98.7%		82.5%
Not Subject to Tariff Elimination	0.5%	0.6%	1.0%	1.3%	14.1%	17.5%

Source: MFAT and Malaysian Customs trade data. Valued vfd (value for duty – the value of imports before insurance and freight costs are added).

As can be seen in the above table, one of the key advantages of the MNZFTA goods outcome is the rapid reduction in duties paid by New Zealand exporters. The tariff elimination outcome means that by 2016 85.9 percent of all duties paid by New Zealand exporters to Malaysian authorities will have been eliminated. Based on current trade, this tariff elimination will amount to a duty saving of over \$10 million. By way of comparison, at the same time under the AANZFTA (i.e. in 2016), less than 46 percent of all duties paid by New Zealand exporters will have been eliminated. In particular, some key lines of interest to us, such as kiwifruit, fibreboard and a range of manufactured goods (inter alia some plastics and steel) enjoy early elimination dates under the MNZFTA that represent improvements on the AANZFTA outcomes (see below for further discussion on the tariff elimination outcome for major goods exports).

The phase-out of duties is also expected to benefit New Zealand producers who use imported components or capital equipment from Malaysia in the production of their goods. Cheaper imports of unprocessed primary products (\$480 million of imports from Malaysia in 2008),¹⁰ simply transformed manufactures (\$92 million) and machinery equipment (\$45 million), will lower the costs of production for New Zealand producers and manufacturers of highly processed goods. This is expected to improve the competitiveness of many New Zealand firms.

¹⁰ Level of processing statistics supplied by Statistics New Zealand

Consumers will also benefit from the MNZFTA. Over time, imported consumer items will no longer attract a tariff, thus reducing the cost to the buyer.

a. Key Outcomes for Major Goods Exports to Malaysia

Kiwifruit: In 2008, New Zealand exported \$5 million worth of kiwifruit to Malaysia. Despite Malaysia's current applied 15 percent tariff on kiwifruit imports, over the past three years, New Zealand exports of kiwifruit to Malaysia have grown by 123 percent. Under the AANZFTA kiwifruit exports to Malaysia will be duty-free by 2012. The MNZFTA improves on this already useful outcome by providing for duty-free access for New Zealand kiwifruit in 2010.

Meat, Wool, Dairy, Fish and Forestry products: the MNZFTA confirms the outcome secured in the AANZFTA, ie the 'binding in' of existing duty free access for New Zealand meat, wool, dairy, fish and forestry product exports. In practice this means Malaysia cannot legally change this duty free level of access for New Zealand exporters while it can change it for others. This gives New Zealand exporters added certainty that many of their competitors do not enjoy – not least during a global financial crisis and the creeping tendency towards protectionism internationally.

It is also important to note that the MNZFTA does not provide for the application of a special agricultural safeguard against New Zealand (or Malaysian products). This is important because it creates a 'pattern' whereby New Zealand's most recent FTAs do not include special agricultural safeguards. This may assist New Zealand's efforts in other FTA negotiations to resist such mechanisms.

Liquid Milk: Importantly New Zealand has secured commercially significant liquid milk tariff rate quota access, to the sum of 2.1 million litres, with quota volume growth rates of three to five percent and in-quota tariff elimination on entry into force. This is a significant improvement on New Zealand's liquid milk access under the AANZFTA liquid milk tariff rate quotas that currently allow for only 550,000 litres, a growth rate of one percent and a 20 percent in-quota tariff rate that is not eliminated until 2013.

Manufactured Goods: The MNZFTA improves on the AANZFTA outcome for a number of manufactured product exports. Examples of manufactured products subject to earlier elimination include:

- a number of steel lines (currently facing a 50 percent tariff) in which New Zealand trades are eliminated by 2016 at the latest (reduced to 10 percent in 2020 in AANZFTA);
- various paints and varnishes lines (currently facing a 25 percent tariff) are eliminated in 2016 (not until 2020 in the AANZFTA); and
- a number of plastic product lines (currently facing tariffs as high as 30 percent) are eliminated in 2012 (as opposed to 2020 in the AANZFTA).

b. Other key goods outcomes

In addition to the set of liberalising tariff commitments, New Zealand has also secured a bilateral notification and consultation mechanism in the goods chapter of the MNZFTA. This mechanism allows New Zealand to seek 'technical discussions' with Malaysia on any matter affecting trade in goods between the Parties. Under the MNZFTA, Malaysia is obliged to engage in such discussions within 30 days. This may assist New Zealand in addressing a range of non-tariff barriers, such as import licensing and halal certification amongst other issues.¹¹ In this context, this is a very useful outcome and builds significantly upon the AANZFTA.

The MNZFTA also goes further than the AANZFTA in requiring Malaysia to answer all reasonable enquires regarding the criteria employed by licensing authorities from New Zealand exporters. This is a helpful outcome for New Zealand exporters given the various import licensing restrictions and requirements that Malaysia current operates.

3.1.3 Rules of origin

The Rules of Origin (ROO) are used by customs authorities to determine whether an exported good can be imported under the MNZFTA's preferential tariff rate and therefore enjoy preferential treatment under the MNZFTA.

The MNZFTA ROO allow for the most trade facilitating access to preferential treatment of any New Zealand FTA, and are an improvement on the ROO negotiated under the AANZFTA. The ROO outcome ensures that New Zealand exporters will be able to take advantage of preferential market access outcomes negotiated through the MNZFTA. At the same time, the robust ROO give New Zealand the confidence that imports claiming Malaysian origin are legitimate Malaysian products.

A Change in Tariff Classification (CTC) approach is applied across all product lines. This ensures consistency for exporters across New Zealand's current FTAs and:

- provides greater certainty of preferential access to New Zealand exporters;
- reduces compliance costs to exporters by simplifying administrative requirements for origin verification;
- facilitates changes to manufacturing processes as new technologies and systems develop; and,
- simplifies border administration and verification.

In particular, the MNZFTA ROO offers New Zealand exporters better access to preferential treatment (i.e. the lower tariff) for a number of product lines, including iron and steel, machinery, and chemical products, than was agreed under the AANZFTA.

¹¹ Officials are currently exploring a halal agreement with Malaysia, separate from the MNZFTA.

Importantly, New Zealand has also ensured that the compliance costs involved in seeking preferential treatment under the MNZFTA are kept to a minimum. This has been achieved through the agreement to 'self-declaration of origin' (on the commercial invoice) for New Zealand exporters to Malaysia.¹² This means that there will be no formal requirement for New Zealand exporters to obtain a certificate of origin for goods in order to gain the benefits of the MNZFTA tariff preference. There are strong trade facilitation benefits to New Zealand traders as a consequence of the MNZFTA self-declaration outcome.

3.1.4 Customs procedures and cooperation

The MNZFTA customs procedures and cooperation chapter will assist the expeditious clearance of goods, the predictable application of rules and procedures and the timely availability of advanced rulings.

Customs procedures and other administrative hurdles can be significant barriers to trade for many New Zealand exporters. For this reason, the MNZFTA helps to simplify and expedite customs procedures currently faced by New Zealand exporters to Malaysia.

In particular, the customs procedures and cooperation chapter secures an AANZFTA-plus commitment that New Zealand exports will be cleared through Malaysian customs within 48 hours of the submission of all relevant customs import documents. Malaysia has never before agreed to such a provision and there is no such commitment contained in the AANZFTA. This is a very significant advantage for New Zealand exporters working with Malaysian importers, not least because of the potential competitive edge in terms of the timeliness and associated certainty of delivery.

The chapter also enshrines a shared endeavour to issue advance rulings within 40 days but in any case within 90 days of the receipt of all necessary information.¹³ Again this is an improvement on AANZFTA, where there is no set timeframe, offering a further benefit to New Zealand exporters by way of enhanced certainty and transparency around customs procedures.

Other key customs procedures-related outcomes include the establishment of mechanisms that allow for the further development of trade facilitating customs procedures through customs-to-customs cooperation over time. It is also expected that the establishment of enhanced cooperation and communication processes between New Zealand and Malaysian Customs as a consequence of the MNZFTA will have a number of future benefits. These include the possibility of pre-empting customs-related problems and addressing and resolving any problems and issues which might arise between the two customs administrations as a matter of priority. The establishment of these processes, therefore, is a further potential benefit to New Zealand traders with Malaysia.

¹² While Malaysia agreed to allow New Zealand exporters to self-declare, Malaysia will continue to require Malaysian exporters to obtain formal certificates of origin in accordance with its domestic laws and regulations.

¹³ Malaysia will issue rulings on origin once its legislative framework permits.

3.1.5 Trade remedies

The MNZFTA trade remedies chapter retains New Zealand’s ability to take trade remedy actions in accordance with WTO rules, provides for enhanced rules on transparency, notification and consultation and allows for the exemption of New Zealand exporters from global safeguards.

New Zealand manufacturers have consistently argued that there should be no weakening of New Zealand’s ability to take trade remedy actions in accordance with WTO rules. The MNZFTA preserves the ability of either Party to take anti-dumping, countervailing, and global safeguard actions under WTO rules.

Significantly, the Agreement also provides for the possibility of excluding New Zealand imports from a Malaysian WTO global safeguard action if such imports are non-injurious. This ‘non-injury’ exemption clause should ensure that New Zealand exporters are not needlessly caught by a Malaysian WTO global safeguard measure where their exports have not been a cause of the action. This clause is potentially very valuable for a small supplier such as New Zealand in any global safeguard action taken by Malaysia. No such flexibility is afforded for under the AANZFTA.

The MNZFTA also establishes a bilateral transitional safeguard mechanism which is available to both New Zealand and Malaysia. Through this mechanism either Party can temporarily suspend tariff reductions or increase the tariff rate if there have been increased imports of a product as a result of the tariff reductions under the FTA and such increased imports have caused or threatened to cause serious injury to a domestic industry. The purpose of this mechanism is to allow a domestic industry some time to adjust to increased import competition from the implementation of the tariff phase-outs under the MNZFTA. While it is unlikely that a New Zealand industry would seek to use this mechanism, it is available if required.

The FTA also provides additional rules relating to the conduct of dumping investigations undertaken under WTO rules in the areas of notifications, responding to requests for consultations and the time period to be used to determine whether dumped import volumes are negligible. These are also AANZFTA-plus provisions that benefit New Zealand traders because of the way the measures promote transparency and conformity with best investigative practice.

3.1.6 Sanitary and phytosanitary measures

The Sanitary and Phytosanitary (SPS) chapter provides for cooperation that is expected to help ensure that any SPS measures are no more restrictive than necessary while preserving New Zealand’s existing biosecurity regime.

The MNZFTA provides a framework to allow for enhanced cooperation on the application of SPS measures, including risk analysis, the principles of regionalisation and equivalence, and technical assistance. The objective is to facilitate trade in goods by ensuring that SPS measures are no more restrictive than necessary, and to provide a means to improve transparency, communication and consultation on SPS issues.

Further to these provisions, the SPS chapter provides for the adoption of 'implementing arrangements'. In practice, this will allow New Zealand and Malaysia to address and seek trade facilitating outcomes to future SPS issues as they arise.

3.1.7 Technical barriers to trade

The MNZFTA technical barriers to trade outcome will help to reduce the transaction costs faced by New Zealand exporters to Malaysia.

Technical Barriers to Trade (TBTs) can create significant transaction and compliance costs for exporters and give rise to higher costs for consumers. The impediments to trade created by such barriers may include:

- a lack of transparency around testing, inspection and certification requirements for exports;
- the need to comply with different technical regulations and standards;
- requirements for re-testing and certification of product to import county specifications;
- the costs associated with inspections and audits which can often be unnecessary to managing legitimate risks; and,
- onerous documentation requirements.

The MNZFTA establishes a framework that enables New Zealand and Malaysia to work together to address issues around standards, technical regulations and conformity assessments procedures. In particular, the TBT outcome usefully incorporates provisions for greater transparency, information sharing and cooperation.

3.1.8 Trade in services

The key advantages of the MNZFTA services outcome include new market access commitments from Malaysia, Most Favoured Nation (MFN) treatment for key sectors of commercial interest and the inclusion of a range of disciplines that will provide New Zealand services exporters with greater certainty.

Malaysia has made a range of services commitments in the MNZFTA that expand on its commitments in the WTO General Agreement on Trade in Services (GATS) and on its commitments in the AANZFTA.¹⁴ In some cases, these improvements provide new market access for New Zealand services exporters beyond Malaysia's current policy settings.¹⁵ This range of additional commitments is expected to assist in the expansion of services trade between New Zealand and Malaysia.

¹⁴ Malaysia had previously made GATS-plus commitments in the following sectors under the AANZFTA: accounting, taxation, architecture, engineering, urban planning, landscape architecture, computer and related, veterinary, advertising, telecommunications, construction, education, financial, health and tourism services.

¹⁵ Market access refers to the terms under which foreign suppliers and their products may enter a market. Market access conditions for services, are set through regulatory requirements such as limitations on the: number of services providers; total value of service transactions; total number of service operations; number of persons that may be employed; level of foreign equity and entity restrictions or joint-venture requirements.

Malaysia has made GATS and AANZFTA-plus commitments in the following sectors:

- **Primary, Secondary, Higher and 'other' (such as language training and tuition) Education** – see section below for a fuller discussion on education services outcomes.
- **Environmental Services** – Malaysia has not previously committed this sector in the AANZFTA, WTO or in any of its previous FTAs, but in the MNZFTA it has made new commitments in four environmental services sectors – wastewater management, cleaning services of exhaust gases, nature and landscape protection and noise abatement services
- **Tourism services** – Malaysia has improved on its already comprehensive tourism commitments by committing the remaining sector of *tourist guide services*.
- **Veterinary Services** – Malaysia has extended its existing AANZFTA commitment in this sector (which covers only equine veterinary services) to cover the entire sector.
- **Management Consulting Services** – Malaysia has extended its existing AANZFTA commitment in this sector to also include human resources management consulting and public relations services.
- **Maritime services** – Malaysia has improved its existing commitment on maritime services to increase the equity limit New Zealand services suppliers are entitled to in joint ventures from 30 percent and 49 percent, and has made a new commitment in cargo handling.

Malaysia also made GATS-plus commitments related to the establishment of commercial presence (Mode 3).¹⁶ These will apply to all sectors in its schedule.

There are a number of GATS-plus and AANZFTA-plus outcomes in the rules that apply to trade in services between New Zealand and Malaysia. Some of the key improvements relate to:

- the AANZFTA-plus outcomes on investment protection that apply to (Mode 3) commercial presence in services;
- the MNZFTA's broader (than AANZFTA) definitions on the range of businesses types and structures (including branches) that can fall under the services chapter provide New Zealand services exporters with greater flexibility on the structure or form of New Zealand services exports. In practice, this means that so long as the business has substantive business operations in New Zealand or Malaysia, it can benefit from Malaysia's commitments in the FTA;
- domestic regulation disciplines apply to all services sectors, not just those in Malaysia's or New Zealand's services schedule. This means the regulations relating to authorisation, licensing, standards, qualifications for all services sectors must meet certain standards of transparency, objectivity and be no more burdensome than necessary;
- the scope of the services chapter has been extended to cover services related to air transport, specifically ground handling services – a key area that is often excluded from services chapters; and,

¹⁶ There are four "modes" of supply associated with trade in services: Mode 1: Cross-Border Trade, where the service is supplied by a provider physically located in one country (eg by way of the Internet), to a consumer in another; Mode 2: Consumption Abroad, where a customer travels to another country to consume a service; Mode 3: Commercial Presence, where a foreign service supplier establishes a presence in another country to provide a service, through incorporation, branch office, joint venture or some other form of business entity; and Mode 4: Movement of Natural Persons, which covers the temporary movement of a person into a country in order to supply a service directly.

- a commitment that Malaysia will renegotiate services commitments on a 'negative list' basis with New Zealand, if and when it concludes a negative list agreement with another country in the future. This is a further useful 'future-proofing' element of the Agreement. Negative lists are generally more comprehensive, transparent and offer scope to provide more ambitious commitments than the WTO GATS-style positive list approach used in the MNZFTA and many of New Zealand's recent FTAs (China FTA and the AANZFTA). Malaysia has not utilised a negative list methodology for scheduling its services commitments in any of its existing FTAs.

The FTA also includes a reciprocal Most Favoured Nation (MFN) provision. This provision requires Malaysia and New Zealand to automatically provide each other better treatment or access if they grant this to a third country in a future FTA in specific sectors. This ensures New Zealand firms in these sectors will not be disadvantaged *vis-a-vis* their competitors from other countries in the Malaysian market. The MFN provision applies to the following services sectors:

- Private education (Primary, Secondary, Higher and 'Other' Education);¹⁷
- Environmental Services (sewage, cleaning services of exhaust gases, noise abatement and nature and landscape protection);
- Engineering and integrated engineering;
- Computer and Related Services; and,
- Services Incidental to Mining.

Taken together this set of commitments represents a further enhancement of the AANZFTA outcome (which does not provide for services MFN).

Education

Education is New Zealand's single most important services export sector after tourism. Malaysia is New Zealand's tenth largest source of international students, third largest source of university students and second largest source of PhD students. In 2008, 2147 Malaysian international students studied in New Zealand, an increase of over 70 percent since 2003 (compared with a 27 percent decrease in the total number of international students visiting New Zealand over the same period). Given this growth and the value-added component of the sector, education services were a priority for negotiators in the MNZFTA.

Malaysia's private education commitments include:

- **Primary and Secondary Education** – new commitments on Mode 1 (distance education) and an improvement in the commercial presence commitment so that by 2015 New Zealand education suppliers are able to hold up to 70 percent of the shareholding in an education joint venture in Malaysia.
- **Higher Education** – an improvement in the commercial presence commitment so that by 2015 New Zealand education suppliers are able to hold up to 70 percent of the shareholding in an education joint venture in Malaysia.

¹⁷ Malaysia reserves the right to adopt or maintain any measure that accords differential treatment with respect to: Religious Institutions (which are institutions which teach predominantly religious studies); and, Military Institutions.

- ***‘Other’ Education (such as language training and tuition)*** – new commitments on Mode 1 (distance education) and an improvement in the commercial presence commitment so that by 2015 New Zealand education suppliers are able to hold up to 70 percent of the shareholding in an education joint venture in Malaysia.

New Zealand has secured commitments from Malaysia across more education sectors and secured higher foreign equity limits than Malaysia has provided any other party in the context of an FTA. Furthermore, some of Malaysia’s foreign equity commitments represent new market access that will require Malaysia to alter its current policy settings for New Zealand suppliers.

As discussed above, Malaysia has also agreed to provide MFN treatment in private education (primary, secondary, higher and other education).¹⁸ For education providers, this means that they will continue to enjoy the best treatment that Malaysia grants any of their competitors from other countries.

In addition Malaysia has agreed that, within one year of entry into force, it will establish a mechanism that allows for recognition of the equivalency of New Zealand’s qualifications. Qualifications recognition plays a key role in facilitating and growing New Zealand education exports and in easing the ability of New Zealand professional service suppliers (such as engineers, architects, accountants) to provide their services in Malaysia.

3.1.9 Movement of business persons

The MNZFTA movement of natural persons (business people) outcome will better facilitate the movement of New Zealand business people, investors and traders into Malaysia, and ensure that they are able to make the most of the MNZFTA’s trade and investment opportunities.

The key advantages of the MNZFTA movement of business persons outcome includes the following AANZFTA-plus elements:

- the definition of ‘business visitors’ is not restricted to specified sectors of services sellers, but includes all legitimate business visitors (i.e. business people seeking to trade in goods, services and investors). This means that the commitments Malaysia has made apply to all New Zealand business visitors’ to Malaysia for bona fide business travel (unlike the AANZFTA);
- information about policies affecting movement of natural persons covered under the Agreement are to be published much more quickly than the AANZFTA requires (within six weeks of entry into force, rather than six months). Any changes to policies must be published within 30 days (rather than 90 days under AANZFTA);
- both countries have agreed on timeframes for providing information back to applicants who have sought temporary entry access (maximum of 15 working days to advise of the receipt of an application, a maximum of 40 working days for an application to be decided). There are no timeframes in the AANZFTA.

¹⁸ Malaysia reserves the right to adopt or maintain any measure that accords differential treatment with respect to: Religious Institutions (which are institutions which teach predominantly religious studies); and, Military Institutions.

- senior New Zealand intra-corporate transferees can work in Malaysia without labour market testing in the sectors covered by Malaysia's services commitments (including education and environmental services); and,
- the length of time that New Zealand business people or services suppliers in financial services can operate in Malaysia has increased from five to ten years.

3.1.10 Investment

The key advantages of the MNZFTA investment outcome include Most Favoured Nation (MFN) treatment as well as greater protections for New Zealand investors and investments.

Cross-border investment is an important aspect of modern trading relationships, and contributes to enhanced international linkages between countries.

The investment relationship between Malaysia and New Zealand has been growing rapidly in recent years. New Zealand's total stock of investment in Malaysia has increased from \$26 million in the year to March 2003 to nearly \$451 million dollars in the year to March 2008. This represents annual average growth of 77 percent. Malaysia's stock of investment in New Zealand in 2007 (the latest year for which data is available) was over half a billion dollars (\$537 million), compared to \$124 million in 2003.

The investment chapter reinforces and builds upon the core obligations and disciplines agreed within the AANZFTA. Like the AANZFTA, the MNZFTA also includes a provision on national treatment, in which both Parties undertake to treat investors of the other Party the same as their own investors. The key advantage of the MNZFTA investment outcome, however, is the provision of comprehensive, reciprocal MFN treatment for New Zealand investors. Investment MFN will ensure that New Zealand investors and their investments in Malaysia cannot be left at a disadvantage relative to investors from other countries as Malaysia must extend any more favourable treatment it grants future FTA partners to New Zealand. Investment-related MFN with Malaysia represents a significant AANZFTA-plus element and means that New Zealand investors and their investments can be assured that their treatment will evolve over time on increasingly favourable terms.

The core national treatment and MFN obligations become operational once New Zealand and Malaysia have brought into effect a set of schedules of non-conforming measures.¹⁹ Malaysia and New Zealand have agreed to defer the negotiations on the schedules of non-conforming measures until after the entry into force of the MNZFTA. Negotiations on these schedules are to be concluded within six months of entry into force of the MNZFTA. At the point that the schedules enter into force, the obligations of National Treatment and MFN provision will become operational.

¹⁹ A non-conforming measure is any law, regulation, procedure, requirement or practice which violates certain articles of the investment agreement.

The MNZFTA also includes core and robust investment protection provisions that create a more certain and predictable investment climate for New Zealand investors and their investments. In many cases these provisions are enhancements of the AANZFTA outcome. Importantly, the MNZFTA protections apply to both citizens and permanent residents of the Parties. Key advantages extended to New Zealand investors and their investments through MNZFTA include:

- provisions to enable the free transfer of all payments relating to an investment, including the capital necessary for establishing the investment and the returns generated from that investment; and,
- commitments which provide protection from arbitrary expropriation – prohibiting either party from expropriating or nationalizing investments of investors of the other Party – unless such an action is undertaken:
 - for a public purpose;
 - in a non-discriminatory manner;
 - on payment of compensation; and,
 - in accordance with due process of law.

Importantly, these provisions also ensure that any compensation paid must be:

- equivalent to the fair market value of an expropriated investment;
- paid without delay;
- rendered in an effectively realisable and freely transferable currency with commercially reasonable interest.

Such expropriation provisions are a key protection for New Zealand investors. Taken together they are designed to help mitigate the risk of arbitrary government action to expropriate established investments and ensure that any expropriation actions are appropriately compensated in the event that they occur.

As with New Zealand's other recent FTAs (the China FTA and the AANZFTA) the provisions of the MNZFTA investment chapter are supported by recourse to compulsory investor-state arbitration. Compulsory Investor-State Dispute Settlement (CISDS) enhances the protection of New Zealand investments in Malaysia by providing New Zealand investors with recourse to international arbitration procedures, beyond the domestic legal system. These procedures can be accessed only if a dispute cannot be settled through consultation and negotiation.

There are also a set of safeguards which seek to preserve to the extent possible the Government's regulatory prerogatives and minimise as far as possible the Government's exposure to inappropriate expropriation claims. The MNZFTA also provides that nothing prevents New Zealand from adopting measures otherwise consistent with the investment chapter to ensure that investment activity is undertaken in a manner that is sensitive to environmental concerns.

3.1.11 Intellectual property

The outcome on intellectual property provides New Zealand investors and exporters with greater certainty and reduced risk regarding intellectual property issues.

The intellectual property chapter promotes the protection of the intellectual property rights of the Parties in accordance with international standards. In particular, the chapter incorporates the WTO Trade Related Intellectual Property Rights (TRIPS) Agreement into the MNZFTA. This will give New Zealand greater flexibility to raise issues about Malaysia's TRIPS consistency through the bilateral mechanism of the FTA, rather than through the WTO dispute resolution system.

New Zealand has also secured a number of intellectual property commitments from Malaysia which build on the AANZFTA outcome. These additional commitments include the provision for government-to-government consultation (within 60 days of request) on any matter covered by the chapter, as well as commitments relating to cooperation on enforcement issues and the exchange of information. Another important commitment not provided for in the AANZFTA is the requirement for Parties to provide legal means to ensure that products sold within its territory are not labelled in a false or misleading manner.

Importantly the chapter further retains the flexibility for New Zealand to deal with issues relating to the protection of traditional knowledge, subject to international obligations. The Agreement also provides for information sharing and cooperation between both countries on initiatives to better protect traditional knowledge.

3.1.12 Competition

The MNZFTA competition outcome allows for future development in this area through enhanced dialogue and cooperation.

The competition chapter of the MNZFTA recognises the importance of promoting and maintaining competition that enhances economic efficiency and consumer welfare. The development of competition policies and law complement and support open trade policies and offer an additional means through which to provide companies a fair, stable and predictable environment in which to operate. The chapter includes a number of AANZFTA-plus competition provisions including:

- commitments that laws aimed at addressing anti-competitive practices will be consistent with competition principles;
- where competition laws are in force, all commercial activities, subject to certain exceptions, should be consistent with those laws; and,
- a party may request discussions with the other party on anti-competitive practices, or the development of any new measures related to controlling anti-competitive practices that may affect their economic development.

More generally, and in addition to the above provisions, cooperation on competition policy issues will benefit New Zealand business in the Malaysian market over the medium to long-term.

3.1.13 Economic cooperation

The economic cooperation chapter of the MNZFTA provides a vehicle for ongoing dialogue and cooperation between the Parties that will, over time, enhance a range of trade-related facilitation processes and activities.

The MNZFTA establishes a framework for economic cooperation as a means for expanding and enhancing the commercial benefits of the Agreement for both parties. The objective is to complement the existing economic partnership between New Zealand and Malaysia and to create new trade and investment opportunities in areas of mutual interest. The areas of cooperation focus are: education, forestry, health, biotechnology, agritechnology and manufacturing industry cooperation.

The economic cooperation component of the FTA also serves to support New Zealand's broader bilateral economic engagement with Malaysia as an influential member of ASEAN; a regional grouping that is set to play a vital role in New Zealand's future economic prosperity and security. The economic cooperation chapter is not subject to the FTA's dispute settlement mechanism.

3.1.14 Dispute settlement

The dispute settlement chapter of MNZFTA provides for a robust, transparent and efficient state to state dispute settlement process.

The MNZFTA includes a consultation and dispute settlement mechanism for the avoidance or settlement of disputes that may arise out of the Agreement. This mechanism is similar to New Zealand's previous FTA precedents and WTO procedures.

The MNZFTA dispute settlement mechanism sets out clear and detailed processes to allow for disputes to be dealt with quickly and effectively. The process is compulsory and the outcomes are binding. This ensures that New Zealand is able to pursue a matter to arbitration should Malaysia not act in accordance with its obligations under the Agreement.

In addition to the existing AANZFTA outcome is the inclusion in the MNZFTA of 'non-violation' complaints whereby New Zealand can pursue a complaint if it considers that a benefit it could have reasonably expected to receive under the FTA is being nullified or impaired, even if the measure at issue is not inconsistent with provisions of the FTA.

3.1.15 General exceptions

The chapter allowing for general exceptions to the MNZFTA provides the New Zealand Government with flexibility to introduce measures which would otherwise be inconsistent with the Agreement in a range of sensitive areas, including measures necessary to accord more favourable treatment to Māori and supporting creative arts of national value.

Consistent with New Zealand's previous FTAs, the MNZFTA:

- maintains New Zealand's ability to take measures it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi; and,
- does not preclude New Zealand from taking measures necessary to protect national treasures or specific sites of historical or archaeological value or to support creative arts of national value.

In addition to the exceptions relating to the Treaty of Waitangi and creative arts of national value, the FTA will not prevent New Zealand from taking measures necessary to:

- protect human, animal or plant life or health, or public morals;
- protect national works, items or specific sites of historical or archaeological value;

The FTA will not prevent New Zealand from taking any actions necessary to:

- protect its essential security interests;
- respond to serious balance of payments issues or financial difficulties.

Taxation measures are also largely excluded from the Agreement and there are limits on the requirements to disclose information if to do so would be contrary to public interest or to law.

3.1.16 Other outcomes of MNZFTA

Consistent with New Zealand's previous FTAs, the MNZFTA:

- contains transparency obligations that ensure each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application;
- provides for notification and information exchange should any proposed or actual measure affect the other Party's interests or operation of the Agreement;
- establishes a Joint Commission to review the implementation and operation of the Agreement, along with a number of specialist committees to maintain oversight and ensure interaction between officials on the various aspects of the MNZFTA and associated instruments; and,
- provides for the review of the Agreement, which affords New Zealand and Malaysia the opportunity to accelerate, or expand, the commitments under this Agreement.

3.2 Advantages to New Zealand in entering into the Environment and Labour Agreements

3.2.1 Introduction

In conjunction with the MNZFTA negotiations, New Zealand has also concluded binding treaty-level Agreements with Malaysia on Labour and Environment – the *Malaysia-New Zealand Labour Cooperation Agreement* and the *Malaysia-New Zealand Environmental Cooperation Agreement*. The value of these instruments is referenced in the MNZFTA's preamble.

These instruments provide a basis for New Zealand to advance its objectives for environmental protection, labour standards and building stronger economic and political relationships with our trade partners.

3.2.2 Advantages to New Zealand in entering into the Labour Agreement with Malaysia

This is Malaysia's first bilateral treaty on labour cooperation concluded in the context of an FTA. The Labour Agreement outlines a set of shared objectives with the goal of promoting the improvement of working conditions and quality of life for workers. It also enunciates New Zealand and Malaysia's shared objectives of promoting and observing the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

Key shared commitments include that:

- labour laws, regulations, policies and practices shall not be used for trade protectionist purposes, and
- neither Malaysia nor New Zealand shall seek to encourage trade or investment by weakening, failing to enforce, or administering their labour laws, regulations, policies and practices in a manner affecting trade between them.

This language establishes the substance of the link between trade and labour standards which New Zealand traditionally pursues in such instruments. Any differences or disputes arising from the implementation or operation of the Agreement can be consulted on with a view to their resolution. Consultation is to start within 30 days of a request to consult, and a meeting will take place within 90 days. Any unresolved issues can be referred to Ministers.

The Labour Agreement provides a framework for dialogue and cooperation on trade and labour issues in areas including:

- labour laws, regulations, policies and best practices in employment relations, including the promotion of labour rights and obligations and decent work;
- compliance and enforcement systems, including management of labour disputes;
- labour management cooperation, including initiatives to foster improved workplace productivity;
- occupational safety and health; and,
- human capital development, training, and employability.

A Labour Committee will be established to oversee the implementation and operation of the Labour Agreement, and may establish working groups and seek the advice of relevant stakeholders or experts. The Labour Committee will meet within one year from entry into force of the Labour Agreement. Both Parties can invite their non-government sectors to identify potential areas for cooperation and seek their involvement in such activities. This provides scope for the involvement of civil society in general and tripartite (business-government-unions) activities in particular.

The Labour Agreement supports the MNZFTA objectives of promoting the improvement of working conditions and quality of life for workers. It recognises the links between trade and labour outcomes. It reaffirms both Parties' commitment to international labour guidelines and is consistent with New Zealand's broader aims of promoting sustainable development in a manner that benefits New Zealand firms and workers.

3.2.3 Advantages to New Zealand in entering into the Environment Agreement with Malaysia

As with the outcome on labour, this is Malaysia's first bilateral treaty on environmental cooperation which has been concluded in the context of an FTA. It includes explicit references to the relationship between trade and environment.

The Environment Agreement provides for a set of shared objectives between New Zealand and Malaysia aimed at improving the environment and enhancing the capacity and capability of each country's officials to examine trade and environment matters.

The Environment Agreement's shared commitments include that:

- environmental laws, regulations, policies and practices will not be used for trade protectionist purposes; and,
- neither country will seek to encourage trade or investment by weakening, failing to enforce, or administering their environmental laws, regulations, policies and practices in a manner affecting bilateral trade.

The linkage established between trade and the environment through this language provides a way for both countries to work together in advancing their understanding of the complicated nexus between the environment and trade. Any differences or disputes arising from the implementation or operation of the Agreement can be consulted on with a view to their resolution. Consultation is to start within 30 days of a request to consult, and a meeting will take place within 90 days. The Agreement establishes an Environment Committee and disputes can also be referred to this Committee. The outcomes of the Committee's work will be made public, thereby enhancing the transparency of its operations.

The Environment Committee will meet within a year of entry into force of the Agreement and may seek the advice of relevant stakeholders or experts. Both Parties can invite submissions from stakeholders, thus ensuring that stakeholders are appropriately engaged.

The Environment Agreement establishes a framework for cooperation with the intention of working together in environmental areas of common interest such as:

- environmental expertise and technology;
- natural resource management including:
 - waste management;
 - wetlands management;
 - eco-tourism;
 - water resources/watershed management;
 - environmental remediation;
 - climate change-related technologies;
 - extended producer responsibility;
 - biodiversity conservation;
 - national park/reserve management;
 - sustainable forest management;
 - marine and coastal resources management;
 - public participation in environmental management; and,
 - environmental education.

This list of common interests may expand over time.

The Environment Agreement supports the broader MNZFTA objectives of sustainable development, and highlights the importance of the links between trade and environmental outcomes.

3.3 Disadvantages to New Zealand entering into the MNZFTA

3.3.1 Trade in goods

a. Market Access – Exports

New Zealand would have preferred 100 percent tariff elimination and the swifter elimination of all of Malaysia's tariffs. Owing to Malaysian domestic and religious sensitivities, however, New Zealand had to accept some non-elimination outcomes (in the form of enduring tariffs and tariff rate quotas) for 0.5 percent of its current exports to Malaysia in order to reach agreement on the overall negotiations package.

In particular, Malaysia refused to make any tariff reduction/elimination commitments on 88 products (mostly alcoholic products, but also including tobacco, firearms and tyres) based on religious, safety or environmental grounds. Of these, alcoholic beverages is the only item of significant export interest to New Zealand with exports worth NZ\$1.6 million in 2008.

Malaysia, however, has never agreed to tariff elimination/reduction for alcoholic beverages in any of its previous FTAs (including the AANZFTA) and refused to make any such commitments for New Zealand in the MNZFTA. Following the Trans-Pacific SEP²⁰ precedent (where Brunei Darussalam similarly refused to make any tariff reduction/elimination commitments on alcohol products) New Zealand secured an exchange of binding Ministerial letters that provide for the opportunity for a review of the treatment of alcohol within two years.

Malaysia also insisted on maintaining a range of Tariff Rate Quotas (TRQs) on some products. These TRQs apply to a range of sensitive products for Malaysia, including liquid milk, live swine and poultry, hens' and duck eggs and some pork. Of these, New Zealand's most significant trade interest is in the three liquid milk TRQs.

In 2008, liquid milk accounted for around 0.4 percent of our total dairy exports to Malaysia and was worth \$1.9 million. New Zealand sought a tariff elimination outcome for these TRQ lines, but Malaysia was only prepared to engage with New Zealand on an expansion of the TRQ. As noted previously (in section 3.1.2), while not optimal, New Zealand was able to gain commercially meaningful improvements to quota volumes, growth rates and in-quota tariff elimination for the three liquid milk tariff TRQs over and above the AANZFTA outcomes.

b. Market Access – Imports

Any trade agreement involving reciprocal tariff removal may have implications for domestic producers as a result of increased exposure to foreign suppliers. In order to help mitigate the potential for any negative adjustment effects in New Zealand, the MNZFTA includes longer phase-out periods for imports in sensitive sectors in New Zealand relative to other sectors of the economy. In particular, products such as margarine, clothing, footwear, carpets, some textiles and some manufactured products such as some steel products, plasterboard and most wooden furniture. It is also important to note that the AANZFTA already provides for the reduction of tariffs on Malaysian imports in these sensitive areas, albeit over a longer period of time in most instances, so the additional adjustment costs from the MNZFTA are unlikely to be significant. Moreover, as outlined in section 3.1.5, the MNZFTA has preserved New Zealand's right to apply anti-dumping, countervailing and global safeguard measures for trade with Malaysia in accordance with the relevant WTO disciplines.

20 Trans-Pacific SEP refers to the Trans-Pacific Strategic Economic Partnership Agreement.

3.3.2 Trade remedies

The MNZFTA has a bilateral safeguard mechanism under which Parties can either temporarily suspend tariff reductions or temporarily increase the tariff rate if increased imports as a result of tariff reductions under the FTA are causing or threatening to cause serious injury to the domestic industry.

Given the relatively low level of New Zealand's current tariffs and the small size of New Zealand's exports in relation to Malaysian production and consumption, it did not consider the inclusion of such a safeguard mechanism was necessary for MNZFTA. Its inclusion became necessary, however, in order to secure Malaysia's agreement to more ambitious tariff commitments.

In view of this, New Zealand focused on ensuring that the mechanism contained a number of features designed to minimise its use in an overly protectionist manner, including limits on the overall period during which safeguard action can be taken and the maximum length of time for which a measure can be imposed.

3.3.3 Trade in services

New Zealand would have preferred services commitments to have been made on a 'negative list' basis and an across the board approach to MFN (rather than limited to specific sectors). A negative list generally provides greater legal certainty and transparency about the barriers that exist to services trade and its dynamic nature renders it better capable of capturing changes in the regulatory environment. Malaysia has not, however, completed a negative list services outcome with any trade partner. Significantly, it has agreed to renegotiate services commitments on a negative list basis with New Zealand if and when it concludes a negative list agreement with another country in the future.

The MNZFTA also includes a provision relating to an emergency services safeguard. New Zealand would have preferred not to have included such a provision. This provision does not, however, constitute a full safeguard mechanism. Rather, it requires Parties to commence discussions to develop mutually acceptable guidelines and procedures for such an emergency safeguard within one year of entry into force of the MNZFTA. In the meantime, the provision enables a Party to request consultations if it considers the implementation of MNZFTA to have caused a negative impact on its domestic services sector although any action must be mutually agreed.

Although MNZFTA is a high quality, comprehensive FTA, New Zealand's level of ambition was not met by Malaysia in all areas. Some trade-offs were required in order to reach agreement on the overall package that allowed both sides to conclude the FTA.

3.4 Disadvantages to New Zealand entering into the Environment and Labour Agreements

No disadvantages have been identified to New Zealand from entering into these instruments.

4 LEGAL OBLIGATIONS WHICH WOULD BE IMPOSED ON NEW ZEALAND BY THE TREATY ACTIONS AND AN OUTLINE OF THE DISPUTE SETTLEMENT MECHANISM

The MNZFTA provides for the liberalisation of trade and enhanced economic integration between New Zealand and Malaysia. The overall objective of the MNZFTA is to improve sustainable economic development in both countries, with a view to promoting deeper regional integration.

This section outlines the key obligations that New Zealand will assume in each chapter of the MNZFTA.

4.1 Initial provisions

The Preamble and Chapter 1 of the MNZFTA set out the objectives of strengthening the Parties trade and economic partnership and improving economic and social outcomes for both countries.

The Preamble and Initial Provisions (Chapter 1) of the MNZFTA:

- outline the broad objectives of a deeper bilateral and regional relationship in terms of delivering economic and social benefits, providing better opportunities for employment, increasing living standards, promoting sustainable development and improving cooperation activities (Preamble and Chapter 1, Article 1.2);
- builds on New Zealand's rights and obligations under the WTO and recognises the APEC goals (Preamble); and,
- confirms that the MNZFTA is consistent with Article XXIV of GATT 1994 and Article V of GATS (Chapter 1, Article 1.1).

4.2 Trade in goods

Chapter 2 of the MNZFTA sets out the tariff elimination requirements and disciplines in relation to trade in goods New Zealand must meet in order to liberalise bilateral trade in goods.

Under the trade in goods chapter of the Agreement (Chapter 2), New Zealand is required to eliminate all customs duties on Malaysian goods in accordance with its tariff schedule annexed to the MNZFTA (Chapter 2, Article 2.3 and Annex 1). At the request of either Party, New Zealand and Malaysia shall promptly enter into consultations to consider accelerating the elimination of tariffs (Chapter 2, Article 2.4).

New Zealand is required to provide information, on request, on any proposed or actual measure that might materially affect trade in goods between the Parties. New Zealand is also required, again on request, to enter into technical discussions on any matter affecting trade in goods between New Zealand and Malaysia (Chapter 2, Article 2.9).

The other MNZFTA goods-related obligations include that New Zealand:

- must provide Malaysian exporters with national treatment in relation to internal taxes and regulation in accordance with WTO requirements (Chapter 2, Article 2.2);
- must not use administrative fees or formalities as indirect protectionism (Chapter 2, Article 2.5);
- will eliminate and not reintroduce any form of agricultural export subsidies for agricultural goods destined for Malaysia (Chapter 2, Article 2.6);
- will not introduce any non-tariff measures on imports from Malaysia except where they are consistent with our WTO rights and obligations (Chapter 2, Article 2.7);
- ensure any import licensing measures are implemented in a transparent way and notify Malaysia of any new import licensing measures or procedures, to the extent possible 60 days before it takes effect (Chapter 2, Article 2.8); and,
- must answer, within 60 days, all reasonable Malaysian enquiries regarding the criteria employed by licensing authorities in granting or denying import licenses (Chapter 2, Article 2.8).

4.3 Rules of origin

Chapter 3 of the MNZFTA establishes the rules for determining whether goods traded between Malaysia and New Zealand qualify for bilateral tariff preferences.

The MNZFTA provides three avenues through which goods can qualify for preferential tariff treatment (Chapter 3, Article 3.2). Goods will qualify as originating if they:

- Are wholly obtained in either Party (Chapter 3, Article 3.3);
- Are produced entirely from materials that originate from either of the Parties (Chapter 3, Article 3.2); or
- Meet the criteria set out in Annex 2 (product specific rules of origin).

For goods qualifying under the third option above, the major rule is based on a specified Change in Tariff Classification (CTC). An alternative method is also provided for some products, such as a Qualifying Value Content (QVC) rule or a specified process rule.

- Under the CTC approach, a good will qualify as originating if all third party inputs used in its production have undergone a specified change of tariff classification. All product lines under the MNZFTA have an applicable CTC rule.
- Under the QVC approach, a good will qualify for preferential treatment as long as the value of originating inputs is equal to or greater than 40 percent of the Free On Board (FOB) value of that good. For certain products there is an optional QVC requirement which allows exporters and producers to choose which rule best suits their particular business model, and also allows for origin conferring transformation where the structure of the Tariff Schedule does not provide for an appropriate CTC rule.
- Under the process rules, specified processes must be undertaken on the good in the territory of either of the Parties. Process rules are predominantly used in the textile and apparel chapters and in the chemical and plastics chapters as an alternative to CTC rules.

For any good to qualify for the MNZFTA tariff preferences, it must be consigned directly between the two Parties (Chapter 3, Article 3.8). If transported through a third party, the goods must not enter the commerce there, or undergo anything more than simple logistical processes, such as unloading and reloading, storing, or any other operation required to keep them in good condition or transport them to the other Party. The transit entry must be justified for geographical, economic or logistical reasons.

Claims from New Zealand exporters for preferential treatment must be accompanied by a Declaration of Origin or 'self-declaration' (Chapter 3, Article 3.14).

4.4 Customs procedures and cooperation

Chapter 4 of the MNZFTA contains provisions to make the systems and procedures for facilitating the trade of goods between New Zealand and Malaysia more transparent and simpler, thereby reducing the costs of doing business bilaterally.

The customs procedures and cooperation chapter allows for greater trade facilitation through:

- agreement that goods originating in the other Party under the terms of the rules of origin will, in the normal course of events, be cleared by customs within 48 hours of the submission of all required import documents (Chapter 4, Article 4.11);
- consistency and predictability of procedural outcomes (e.g. through the provision of binding "advance rulings" on the tariff classification of goods and, to the extent provided in each Party's domestic legislation, on the origin of goods) (Chapter 4, Article 4.10);
- adopting procedures to expedite the clearance of express consignments (Chapter 4, Article 4.6);
- early resolution of any disputes between the two customs administrations (Chapter 4, Article 4.12);
- encouraging the use of modern customs procedures such as risk management so as to better facilitate the clearance of low-risk goods and place the focus upon high-risk goods (Chapter 4, Article 4.13);
- a commitment to, as necessary, consult the other customs administration with a view to agreeing on procedures to secure the movement of goods between the Parties (Chapter 4, Article 4.14);
- mutual assistance provisions, covering several areas of operation, to the extent permitted by domestic laws (Chapter 4, Article 4.4); and,
- agreement to provide notice of any significant modification of customs law or policies affecting the movement of goods that is likely to substantially affect the operation of this chapter (Chapter 4, Article 4.4).

4.5 Trade remedies

The trade remedies chapter of the MNZFTA provides for the application of a transitional bilateral safeguard measure to address serious injury of a domestic industry, in certain circumstances.

The trade remedies chapter explicitly retains the trade remedy rights of each party under the WTO. A party taking a WTO global safeguard action may, however, exclude imports of originating goods from the other Party if such imports are not a cause of serious injury or threat thereof (Chapter 5, Article 5.3).

The MNZFTA also provides for the application of a bilateral transitional safeguard on imports during the period tariffs are being phased out for any particular good and for two years beyond that (Chapter 5, Part 2, Articles 5.5-5.11). Such a bilateral safeguard mechanism can be imposed to address situations of serious injury or threats of serious injury to a domestic industry caused by increased imports as a result of tariff reductions under the Agreement. In these situations, action can include suspending further tariff reductions or reverting to higher tariffs for a certain period (Chapter 5, Part 2, Article 5.6.1).

To apply a bilateral safeguard measure, New Zealand would first have to undertake a full injury and causation investigation (Chapter 5, Article 5.8) and publish the findings (Chapter 5, Article 5.8). Further, New Zealand would have to limit the period for which a measure was imposed (Chapter 5, Article 5.7) and only suspend tariff reductions or increase the tariff to the minimum extent necessary to prevent or remedy the injury being caused and ensure the tariff increases do not exceed specified limits (Chapter 5, Article 5.6). New Zealand would also have to progressively liberalise a measure in place for more than one year (Chapter 5, Article 5.7) and provide Malaysia compensation in the form of substantially equivalent concessions (Chapter 5, Article 5.11).

If the two Parties were unable to agree on compensation, Malaysia would have the right to suspend the application of equivalent tariff concessions on New Zealand imports (Chapter 5, Article 5.11). This right, however, cannot be exercised for the first year that the safeguard measure is in effect if the measure was imposed as a result of an absolute increase in imports (Chapter 5, Article 5.11).

4.6 Sanitary and phytosanitary measures

The MNZFTA sanitary and phytosanitary measures chapter determines the mechanisms that New Zealand can use to facilitate trade between New Zealand and Malaysia while protecting human, animal or plant life or health.

Chapter 6 provides for the development of mechanisms to allow Parties to enhance implementation of the *WTO Agreement on the Application of Sanitary and Phyto Sanitary Measures* (SPS Agreement), including strengthening cooperation on equivalence of each Party's SPS measures (Chapter 6, Article 6.8). The Chapter also provides for Parties to cooperate on adaptation to regional conditions, in accordance with the WTO SPS Agreement (Chapter 6, Article 6.9).

The MNZFTA emphasises communication between the competent authorities of both Parties, including through the SPS Committee and subsidiary working groups (Chapter 6, Articles 6.5 and 6.6). There are specific procedures for informing relevant SPS-related changes by either country (Chapter 6, Article 6.12) and the chapter sets out a mechanism to seek an explanation of and consultation on any SPS measure that is affecting bilateral trade (Chapter 6, article 6.14).

Decisions on matters affecting biosecurity and food safety will continue to be made and enforced in accordance with New Zealand's existing regulatory regime.

4.7 Technical barriers to trade

The provisions in the technical barriers to trade chapter of MNZFTA aim to facilitate trade and reduce transactions costs associated with standards and conformance. The chapter preserves New Zealand's right to adopt or maintain technical regulations necessary to ensure national security, the prevention of deceptive practices and the protection of human health or safety, animal or plant life or health or the environment.

The key provisions of the technical barriers to trade chapter are that the Parties:

- will promote trade facilitation through ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary barriers to trade (Chapter 7, Article 7.2);
- will use international standards as the basis for their technical regulations and shall encourage the exchange of information and cooperation in the preparation, adoption and application of standards (Chapter 7, Article 7.5);
- agree to enhance confidence in each other's conformity assessment bodies and, where appropriate, mutually or unilaterally recognise the conformity assessment procedures of the other Party (Chapter 7, Article 7.6);
- shall give positive consideration to accepting as equivalent the technical regulations of the other Party. Where a Party does not accept equivalence of technical regulations it must explain the reasons for its decision (Chapter 7, Article 7.7);
- will establish regulator-to-regulator dialogues and work programmes with the aim of promoting confidence-building between respective regulators, assisting with good regulatory practices and promoting trade facilitation (Chapter 7, Article 7.8);
- agree to transparency disciplines to enhance the provision of meaningful comment on proposals for technical regulations and conformity assessment procedures (Chapter 7, Article 7.9); and,
- can also seek technical consultations on issues relating to the implementation of the technical barriers to trade chapter and may establish ad hoc working groups to develop workable and practical solutions to issues raised (Chapter 7, Article 7.11).

4.8 Trade in services

The MNZFTA trade in services chapter seeks to facilitate trade in services between New Zealand and Malaysia by building on current GATS and AANZFTA commitments to further liberalise bilateral services trade.

The MNZFTA establishes the general obligations of national treatment (Chapter 8, Article 8.5) and market access (Chapter 8, Article 8.4) in sectors listed in the services schedules (Annex 4), subject to the restrictions specified in such schedules. To the extent of associated commitments made in New Zealand's services schedule, these obligations entitle Malaysian service suppliers wishing to operate in New Zealand to access the market without quota, value, numerical or legal entity-related restrictions (market access) and on the same basis as domestic suppliers (national treatment).

In addition, the MNZFTA establishes obligations to ensure that measures in domestic regulation affecting trade in services are administered in a reasonable, objective and impartial manner and that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not become unnecessary barriers to trade in services (Chapter 8, Article 8.18). New Zealand also has an obligation, within one year of entry into force, to establish a mechanism that allows for the recognition of the equivalency of qualifications granted within Malaysia (Chapter 8, Article 8.9).

The MNZFTA excludes services supplied in the exercise of government authority,²¹ government procurement and subsidies (although there are provisions enabling the Parties to enter into consultations on subsidies issues) (Chapter 8, Article 8.3).

New Zealand has made commitments (Chapter 8, Article 8.7) covering Modes 1-3 that go beyond what it has committed in AANZFTA in the following sectors:

- Services Incidental to Animal Husbandry (revised restriction regarding access to the National Dairy Herd Testing database);
- Services Incidental to Mining;
- Mailing List Compilation Services;
- Commission Agent Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Wholesale Trade Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Non-Life Insurance Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Insurance Intermediation (reduction in the scope of the restriction relating to agriculture and food related services);
- Maritime Transport Services (reduction in the scope of the restriction relating to agriculture and food related services);

²¹ Services supplied in the exercise of governmental authority are defined as services supplied neither on a commercial basis nor in competition with one or more service suppliers.

- Air Transport Services (reduction in the scope of the restriction relating to agriculture and food related services); and,
- Washing Cleaning and Dying Services.

None of these commitments go beyond New Zealand's existing regulatory environment or policy settings in any respect.

In addition, New Zealand has made reciprocal Most Favoured Nation (MFN) commitments requiring that any better treatment relating to services that New Zealand extends to third countries must also be extended to Malaysia (Chapter 8, Article 8.8). New Zealand's MFN commitments cover the following sectors:

- Private education (Primary, Secondary, Higher and 'Other' Education);²²
- Environmental Services (sewage, cleaning services of exhaust gases, noise abatement and nature and landscape protection);
- Engineering and Integrated Engineering;
- Computer and Related Services; and,
- Services Incidental to Mining.

New Zealand has committed to initiate discussions within one year of entry into force to develop mutually acceptable guidelines and procedures for the application of emergency safeguard measures for services trade (Chapter 8, Article 8.12).

A review of commitments will take place after no less than two years (Chapter 8, Article 8.15) with a view to further services liberalisation. If Malaysia signs any future FTA using a 'negative list' approach for its services commitments, it will commence re-negotiation of its specific commitments to New Zealand using a negative list framework within 18 months (Chapter 8, Article 8.15).

4.9 Movement of business persons

The MNZFTA movement of natural persons chapter facilitates the temporary entry of Malaysian business persons (i.e. services suppliers, goods sellers and investors) to New Zealand for business purposes through more streamlined and transparent immigration processes.

The MNZFTA's provisions on publication, fees for processing immigration formalities, timeliness, and making information available to applicants for temporary entry are all consistent with current New Zealand immigration practice (Chapter 9, Articles 9.4-9.5 and 9.7).

New Zealand's movement of natural persons commitments are the same as in the AANZFTA, and provide for the entry of Malaysian business visitors and installers/servicers for up to three months in any calendar year. Executives, managers and specialists, as intra-corporate transferees, are permitted to enter for up to three years. Malaysian Independent Professional Service Suppliers, in specified service sectors, are permitted entry for up to one year, subject to qualifications requirements and labour market tests (Chapter 9, Article 9.3, 9.6 and Annex 6).

²² Malaysia reserves the right to adopt or maintain any measure that accords differential treatment with respect to: Religious Institutions (which are institutions which teach predominantly religious studies); and, Military Institutions.

4.10 Investment

The investment chapter of MNZFTA provides greater protection and certainty for Malaysian investors entering the New Zealand market.

Key obligations under this chapter relate to the national treatment (Chapter 10, Article 10.4) and reciprocal Most Favoured Nation (MFN) (Chapter 10, Article 10.5) provisions. National Treatment requires New Zealand to treat all Malaysian investors and investments no less favourably than it treats its own investors and their investments. The MFN provisions ensure that Malaysian investors are treated no less favourably than investors from other countries and their investments in New Zealand through future FTAs.

New Zealand and Malaysia will be able to enter non-conforming measures or reservations to these commitments, as outlined in the chapter's 'work programme' (Chapter 10, Article 10.17). The scope and content of the non-conforming measures will be negotiated within six months of entry into force of the agreement at which point the national treatment and MFN provisions will come into effect.

The other key obligations of the chapter are to:

- allow transfers related to a covered investment to be made freely and without delay into and out of each Party's territory (Chapter 10, Article 10.7);
- provide fair and equitable treatment and full protection and security to investors and investments of the other Party (Chapter 10, Article 10.10);
- compensate for losses relating to armed conflict, civil strife, or state of emergency on the same basis that New Zealand investors, or investors from a third country would be treated (Chapter 10, Article 10.9);
- enforce disciplines relating to expropriation and compensation (Chapter 10, Article 10.8); and,
- provide recourse to compulsory investor state dispute settlement which allows investors to use international arbitration procedures beyond domestic legal systems for claims relating to breaches of the core elements of the investment chapter (Chapter 10, Section B, discussed below).

The provisions relating to investment are within New Zealand's existing regulatory and policy settings.

4.10.1 Compulsory investor-state dispute settlement

The MNZFTA establishes a mechanism, consistent with that in the AANZFTA and the FTA with China, for the compulsory settlement of disputes between foreign investors and the country in which the investment is made. If a dispute cannot be settled through consultation and negotiation, the investor is able to submit the issue to conciliation or arbitration by the International Centre for the Settlement of Investment Disputes (ICSID) or arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL) or, if the disputing parties agree, to any other arbitration institution.

The provisions enabling investor-state dispute settlement only apply to claims of loss suffered from breaches of the chapter's obligations (with the exception of performance requirements), and only where those specific obligations directly concern a covered investment (i.e. investments which have been made). As a consequence, actions relating to decisions on potential investments into New Zealand under the Overseas Investment Act 2005 are not subject to investor-state arbitration.

Importantly, provisions in the Annex on Expropriation and Compensation (Annex 7) seek to preserve as far as possible the Government's ability to exercise its regulatory powers for non-discriminatory actions that may be reasonably justified as achieving legitimate public welfare objectives, such as the protection of public health, safety and the environment.

Obligations on New Zealand to allow for an investor-state arbitration process and potential risks associated with this are mitigated to the extent possible, including through a series of safeguards such as those relating to clear time-limits for the admissibility of claims and allowing preliminary objections to avoid claims that are frivolous or without merit (Chapter 10, Article 10.24). The chapter further requires that a disputing investor submitting a claim must waive its right to initiate or continue any related proceedings before the domestic courts of the host country, or other dispute settlement procedures (Chapter 10, Article 10.21). The investment chapter also provides for consultation on the consolidation of claims arising out of a common question of law or fact (Chapter 10, Article 10.27); protection of confidential documents (Chapter 10, Article 10.28); and provisions limiting the issue of awards to real damages, costs and fees only – punitive damages are explicitly ruled out. There is also a process for the Parties to reach a joint decision on any matter of interpretation of the chapter disputed by an investor, with such a decision being binding on the tribunal.

4.11 Intellectual property

The intellectual property chapter of the MNZFTA establishes a platform for cooperation, consultation and information exchange on intellectual property issues.

The chapter includes requirements for the parties to cooperate on enforcement issues, including the exchange of information concerning enforcement of Intellectual Property (IP) rights (Chapter 11, Article 11.5). The chapter also requires parties to provide legal means to ensure that products sold within its territory are not labelled in a false or misleading manner (Chapter 11, Article 11.7)

The chapter provides for a consultation process (with a clear timeframe that such consultations must occur within 60 days of the request) to clarify any IP issues. If the issues cannot be resolved through the consultations, the requesting party may refer the matter to the Joint Commission (Chapter 11, Article 11.8).

The chapter recognises the right of a party to establish appropriate measures to protect traditional knowledge, consistent with their international obligations (Chapter 11, Article 11.6).

4.12 Competition

The MNZFTA competition chapter establishes a platform for cooperation, consultation and information exchange on competition policy issues.

Each country can still introduce specific measures that are exempt from general competition law, provided they are transparent and undertaken on the grounds of national policy or public interest (Chapter 12, Article 12.2). Technical cooperation and information exchange on competition matters are encouraged (Chapter 12, Article 12.3) as are discussions on anti-competitive practices that may affect each other's economic development (Chapter 12, Article 12.4). Dispute settlement procedures do not apply to the provisions in the competition chapter, and neither country may challenge any decision made by a competition authority in enforcing applicable competition law (Chapter 12, Article 12.5).

4.13 Economic cooperation

The economic cooperation chapter of the MNZFTA commits New Zealand to establish a framework and committee to agree a work programme for cooperation activities. These activities will build capacity and support the promotion of commercial and social benefits from the MNZFTA.

The MNZFTA sets out the objectives and provides for the establishment of an 'economic cooperation framework' and Economic Cooperation Committee to consider the development of an agreed work programme (Chapter 13, Articles 13.1 and 13.4). Particular attention will be given initially to the following potential areas for cooperation: education, forestry, health, biotechnology, agritechology and manufacturing (Annex 8).

4.14 Transparency

The MNZFTA's transparency chapter contains obligations that ensure each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application (Chapter 14, Article 14.2 and 14.3). Each Party commits to providing impartial administrative proceedings and reviews and appeals in accordance with general due process requirements (Chapter 14, Article 14.4.). The Agreement also provides for notification and information exchange should any proposed or actual measure affect the other Party's interests or operation of the Agreement (Chapter 14, Article 14.5). These transparency provisions are consistent with New Zealand's existing law and administrative practice.

4.15 Institutional provisions

The MNZFTA institutional provisions chapter sets out how the implementation and operation of the MNZFTA will be overseen, including through the establishment of a Joint Commission comprising of officials from New Zealand and Malaysia.

A MNZFTA Joint Commission is established under the FTA to review the implementation and operation of the Agreement (Chapter 15, Articles 15.1). Its functions will also include monitoring the various specialist Committees created by MNZFTA (Chapter 15, Article 15.1) and establishing ad hoc Working Groups to address specific issues that are not being dealt with in existing Committees (Chapter 15, Article 15.1). The Joint Commission will meet within one year of the Agreement entering into force and thereafter as the Parties agree (Chapter 15, Article 15.1).

In addition to the Joint Commission a number of specialist committees are also established under the FTA to facilitate the ongoing interaction of experts. MNZFTA includes a Committee on Trade in Goods (Chapter 2, 2.10), Sanitary and Phytosanitary Committee (Chapter 6, Article 6.6), Technical Barriers to Trade Committee (Chapter 7, Article 7.10), Committee on Trade in Services (Chapter 8, Article 8.19), Committee on Investment (Chapter 10, Article 10.8), and a Committee on Economic Cooperation (Chapter 15, Article 15.2). These committees will review and monitor the operation of their respective specialist areas, provide a forum to discuss any problems that might arise in the implementation of the Agreement, progress specific work programme areas and identify prospects for future joint coordination and strengthening of links.

A general review of the Agreement will take place, at Ministerial level, within five years of entry into force of the Agreement and at least every three years thereafter (Chapter 15, Article 15.4). This review provides the opportunity to accelerate or expand the commitments under this Agreement.

4.16 Dispute settlement

The dispute settlement chapter of the MNZFTA provides a mechanism for the resolution of disputes between Malaysia and New Zealand resulting from the implementation of the MNZFTA.

The MNZFTA dispute settlement mechanism sets out clear and detailed processes to allow for disputes to be dealt with efficiently and effectively (Chapter 16, Article 16.2). The process is compulsory and the outcomes are binding. This ensures that New Zealand is able to pursue a matter to arbitration should it believe that Malaysia has not acted in accordance with obligations under the Agreement. Correspondingly New Zealand may also be held to account if Malaysia believes New Zealand has not fulfilled its obligations.

If consultations are not able to resolve a dispute, either Party may request the establishment of an arbitral tribunal to make findings and rulings on the measure at issue (Chapter 16, Article 16.8). Such findings and rulings are binding on the Parties to the dispute (Chapter 16, Article 16.10).

The MNZFTA dispute settlement mechanism includes the non-violation grounds of complaint (where a Party considers that the benefit could have reasonably been expected to accrue to it is being nullified or impaired by a measure that is not inconsistent with the Agreement) (Chapter 16, Article 16.7).

Commitments under the competition (Chapter 12, Article 12.5) and economic cooperation (Chapter 13, Article 13.6) chapters are excluded from the scope of the dispute settlement mechanism. Commitments under the movement of natural persons chapter are subject to the dispute settlement mechanism only in limited circumstances (Chapter 9, Article 9.9).

If the Arbitral Tribunal finds that a measure is inconsistent with this Agreement or that a measure nullifies or impairs benefits then the relevant Party must take steps to immediately, or within a reasonable period of time, comply with the findings and rulings of the Arbitral Tribunal to address the measure at issue. If there is disagreement as to whether the relevant Party has taken steps to comply with the findings and rulings within a reasonable period of time, then an Arbitral Tribunal may again be convened (Chapter 16, Article 16.14). Offering compensation or suspending benefits of equivalent effect (Chapter 16, Article 16.15) are also possible options available to the disputing parties in such circumstances.

4.17 General exceptions

The MNZFTA general exceptions chapter contains provisions that allow New Zealand to take measures in certain circumstances to deal with an emergency or to achieve certain priority policy outcomes, even if these measures may affect their MNZFTA obligations. These exceptions cannot be abused for trade protectionist purposes.

The WTO *General Agreement on Tariffs and Trade* Article XX and *General Agreement on Trade in Services* Article XIV are incorporated into MNZFTA in relation to relevant chapters. These provisions stipulate that Parties are able to adopt or enforce measures necessary to protect public morals, human, animal or plant life, provided those measures are not used for trade protectionist purposes. Other exceptions include the ability to take measures relating to the conservation of living and non-living exhaustible natural resources, and to protect national works or specific sites of historical or archaeological value or to support creative arts of national value (Chapter 17, Article 17.1).

The MNZFTA also provides that a Party is not prevented from taking action which it consider necessary for the protection of its essential security interests (Chapter 17, Article 17. 2) or to take measures to deal with serious balance of payments and external financial difficulties (Chapter 17, Article 17.3).

New Zealand's ability to take measures to accord more favourable treatment to Maori, including in fulfilment of Treaty of Waitangi obligations, is expressly provided for in a Treaty of Waitangi provision, (Chapter 17, Article 17.6) as long as such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade.

4.18 Final provisions

The final provisions chapter of the MNZFTA confirms that nothing in the FTA derogates from any rights and obligations of New Zealand or Malaysia under the WTO, or any other multilateral or bilateral agreement to which either country is a Party.

The chapter confirms that in the event of any inconsistency between the MNZFTA and any other agreement to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution (Chapter 18, Article 18.2). It also terminates the pre-existing 1997 Agreement on Trade and Economic Cooperation between the Government of New Zealand and the Government of Malaysia when the MNZFTA enters into force (Chapter 18, Article 18.8).

4.19 Notification to the WTO

Upon signature, New Zealand and Malaysia will need to notify MNZFTA to the WTO as a free trade area within the meaning of GATT Article XXIV (goods) and GATS Article V (services).

4.20 Related outcomes: Environment and Labour Agreements with Malaysia

4.20.1 Labour Agreement

The mechanism for labour cooperation establishes a broad framework for promoting the mutually beneficial sharing of experience and expertise.

The value of such bilateral initiatives is referenced in the Preamble of the MNZFTA, along with the Environment Agreement.

The Labour Agreement outlines a set of shared objectives, including to:

- facilitate the improvement of capacities and capabilities of the Parties, including relevant stakeholders; and
- to promote the improvement of working conditions and quality of life for workers (Labour Agreement, Article 1).

These objectives support the broader purpose of the Agreement which is to protect, enhance and enforce workers' basic rights (Preamble). The Agreement enunciates the Parties' shared objective of promoting better understanding and observance of the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). The text of the ILO Declaration is attached to the Agreement as an Annex.

The Agreement enumerates a set of shared commitments which include statements that labour laws, regulations, policies and practices shall not be used for trade protectionist purposes, and that neither Malaysia nor New Zealand shall seek to gain a trade or investment advantage by weakening or failing to enforce or administer their labour laws, regulations, policies and practices in a manner affecting trade between them (Labour Agreement, Article 2).

Both Parties can invite their non-government sectors to identify potential areas for cooperation and seek their involvement in such activities (Labour Agreement, Article 3, paragraphs 2). The Agreement provides an opportunity for New Zealand to improve dialogue on labour-related matters and conduct cooperative activities with Malaysia in the following areas (Labour Agreement, Article 3, paragraph 3):

- labour laws, regulations, policies and best practices in employment relations, including the promotion of labour rights and obligations and decent work;
- compliance and enforcement systems, including management of labour disputes;
- labour management cooperation, including initiatives to foster improved workplace productivity;
- occupational safety and health;
- human capital development, training, and employability; and,
- any other cooperative activities agreed to by the Parties.

The Agreement establishes the institutional mechanisms through which cooperation and dialogue will be conducted. A Labour Committee is established and must meet within a year of entry into force of the Agreement (Labour Agreement, Article 4, paragraph 1 and 3). The Committee is designed to oversee the implementation and outcomes of the Agreement; and serve as a channel for dialogue (Labour Agreement, Article 4, paragraph 2).

In addition, the Committee may consult or seek the advice of relevant stakeholders or relevant experts and may invite them to attend Committee meetings (Labour Agreement, Article 4, paragraph 7). The Labour Committee shall release a report on its work at the end of each Committee meeting (Labour Agreement, Article 4, paragraph 10). This is a particularly welcome benefit of the Agreement, since it may improve confidence among stakeholders about the work of this bilateral Committee.

A consultation process which is the most comprehensive, detailed and transparent New Zealand has concluded to date, has been agreed (Labour Agreement, Article 5). A Party may request consultations regarding any matter arising over the interpretation of operation of the Agreement. Unless otherwise agreed, consultations are to commence within 30 days of a request for consultations. If consultations are unable to resolve the issue, a Party may request the Labour Committee be convened. The Labour Committee shall meet as soon as practicable and no later than 90 days following the request. If issues are unable to be resolved, they shall be referred to the relevant Minister responsible for the labour issue concerned for consideration. Particularly significant is the commitment that the “Parties shall implement the conclusions and recommendations of the Labour Committee, or the agreed outcome of the Ministers’ consideration as soon as practicable” (Labour Agreement, Article 5, paragraph 7). Taken together, this mechanism provides a set of clear binding steps the Parties need to undertake to resolve any issues, including the possibility of involvement at the of Ministers at the political level.

4.20.2 Environment Agreement

The Environment Agreement sets out the shared objectives to improve the capacities and capabilities of the Parties to deal with environmental issues and to establish a framework for cooperation.

The Environment Agreement with Malaysia establishes a set of shared commitments which include statements that environmental laws, regulations, policies and practices shall not be used for trade protectionist purposes, and that neither Malaysia nor New Zealand shall seek to gain a trade or investment advantage by weakening or failing to enforce or administer their environmental laws, regulations, policies and practices in a manner affecting trade between them (Environment Agreement, Article 2, paragraphs 5-6).

A framework for cooperation is established to allow New Zealand and Malaysia to work together on environmental areas of common interest (Environment Agreement, Article 3, paragraphs 1-2). Non-government sectors can be invited to identify potential areas for cooperation and be involved in such activities (Environment Agreement, Article 3, paragraphs 2-3).

A range of cooperative activities are identified in the Agreement including waste management, wetlands management, eco-tourism, water resources/watershed management, environmental remediation, climate change-related technologies, extended producer responsibility, biodiversity conservation, national park/reserve management, sustainable forest management, marine and coastal resources management, public participation in environmental management and environmental education (Environment Agreement, Article 3, paragraph 5).

The Environment Agreement facilitates communication on environmental matters through the establishment of national contact points and the Environment Committee (Environment Agreement, Article 4, paragraphs 1 and 2). The Environment Committee will meet within one year from entry into force of the Agreement (Environment Agreement, Article 4, paragraph 3). The Environment Committee may consult or seek the advice of stakeholders and relevant experts and may decide to invite their attendance at the meetings of the Committee (Environment Agreement, Article 4, paragraph 7). Domestic stakeholders may be given the opportunity to submit views to the Environment Committee on relevant matters (Environment Agreement, Article 4, paragraph 8). The Environment Committee may publicly release a report on its work at the end of each meeting (Article 4, paragraph 10).

In the event that problems arise between New Zealand and Malaysia, the Agreement provides for a number of steps for their resolution (Environment Agreement, Article 5). A Party may request consultation regarding any matter arising over the interpretation of operation of the Agreement. Unless otherwise agreed, consultations are to commence within 30 days of a request for consultations. If consultations are unable to resolve the issue, a Party may request the Environment Committee be convened. The Environment Committee shall meet as soon as practicable and no later than 90 days following the request. The Environment Committee shall produce a report providing conclusions and recommendations on resolving the issue, which may be made public (Environment Agreement, Article 5, paragraphs 3-6). Once a report has been issued, New Zealand or Malaysia must implement the conclusions and recommendations of the Committee as soon as practicable (Environment Agreement, Article 5, paragraph 7).

5 MEASURES WHICH THE GOVERNMENT COULD OR SHOULD ADOPT TO IMPLEMENT THE TREATY ACTIONS

A small number of legislative and regulatory amendments are required to ensure that New Zealand's domestic legal regime aligns with the rights and obligations created under the MNZFTA:

- an amendment to the Tariff Act 1988 to provide for the transitional safeguard mechanism;
- regulations will need to be made under the Tariff Act 1988 to enable the application of preferential tariff rates for imports from Malaysia;
- regulations will need to be made under the Customs and Excise Act 1996 to give effect to the ROO obligations insofar as they affect imports into New Zealand.

Officials will be seeking to include the MNZFTA Bill in the 2010 legislative programme as a category 2 Bill. The Bill should be passed and relevant regulations made by mid 2010 as to allow for the timely entry into force of the MNZFTA.

6 ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL COSTS AND EFFECTS OF THE TREATY ACTIONS

6.1 Economic effects

6.1.1 Introduction

The MNZFTA and its associated instruments are likely to have a modest positive effect on the New Zealand economy over time. The main benefits will result from:

- enhanced access to the Malaysian market for New Zealand goods and services exporters;
- improved firm competitiveness as a result of preferential tariff treatment and exposure to international competition;
- greater certainty (and thus reduced risk) for New Zealand businesses about the future trading environment in Malaysia; and
- potential longer term gains from enhanced regional integration.

The following sections assess the economic effects of the MNZFTA using a framework that has been used in the past for all of New Zealand's recent FTAs.

6.1.2 Relationship between trade and macroeconomic performance

Trade and openness have long been shown to be closely linked to economic performance and social development. In-depth studies by the Organisation of Economic Cooperation Development (OECD), World Bank and National Bureau of Economic Research (NBER) strongly support the proposition that countries with more liberal trade policies have more open economies that grow faster than those with more protectionist policies (Sally, 2009, pp3-4).²³ The size of the potential benefits is substantial. An OECD study on economic growth in OECD countries found that a 10 percentage point increase in trade exposure is associated with a 4 percent rise in income per capita (OECD, 2003).²⁴

For a small country such as New Zealand, the relationship between international linkages and economic performance is particularly important. New Zealand's relative lack of engagement with the global economy has been documented by many commentators seeking to explain New Zealand's relatively poor economic performance in recent decades (Treasury, 2009; Skilling and Boven, 2005, NZIER, 2004).²⁵ Offshore trade and investment offers a way for New Zealand firms to expand beyond their limited domestic market and to generate economies of scale and scope. Greater exposure to international competition can also spur innovation and technology transfer, both of which are drivers of domestic productivity and living standards.

23 Sally, R. (2009). 'Globalisation and the Political Economy of Trade Liberalisation in the BRICS'. In Safadi, Raed and Ralph Lattimore, editors (2009), *Globalisation and Emerging Economies: Selected Policy Issues*. OECD: Paris.

24 OECD, *The Source of Economic Growth in OECD Countries*, (2003) Paris: OECD. Pg 89.

25 Treasury, (2009). *International Connections and Productivity: Making Globalization Work for New Zealand*. Productivity paper 09/01. New Zealand Treasury: Wellington.

Skilling, D and D Boven. (2005). *No Country is an Island: Moving the New Zealand Economy Forward by Taking it the World*. The New Zealand Institute discussion paper 2005/3. New Zealand Institute: Auckland.

NZIER. (2004). *Monitoring New Zealand's Star Performers*. NZIER Discussion Paper, 2004/01. NZIER: Wellington.

Set against this is the fact that the presence of trade barriers in export markets can restrict New Zealand's ability to exploit its comparative advantages and therefore maximise the benefits from international linkages. Efforts to remove or reduce such barriers, either multilaterally, regionally or bilaterally through trade agreements are therefore likely to deliver economic benefits to New Zealand firms and consumers. As outlined below, there are two broad types of benefits from trade liberalisation: static gains and 'second order' (or dynamic productivity) gains.

a. Static effects

The initial effects from trade liberalisation are known as 'static' effects. They stem from three sources:

- (i) A **reallocation of resources** in the liberalising economy away from previously protected sectors towards sectors that are more productive and efficient. In previously protected sectors, the additional competition from lower cost imports prompts the remaining domestic firms to increase their efficiency to stay competitive. This reallocation of resources creates greater specialisation and productivity as domestic firms focus on maximising their comparative and competitive advantages.
- (ii) An **expansion of exports**, with accompanying higher returns, to the previously protected market. As tariffs are removed in the export market, exporters qualifying for preferential access experience an improvement in their competitiveness. This will usually lead to an expansion in market share, and a rise in returns over time, which have net positive effects for the source economy.
- (iii) An increase in **household consumption** resulting from lower import prices after domestic tariffs are removed, and **improved competitiveness** for firms using imported intermediate inputs. As the tariffs on imported goods are reduced, domestic prices generally drop. This increases the purchasing power of households, allowing them to spend more on other goods and services, which generates a welfare gain. In addition, domestic firms which use imported intermediate inputs in their production processes see their costs decrease as tariffs are removed. This improves the competitiveness of the final goods they sell to domestic and export markets.

These static effects are generally associated with a net increase in exports, economic activity, incomes and employment (the likely impact of the MNZFTA on employment is discussed in section 6.2.1 below). Possible dampening effects can result from 'trade diversion', which occurs when imports are sourced from FTA partners as result of the tariff preference they receive, even though they may not in fact be the most efficient producer. However, this risk is mitigated when suppliers in FTA partner economies are already internationally competitive.

While the above framework applies mainly to the liberalisation of goods, the liberalisation of services trade and investment flows deliver similar benefits in principle. Services trade barriers distort services trade in much the same way as do agricultural and manufacturing-related trade barriers. They impose costs on firms and consumers, limit international competition, hamper innovation, prevent or reduce efficiency gains from resource reallocation and allow protected services providers to price at levels that are above where they would be in a fully competitive market.

The static effects of reductions in the trade barriers facing New Zealand exporters and investors in Malaysia and of changes in New Zealand's tariff regime following MNZFTA are discussed in section 6.1.3 below.

b. "Second-order" effects

Trade liberalisation and increased openness also have important, albeit hard to quantify, "second-order" or "dynamic productivity" effects (OECD, 2006a).²⁶ These effects stem from:

- (i) **Increased innovation** by exporting and importing firms, over and above the allocative efficiency effects described above, as they engage more deeply in the global market more broadly and are exposed to leading-edge production techniques.
- (ii) **Technology transfer** through increases in capital and people movement between countries that are facilitated by the closer economic relationship that results from an FTA. These transfers allow economies to become more technologically advanced. The enhanced linkages that services trade can deliver more generally is considered to facilitate an increase in investment flows and skill transfers between countries, which in turn improve a country's wealth and create jobs (Cattaneo and Nielson, 2003).²⁷
- (iii) **Insertion into regional production networks.** Recent advances in the trade literature (e.g. Grossman and Rossi-Hansberg, 2008)²⁸ have highlighted the growing importance of 'trade in tasks'. A 'task' refers to a small piece of value added being completed by each factor of production (capital, labour, etc) along the length of a regional production network or supply chain. This is precisely the nature of many production networks in the Asia-Pacific region – a final good will often have passed through several countries and several production processes before it is sold to the end consumer. It can be shown that if the costs of trading in tasks fall, which could occur via services or investment liberalisation, through improved links with partner companies overseas, or improvements in communication technology, productivity increases along the supply chain – with attendant benefits to all economies along that chain.
- (iv) **Broader economic integration** in the Asia-Pacific region. While market access discussions tend to dominate the evaluation of FTAs, there are broader economic and developmental gains to be had from regional integration. As noted by the IMF (2007) "Regional trade integration can serve as a vehicle for dialogue and coordination on regional issues that are not part of the multilateral agenda. These might include regulatory harmonization, infrastructure development, and collaboration among members to facilitate transit trade and transport. And they can stimulate inward foreign direct investment and growth through technological transfers".

The above effects accumulate to an economy over time, and may not be immediately obvious in trade or investment statistics. But these dynamic productivity gains from trade can result in not just one-off lifts in economic activity, but sustained increases in the productivity growth rate (OECD, 2006a). A discussion of the second order gains from the MNZFTA is presented in section 6.1.7.

26 OECD. (2006a). 'Dynamic gains from trade'. OECD Trade Policy Working Paper, no. 43. Paris: OECD.

27 Cattaneo, O. and J. Nielson. (2003). *Service Providers on the Move: The Economic Impact of Mode 4*. OECD Working Paper, March, 2003. OECD: Paris.

28 Grossman, G., and E. Rossi-Hansberg. (2008). 'Trading tasks: a simple theory of offshoring'. In *American Economic Review*, 98:5, pp1978-1997.

c. *Measuring the macroeconomic impact of FTAs*

The overall impacts of the MNZFTA on the New Zealand economy will be dependent on a number of factors:

- the degree of reliance on trade to generate economic income (GDP);
- the initial level of bilateral trade barriers and the rate at which they are reduced;
- the level and growth rate of bilateral trade and investment; and
- the potential magnitude of dynamic productivity gains.

These factors are examined in more detail below. Due to the considerable statistical difficulties inherent in measuring the size and nature of services trade and investment flows and the barriers that may inhibit these trade flows, the analysis necessarily focuses primarily on goods trade.

Sections 6.1.3 to 6.1.7 examine the various effects outlined in section 6.1.2 to assess how the MNZFTA might impact on the New Zealand economy.

6.1.3 Static effects on the New Zealand economy of the MNZFTA

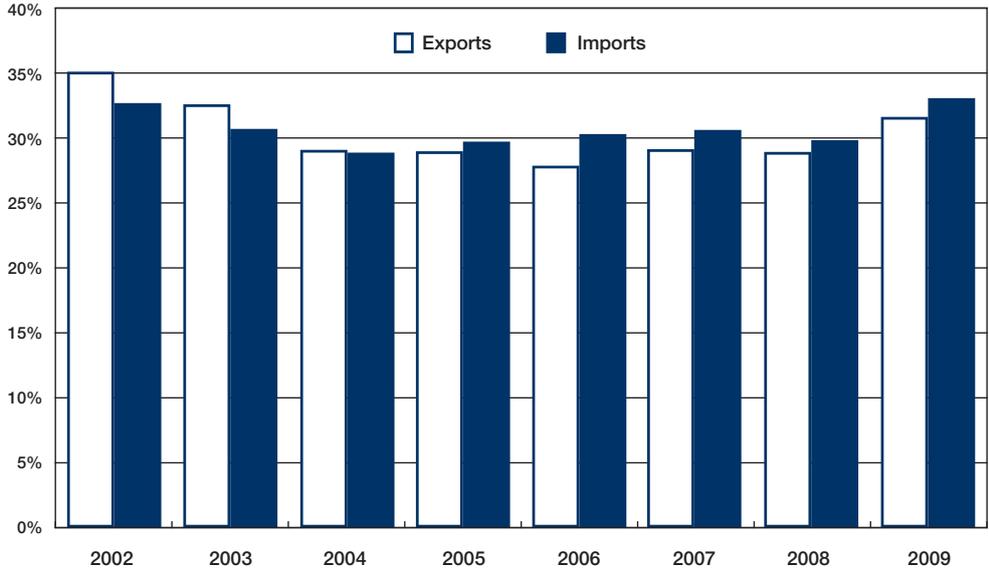
a. *Contribution of trade to the New Zealand economy*

As a small, isolated economy, New Zealand has always been reliant on international trade to open up larger markets and allow firms to develop scale and scope efficiencies. Exports of goods and services currently account for around 32 percent of New Zealand's economic activity (GDP) and it is reasonable to assume that New Zealand's exports would grow more rapidly following the removal or reduction of trade barriers.

At an economy wide level, the income generated by these exports is largely used to fund New Zealand households' and firms' purchases of imports. These imports are worth around 33 percent of GDP (see figure below).

FIGURE 1 TRADE AS PROPORTION OF GDP

Trade in goods and services as percent of GDP



Source: Statistics New Zealand

Improving New Zealand’s connections to the global economy has been a priority for successive governments. Free Trade Agreements such as the MNZFTA will play a part in lifting New Zealand’s engagement with the rest of the world.

Outcome: New Zealand relies on trade for its well-being. Any trade barriers in place in our key export destinations will dampen New Zealand’s potential to expand exports and thus lift per capita incomes. The removal of Malaysia’s trade barriers – our eighth most important export destination – should allow export growth to improve slightly over time and make a greater contribution to GDP.

b. Size of the barriers to trade being addressed in the MNZFTA

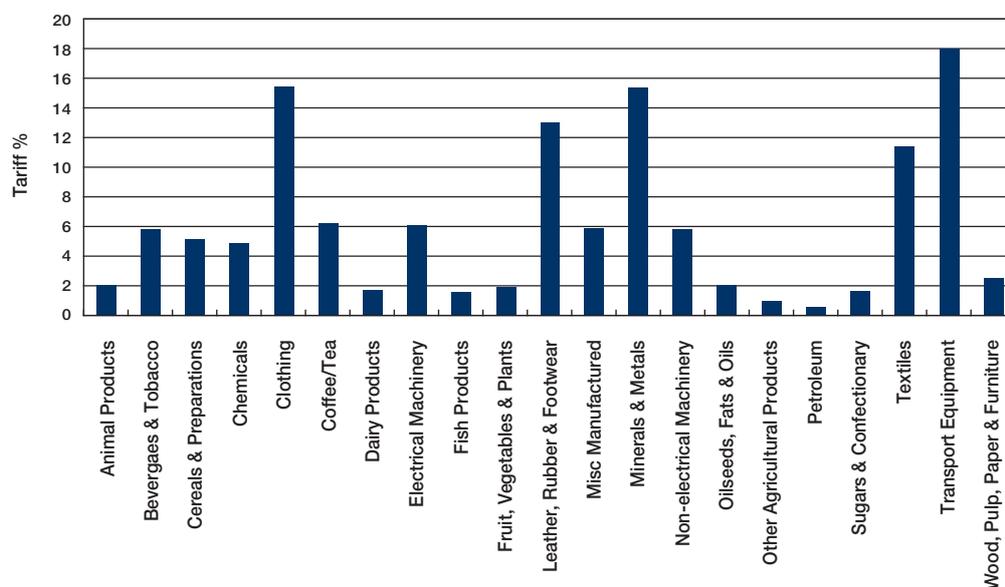
In general, the larger the size of the barriers on bilateral trade between New Zealand and Malaysia, the larger the potential economy wide benefits from removing them in terms of increased allocative efficiency and improved market access.

Malaysia

Around 60 percent of Malaysia’s tariff lines are applied at zero percent. Analysis conducted by the New Zealand Ministry of Foreign Affairs and Trade puts the average applied *ad valorem* tariff rate at 7.3 percent in 2008. Malaysia has room to increase tariffs up to their WTO ‘bound rate’. Its average bound rate is 25.1 percent on all goods and 79.7 percent on agricultural products.

Although Malaysia’s average applied rate is relatively low, this average masks a number of areas where New Zealand exporters face fairly high tariffs, as shown in Figure 2. Tariffs are particularly high in the metals, machinery, textiles, clothing and footwear sectors. Within these sectors, New Zealand’s exports in fact face tariffs which can be as high as 50 percent including on some iron or steel products.

FIGURE 2 MALAYSIA'S 2008 APPLIED AVERAGE TARIFFS



Source: Government of Malaysia and WTO Agriculture and NAMA sector codes
 Notes: 2008 Applied MFN Rates.

New Zealand

New Zealand has progressively reduced its tariffs over the past two decades, through unilateral policy decisions and multilateral and bilateral FTA negotiations. As such, much of the adjustment required by New Zealand firms to operate in a low tariff environment has already taken place. Around 58 percent of New Zealand's tariff lines are already duty free. In 2008 New Zealand's average applied tariff across all goods was 2.6 percent, with higher tariffs of 12.5 percent applying to certain clothing and footwear products and carpets. These higher tariffs were reduced to 10 percent on 1 July 2009, and other tariffs have been harmonised to sit at 5 percent.

Outcome: New Zealand's tariffs are low by international standards. Reducing the barriers on imports from Malaysia is likely to deliver very modest efficiency gains across the wider New Zealand economy. The adjustment costs to import-competing firms are also likely to be relatively low. Malaysia's tariff barriers are relatively high, with some noticeable tariff peaks. These are likely to be restricting New Zealand's exports to Malaysia.

c. Relative significance of New Zealand-Malaysia bilateral trade

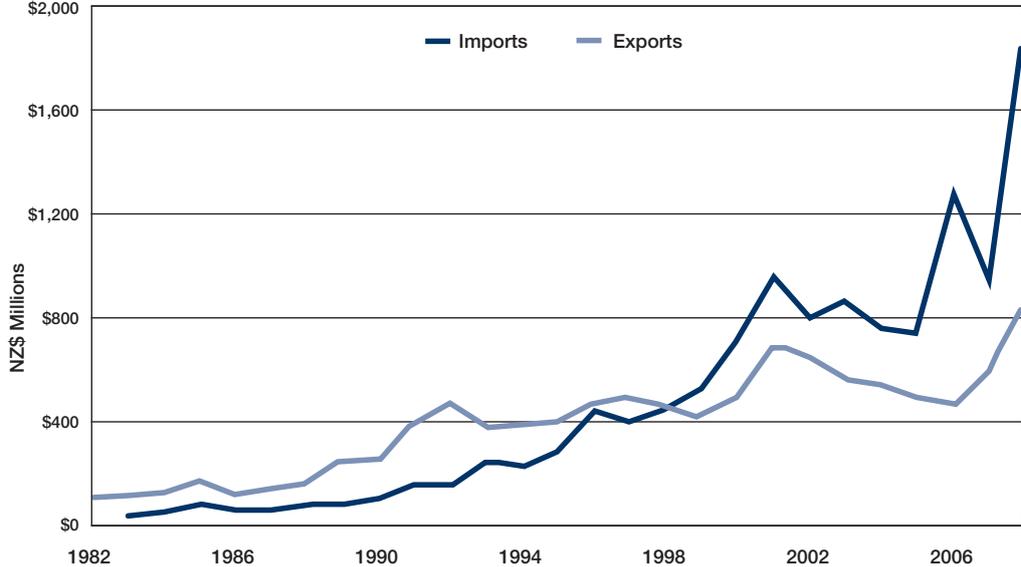
Malaysia was New Zealand's eighth largest export destination in 2008, with exports of \$949 million. Malaysia received 2.2 percent of New Zealand's total goods exports in 2008 and is becoming a more important export market for New Zealand over time: New Zealand's exports to Malaysia have grown by over 80 percent since 2004, more than double the rate of New Zealand's export growth to the world over the same period.

Malaysia was New Zealand’s seventh largest source of imports in 2008. New Zealand imported \$1.99 billion of goods from Malaysia in calendar year 2008, accounting for 4.1 percent of New Zealand’s total goods imports. Since 2004, imports of goods from Malaysia have grown by 137 percent, three and a half times as fast as the growth in imports from the rest of the world.

The growth in bilateral goods trade can be seen in Figure 3 below.

FIGURE 3 VALUE OF TRADE WITH MALAYSIA

\$NZ millions



Source: NZIER

New Zealand and Malaysia have a largely complementary trading relationship. New Zealand exports are largely concentrated in the primary sector, and Malaysia specialises in machinery and manufactured goods. The key bilateral trade items are provided in Table 3 and Table 4 below.

TABLE 3 TOP TEN NEW ZEALAND EXPORTS TO MALAYSIA (2008)

Export value (2008)		
Product	(NZ\$ millions)	% of total exports
Dairy products	\$511.1	54%
Petroleum	\$94.4	10%
Cereals and Preparations	\$63.8	7%
Minerals and metals	\$56.0	6%
Wood, pulp, paper and furniture	\$52.5	6%
Meat	\$46.2	5%
Fruit and Vegetables	\$32.7	3%
Other agricultural products	\$20.2	2%
Non-electrical Machinery	\$18.9	2%
Chemicals	\$14.8	2%
Subtotal top ten exports	\$910.5	96%
Total exports	\$948.9	

Source: *World Trade Atlas and WTO Agriculture and NAMA sector codes. Exports are valued fob (free on board – the value at New Zealand ports before export).*

TABLE 4 TOP TEN NEW ZEALAND IMPORTS FROM MALAYSIA (2008)

Import value (2008)		
Product	(NZ\$ millions)	% of total imports
Petroleum	\$505.7	25%
Non-electrical Machinery	\$503.7	25%
Electrical Machinery	\$298.4	15%
Oilseeds, Fats & Oils	\$254.3	13%
Minerals and metals	\$117.0	6%
Chemicals	\$104.2	5%
Wood, pulp, paper and furniture	\$60.5	3%
Miscellaneous manufactures	\$28.3	1%
Leather, rubber, footwear, and travel goods	\$27.8	1%
Coffee, Tea	\$14.3	1%
Subtotal top ten imports	\$1,914.1	96%
Total imports	\$1,986.4	

Source: *World Trade Atlas and WTO Agriculture and NAMA sector codes. Imports are valued cif (cost, including insurance and freight to New Zealand).*

In addition to merchandise trade, New Zealand and Malaysia also have a growing services and investment relationship, as discussed below in sections 6.1.4 and 6.1.5.

Outcome: Goods trade between New Zealand and Malaysia is substantial, and growing more rapidly than New Zealand's trade with the rest of the world. This implies that Malaysia is becoming increasingly important to New Zealand as a destination for exports and source of imports.

d. Specific market access outcomes

The MNZFTA moves within seven years towards near complete elimination of tariffs on New Zealand's key export sectors, as shown in Table 5.

TABLE 5 SUMMARY OF OUTCOMES FOR NEW ZEALAND EXPORTERS

Average, 2007-2008		
Year	Key export products liberalised	Proportion of trade covered
2010	Butter, cheese, honey, wool, kiwifruit, apples and some manufactured products	95.1%
2011-2012	Electrical parts, fibreboard, chocolate and some manufactured products	98.3%
2013-2016	Paper products, plastics, paints, whiteware, iron and steel	99.5%

Source: MFAT

Tariff elimination has been achieved on all export products of interest, with the exception of alcoholic beverages. By 2016, 99.5 percent of New Zealand's current exports to Malaysia will be duty free. This is a better outcome than AANZFTA (as shown in Table 2 and again in Table 6 below – replicated for ease of reference) and will deliver commercial benefits to New Zealand's exporters through reduced tariff payments (see section 'f' below), improved access and higher returns.

The MNZFTA also addresses non-tariff barriers by prohibiting any measures that are not consistent with both countries' WTO obligations, a requirement that any measures imposed must not unnecessarily restrict trade and an agreed process for dialogue surrounding such measures (including an explicit time frame for responding to a request for 'technical discussions').

TABLE 6 COVERAGE OF GOODS COMMITMENTS

Average, 2007-2008						
	Percentage of New Zealand trade subject to tariff elimination		Percentage of Malaysia's tariff lines subject to elimination		Percentage of estimated duties paid by New Zealand exporters eliminated	
	MNZFTA	AANZFTA	MNZFTA	AANZFTA	MNZFTA	AANZFTA
2010	95.1%	94.8%	67.6%	67.4%	12.6%	7.4%
2011	96.9%	96.6%	73.1%	73.0%	25.1%	19.9%
2012	98.3%	97.8%	87.3%	83.9%	46.1%	36.2%
2013	98.6%	98.0%	93.4%	90.0%	51.9%	42.1%
2014	98.6%	98.0%	93.4%	90.0%	51.9%	42.1%
2015	98.6%	98.0%	93.4%	90.2%	51.9%	45.9%
2016	99.5%	98.2%	99.0%	92.2%	85.9%	45.9%
2017		98.2%		92.2%		45.9%
2018		98.2%		92.2%		45.9%
2019		98.2%		92.2%		45.9%
2020		99.4%		98.7%		82.5%
Not Subject to Tariff Elimination	0.5%	0.6%	1.0%	1.3%	14.1%	17.5%

Source: MFAT and Malaysian Customs trade data. Valued vfd (value for duty – the value of imports before insurance and freight costs are added).

The phase-out of domestic duties on Malaysian imports is also expected to benefit New Zealand producers which use imported components or capital equipment from Malaysia in the production of their goods. In 2008, New Zealand imported \$480 million of unprocessed primary products, \$92 million of simply transformed manufactures and \$45 million of machinery equipment used in the production process. Tariff elimination on these items will lower the costs of production for New Zealand producers and manufacturers of highly processed goods. This improves these firms' competitiveness generally and in the Malaysian market in particular, including in terms of their rivals in that market. Consumers will also benefit from the MNZFTA. Over time, imported consumer items from Malaysia will no longer attract a tariff, thus reducing the cost to the New Zealand buyer and delivering welfare gains to households.

Outcome: The MNZFTA provides New Zealand exporters with improved access to the Malaysian market, over and above previous access under the AANZFTA. This will deliver greater opportunities for New Zealand's exporters to expand their market share and levels of competitiveness in Malaysia.

e. Non-elimination outcomes

Malaysia refused to make any tariff reduction/elimination commitments on 88 products (mostly alcoholic products, but also including tobacco, firearms and tyres) based on religious, safety or environmental grounds. Exports of these products are, however, just 0.5 percent of New Zealand's exports to Malaysia and, of these, alcoholic beverages is the only item of significant export interest to New Zealand with exports worth NZ\$1.6 million in 2008. While tariff elimination on alcohol was not feasible in the short-term (because of Malaysia's objection to this on religious grounds), New Zealand did manage to secure an exchange of treaty-level Ministerial letters which form an integral part of the Agreement that provide the opportunity for a review of the treatment of alcohol within two years.

Malaysia also insisted on maintaining its Tariff Rate Quota (TRQ) system during the MNZFTA negotiations on a range of domestically sensitive products including liquid milk, live swine and poultry, hens' and duck eggs and some pork. Of these New Zealand has a trade interest in the three liquid milk TRQs. See section 3.3.1 (a) for further detail on the liquid milk TRQs outcome.

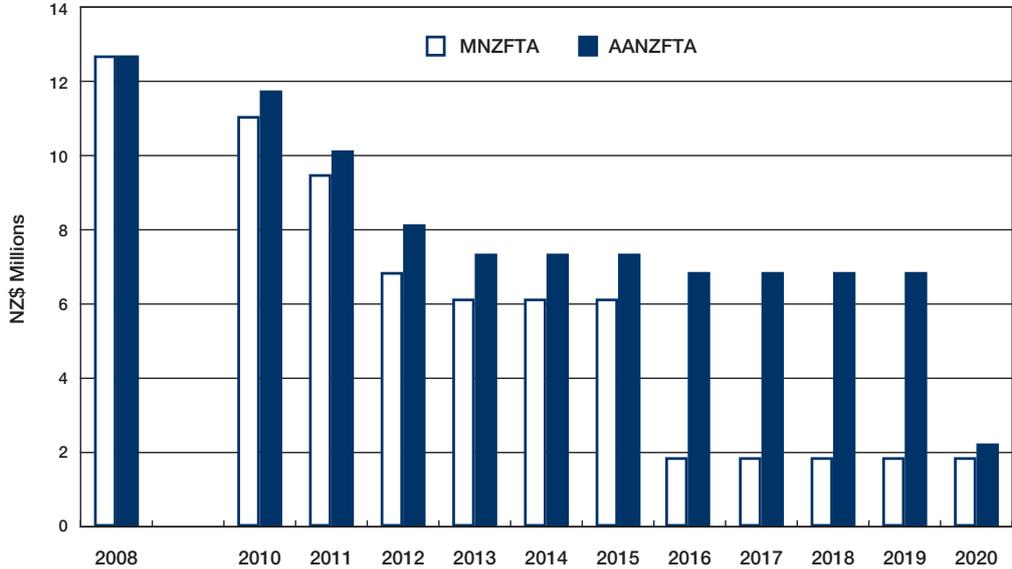
Outcome: The MNZFTA achieved elimination on all but a very small proportion of New Zealand's exports to Malaysia and even on these items either a commercially meaningful outcome was secured (eg for liquid milk), or a process has been agreed to review the treatment of these items (eg for alcoholic beverages).

f. Estimated reduction in duties on New Zealand exports to Malaysia

New Zealand's exports to Malaysia attracted some \$12.6 million of duty in 2008. Figure 4 compares the estimated reduction in duty payments on current exports to Malaysia throughout the implementation period of the MNZFTA against the AANZFTA. Two features of this comparison are worth noting. First, the MNZFTA will provide for greater duty-free access for New Zealand exporters throughout the MNZFTA tariff phase-out period than at the same point under the AANZFTA. By 2016 (the end-date for MNZFTA tariff elimination) the gap between the duty-free access provided for under the MNZFTA and the AANZFTA is at its widest. That is, 86 percent of all estimated duties paid are eliminated by 2016 under the MNZFTA, compared with less than 46 percent at the same point under AANZFTA.

The second key feature of the MNZFTA outcome (when compared against that secured in the AANZFTA) is that it provides New Zealand with greater duty-savings at the end of both FTA's tariff elimination timeframes. In Figure 4, this can be observed in the duties paid in 2020 (the end-date for Malaysia's tariff elimination under the AANZFTA). In short, New Zealand exporters are afforded greater duty-free access, and therefore, will pay less duty under the MNZFTA than under the AANZFTA.

FIGURE 4 REDUCING DUTIES ON NEW ZEALAND EXPORTS TO MALAYSIA



Source: Government of Malaysia, New Zealand Ministry of Foreign Affairs and Trade calculations

Outcome: New Zealand's exporters will see the duty paid on their exports to Malaysia decrease steadily over time, and decrease more rapidly than would have otherwise been the case under the AANZFTA.

g. Potential impacts on New Zealand of tariff liberalisation under the MNZFTA

New Zealand has committed to remove all tariffs on imports from Malaysia by 2016. Over 72 percent of New Zealand's current imports from Malaysia already enter the New Zealand market free of duty. The remaining 28 percent will be liberalised in a phased fashion. The broad structure of New Zealand's MNZFTA commitments to Malaysia is presented in Table 7.

Extended timeframes for tariff elimination have been provided for a number of import sensitive sectors, and in particular, some metal products, margarine and most wooden furniture. Details are shown in Table 8. These extended timeframes will reduce the potential adjustment costs on these sectors as they compete with greater imports from Malaysia.

TABLE 7 SUMMARY OF NEW ZEALAND'S TARIFF REDUCTION COMMITMENTS

Average, 2007-2008			
	Percentage of NZ Imports from Malaysia subject to tariff Elimination	Percentage of Tariff Lines Eliminated	Key Products Becoming Duty Free
Already Duty Free	72.1%	57.8%	Vegetable fats and oils, computer processors, mineral fuels, cocoa and cocoa preparations
2010	90.8%	84.6%	Some plastics, rubber (excluding new car tyres), wood, glass fibres, food products
2011	90.8%	84.6%	No further reductions
2012	94.6%	90.2%	Some plastics, wood, yarn, certain fabrics, some iron or steel products, glass wool insulation, refrigerators, tug boats, mattresses, upholstered seats with wooden frames
2013	94.8%	90.5%	Some metal furniture, bicycles
2014	95.0%	90.6%	Some iron and steel bars and a soap product
2015	98.5%	99.3%	Footwear, fabrics, carpets, clothing and new car tyres
2016	100.0%	100.0%	Some Iron and steel, wooden furniture, plywood and margarine products

Source: MFAT. Valued vfd (value for duty – the value of imports before insurance and freight costs are added).

New Zealand import-competing firms were extensively consulted during the MNZFTA and AANZFTA negotiations. Section 8 notes the firms and organisations consulted and summaries their views. These views were taken into account as far as was practicable, within the context of securing a commercially meaningful overall outcome to the negotiations.

In 2008, the revenue collected on imports from Malaysia was \$8.25 million. As tariffs are phased out over time under the MNZFTA, less revenue from duty payments on imports from Malaysia will be collected. This decrease in duties collected was already due to take place under the outcomes of the AANZFTA. The MNZFTA's faster tariff elimination timeframe, however, will lead to a more rapid reduction and zeroing of tariff revenue than provided for under the AANZFTA.

Outcome: The removal of New Zealand's tariffs on imports from Malaysia will result in decreased duty revenue. There will be an increase in exposure for some New Zealand firms that compete with imported items from Malaysia. However, much of this adjustment would have occurred in the absence of the MNZFTA, so the additional adjustment is expected to be minimal.

TABLE 8 TARIFF OUTCOMES IN KEY AREAS OF NEW ZEALAND'S DOMESTIC SENSITIVITY

		Percentage of imports from Malaysia on which tariffs will be eliminated										
	Imports from Malaysia avg. 2007/08 (NZ\$)	Avg. duties paid in 2007/08 (NZ\$)	% Duty Free in 2008	% Duty Free in 2010	% Duty Free in 2011	% Duty Free in 2012	% Duty Free in 2013	% Duty Free in 2014	% Duty Free in 2015	% Duty Free in 2016		
Textiles & clothing	\$15,972,814	\$661,916	25.3%	73.8%	73.8%	74.1%	74.2%	74.2%	100%	100%		
Footwear	\$175,955	\$17,913	14.7%	14.7%	14.7%	14.7%	14.7%	14.7%	100%	100%		
Metal products	\$55,351,324	\$1,469,438	20.0%	59.6%	59.6%	89.5%	89.9%	90.1%	91.0%	100%		
Furniture	\$30,245,440	\$449,156	2.8%	9.4%	9.4%	48.1%	53.3%	53.3%	53.6%	100%		
Miscellaneous manufactures	\$26,663,151	\$2,214,003	66.7%	92.4%	92.4%	97.2%	97.2%	97.2%	100%	100%		

Source: MFAT. Valued vfd (value for duty – the value of imports before insurance and freight costs are added).

6.1.4 Potential impacts on the New Zealand economy of the outcome in services

Data limitations mean that quantifying the economic impacts of the enhanced services market access negotiated under the MNZFTA is difficult. However, the broad principles underpinning the benefits from expanded goods access also apply to New Zealand's services exports.

As noted above, the data that is available indicates that Malaysia and New Zealand have a growing services trade relationship. Malaysia is an important source of tourists for New Zealand. In 2008, over 19,600 short-term visitors came to New Zealand from Malaysia. Malaysia is New Zealand's tenth largest source of international students, accounting for around 2.4 percent of total international student numbers. In 2008, 2147 Malaysian international students studied in New Zealand. This number has increased by over 70 percent since 2003, compared with a 27 percent decrease in the total number of international students visiting New Zealand over the same period.

Given this growth, education services were a priority for negotiators in the MNZFTA and GATS and AANZFTA-plus outcomes were secured. In addition to this market access, the rules on services trade were tightened. This will provide greater clarity and certainty for New Zealand services exporters.

It may be expected that as Malaysian incomes rise over time, their demand for imported services will increase – Malaysians will be more likely to travel overseas or have their children educated offshore, for example. When this occurs, the sectoral MFN provisions of the MNZFTA will ensure that New Zealand's services exporters in key sectors are never disadvantaged relative to our competitors, thereby allowing New Zealand suppliers to secure the best possible treatment at all times and help maintain levels of competitiveness in a key regional services market.

Very little or no domestic adjustment is expected as a consequence of New Zealand's services commitments to Malaysia under MNZFTA. Some minor improvements on New Zealand's AANZFTA's commitments were agreed to in MNZFTA, but all are within New Zealand's current regulatory environment and policy settings.

Outcome: New Zealand's services exporters will benefit from improved market access under the MNZFTA, particularly in key sectors such as education. The exporting environment will be more certain as a result of clearer rules. In key sectors of commercial interest, New Zealand firms will not be disadvantaged by any future FTA preferential commitments granted by Malaysia to other countries.

6.1.5 Potential impacts on the New Zealand economy of the outcome on investment

The benefits from expanded portfolio and direct investment include the transfer of technology and managerial skills, access to resources and maintaining a closer presence to key markets. The international literature suggests that direct investment in particular has the potential to generate efficiency gains and wider industry spillovers in both the source and destination countries.

New Zealand total outward investment in Malaysia has increased sharply in recent years (76.95 percent per annum between year to March 2003 and year to March 2008) – albeit from a relatively modest base. New Zealand's stock of investment in Malaysia was \$451 million in the year to March 2008. Malaysia's stock of investment in New Zealand in the year to March 2007 was \$537 million, compared to \$124 million in 2003.

No new market access commitments were negotiated in the MNZFTA, although they will be considered shortly after entry into force. However, the MNZFTA contains a number of provisions that help to protect New Zealand investors and create a less uncertain investment environment. These provisions relate in particular to the equitable treatment of investments once established in the host market. This in turn should reduce the risk around investment between New Zealand and Malaysia and facilitate additional flows.

The MNZFTA's comprehensive investment MFN provision will also ensure that New Zealand's investors will not be disadvantaged relative to its competitors when Malaysia concludes FTAs in the future. Again, this creates additional certainty for New Zealand investors.

Future market access negotiations on investment are not expected to compromise New Zealand's existing regulatory environment. New Zealand's investment screening regime under the Overseas Investment Act 2005 will continue to apply to investments from Malaysia. As such, any domestic adjustment to the investment provisions of MNZFTA is expected to be minimal.

Outcome: The bilateral investment environment has been enhanced for New Zealand investors in Malaysia through the improved investment protection provisions of the MNZFTA. This creates a sound basis for future market access negotiations. Importantly, the position of New Zealand investors and their investments has been 'future-proofed' through the commitment to comprehensive forward-looking MFN for investment.

6.1.6 Conclusions regarding static gains to the New Zealand economy

The above assessment shows that New Zealand and Malaysia have a significant and rapidly growing trade and investment relationship. The outcomes of the MNZFTA will provide New Zealand firms with additional trade opportunities in the Malaysian market.

It can be concluded that there will be positive, albeit modest, static gains to the New Zealand economy as a result of the tariff and non-tariff barrier liberalisation agreed to under the MNZFTA. As with any FTA, the distribution of these gains will differ between firms, sectors, regions and over time.

Those who will benefit the most are New Zealand firms currently exporting goods and services to Malaysia, particularly in sectors where high tariff and non-tariff barriers exist, or prohibitive services barriers exist. These benefits will come from improved prices, expanded export volumes, or a combination of the two. New Zealand's exporters will also be able to compete in the Malaysian import market with third country competitors on a more level playing field.

The static impacts on New Zealand of the investment provisions in the MNZFTA are likely to net positive, as a result of improved certainty for (and hence lower risk faced by) New Zealand investors.

6.1.7 “Second order” effects on New Zealand of the MNZFTA

The MNZFTA will result in trade liberalisation and a closer bilateral economic relationship between New Zealand and Malaysia. In addition to the static gains outlined above, the MNZFTA is likely to have additional impacts on the New Zealand economy over time through ‘second order’ or dynamic productivity gains. The OECD (2006) has suggested that failing to take into account these gains would result in the benefits from trade liberalisation and regional economic integration being underestimated, potentially substantially. Modelling these effects is difficult, but feasibility assessments undertaken prior to commencing the New Zealand-China and New Zealand-Korea FTAs indicates that the dynamic gains from trade liberalisation are significant.²⁹

The MNZFTA contains a number of provisions that might generate dynamic productivity gains for the New Zealand economy, but it is not possible to meaningfully quantify these gains. Many are incremental and will take place over a period of many years. Some possible channels for dynamic gains from MNZFTA are discussed below.

It has been estimated that the ‘hidden’ costs of trade equate to as much as 15 percent of the value of the goods traded (OECD, 2005). These costs are imposed on businesses through higher than necessary administrative and processing costs (red tape) and on governments through lost revenue resulting from incorrectly identifying the origin of products or through smuggling. These costs are ultimately borne by firms and final consumers. Trade facilitation is defined by APEC as “the simplification and rationalisation of customs and other procedures that hinder, delay or increase the cost of moving goods across borders... so that goods are delivered in the most efficient manner” (APEC, 2007, p1),³⁰ thereby reducing these hidden costs and delivering economic benefits.

Trade facilitation in its broader sense covers, *inter alia*, trade facilitation through improved customs procedures, investment protection, harmonisation of rules of origin, mutual recognition agreements, competition policy and intellectual property rights. The MNZFTA contains provisions on all of these matters, which should facilitate trade and deliver additional dynamic gains from trade. Scollay and Vigil (2003) suggest that “a comprehensive package of trade and facilitation measures can provide benefits to [FTA] members at least as great as the traditional [FTA] elements of trade liberalisation”.³¹

The MNZFTA contains Rules of Origin (ROO) provisions which are the most trade facilitating of any New Zealand FTA, and an improvement on the ROO negotiated under AANZFTA. Complying with ROO can present challenges for businesses: at a firm level, the costs of complying with rules of origin have been estimated at between 3 and 5 percent of the free on board value of the exported goods many businesses trade across a large number of borders, these costs are likely to escalate (Herin, 1986).³² This hits small to medium exporters particularly hard as they may be less able to pass these additional costs on to the final consumer (Scollay, 2003). The MNZFTA’s ROO are transparent and trade facilitating and this should contribute to lower transaction costs for New Zealand exporters and importers.

29 Both the New Zealand-China FTA and New Zealand-Korea FTA studies are available on the Ministry of Foreign Affairs and Trade’s website at: <http://www.mfat.govt.nz/Trade-and-Economic-Relations/0--Trade-archive/0--Trade-agreements/China/0-jointstudyreportindex.php>; and, <http://www.mfat.govt.nz/downloads/trade-agreement/Korea/NZ-Korea-FTA-Feasibility-Study.pdf>.

30 APEC. (2007). APEC’s Second Trade Facilitation Action Plan II.

31 Scollay, R. and F. Gonzales Vigil (2003). ‘Asia Pacific RTAs as avenues towards achieving the Bogor Goals’. Report to PECC International Secretariat.

32 Herin, J. (1986) “Rules of Origin and Differences between Tariff Levels in EFTA and in the EC.” Occasional Paper No.16, EFTA, Geneva.

The services and investment MFN provisions secured in the MNZFTA provide New Zealand service suppliers and investors with greater certainty of non-discrimination in the Malaysian market. Technology transfer may also be facilitated through expanded services and investment linkages over time.

The MNZFTA also helps to cement New Zealand's role as an important and constructive player in regional economic integration discussions. While the precise vehicle for further regional integration in the Asia-Pacific is not yet clear, agreements such as the MNZFTA and the AANZFTA contribute to New Zealand 'moving closer' to Asia and forming important business, government-to-government level linkages. For New Zealand businesses, this may assist with becoming more tightly tied into regional production networks and supply chains with global reach.

Collectively, these provisions should, over time, significantly enhance the predictability and transparency of the New Zealand trading relationship with Malaysia. Taken together with the market access improvements related outlined in the static effects section, these are expected to help generate the 'second-order' effects related to dynamic productivity.

Outcome: While difficult to quantify, the MNZFTA outcomes are expected to deliver modest dynamic productivity gains over time to New Zealand as a result of an improved trade and investment environment and being closer to the centre of future regional economic integration efforts.

6.1.8 Conclusions regarding overall gains to the New Zealand economy

The MNZFTA is expected to improve economic welfare and living standards, albeit modestly. It is expected to deliver both static and second order net benefits to the New Zealand economy over time through:

- expanded trade in goods and services;
- reduced duty payments;
- facilitation of investment flows through enhanced protections which reduce risks to investors;
- a more certain trading and investment environment; and,
- longer term productivity improvements through enhanced regulatory cooperation, competition, innovation, technology transfer and regional integration possibilities.

To facilitate and encourage the gains from the MNZFTA, government agencies are developing a whole-of-government FTA implementation strategy, in close consultation with New Zealand businesses and other stakeholders.

6.2 Social effects

This section considers the potential impacts of the MNZFTA on employment, social regulation and immigration in New Zealand.

6.2.1 Employment

As outlined above, it is expected that the MNZFTA will result in an increase in New Zealand's net exports to Malaysia, and a modest increase in overall economic activity in New Zealand. As the demand for New Zealand's goods and services rises, at an economy wide level this suggests that the effect of MNZFTA on employment in New Zealand is also likely to be modestly positive.

At an industry level, there is a risk that firms that have previously been protected by tariffs (or other trade barriers) may need to adjust their production levels following the implementation of New Zealand's MNZFTA commitments. This may entail a change in the level of demand for the various factors of production, including labour. In the short-term, this may result in some negative employment effects. The likely size of these effects will depend on the level and speed of the tariff reduction and the degree to which the domestic firm is internationally competitive. Any possible negative employment effects, however, are likely to be small given the relatively open economy New Zealand businesses already operate in. That is, New Zealand's history of unilateral tariff liberalisation, as well as tariff liberalisation through FTAs, mean that most New Zealand businesses already compete with international sourced products in New Zealand.

These negative effects need to be considered against the additional employment opportunities that the MNZFTA may provide. Economic theory, and New Zealand's previous experience with unilateral, multilateral and regional trade liberalisation, suggests that, over time, workers and other resources are able to be redeployed in expanding sectors of the economy.

In addition, particular attention has been paid by negotiators to the scope and speed of tariff reductions in domestically sensitive import-competing sectors. Extended tariff phase-outs allow for a more gradual adjustment in sectors such as textiles, footwear, metal products, furniture and others.

6.2.2 Social regulation

The MNZFTA is not expected to have any impact on New Zealand's social regulation. Publicly provided services (i.e. those supplied in the exercise of government authority in New Zealand) are not covered by the MNZFTA's services commitments. Moreover, no commitments were made in publicly provided services such as education, housing, healthcare and social welfare.

New Zealand's commitments under MNZFTA on the movement of natural persons contain safeguards to ensure that any potential negative impacts on the New Zealand labour market are, as far as possible, avoided.

The Agreement on Labour Cooperation contains provisions to ensure that core international labour standards are adhered to and that such standards may not be relaxed for protectionist purposes or to encourage trade. This is the first time Malaysia has concluded an instrument of this nature. This instrument can be seen as complementing existing labour-related instruments negotiated with other ASEAN partners in the context of New Zealand's other FTAs (i.e. with Thailand, Singapore, Brunei Darussalam, and the Philippines), and the ongoing negotiations with Indonesia for bilateral instruments on labour and environment.

The Agreement on Environment Cooperation with Malaysia is not expected to have any negative social effects on New Zealand.

6.2.3 Immigration

The specific commitments entered into in respect of the movement of natural persons (i.e. business people) do not require changes to existing immigration policy. The promotion of trade and investment opportunities under the MNZFTA may however encourage greater interest in immigration to New Zealand (including by skilled migrants) and vice versa. Such immigration would occur under current immigration policy settings.

6.3 Cultural effects

The MNZFTA contains provisions to ensure that New Zealand's cultural policy-related objectives are not compromised:

- as with New Zealand's previous FTAs, New Zealand retains the ability to take measures it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi;
- MNZFTA also contains an exception that allows New Zealand to take measures necessary to protect national treasures or specific sites of historical or archaeological value or to support creative arts of national value, provided such measures are not used in a protectionist manner; and,
- the MNZFTA Intellectual Property Chapter also recognises that each Party may establish appropriate measures to protect traditional knowledge, subject to its international obligations.

6.4 Environmental effects

New Zealand has long recognised the links between trade and the environment. One of the aims of New Zealand's FTAs has been to ensure that the outcomes contribute to sustainable development and environmental objectives, consistent with the Government's 2001 policy framework. The MNZFTA and the Agreement of Environmental Cooperation – the first that Malaysia has signed in the context of an FTA – contain a range of provisions that recognise the important role that trade liberalisation can play in supporting environmental improvements and the role that improved environmental performance can play in underpinning economic development.

Key environmental aspects of the MNZFTA and Environmental Agreement are:

- the liberalisation of environmental services – Malaysia has agreed to new commitments in wastewater management, cleaning services of exhaust gases, nature and landscape protection and noise abatement services;
- Malaysia has also agreed to an MFN provision which requires that if Malaysia provides better treatment or access to a third country in a future free trade agreement in these environmental services sectors, New Zealand service suppliers will automatically secure that same level of treatment;
- in the Investment and Environment provision of the Investment chapter, Malaysia and New Zealand have agreed to ensure, subject to certain disciplines, that both countries are able to adopt and enforce policies so that investment activities are not undertaken in manner that may cause environmental concern; and,
- a commitment in the Environment Agreement to sustainable development and enhancing the capacity and capability of each country's officials to examine trade and environment matters in areas of shared interest such as environmental technology and natural resource management.

Given the links between trade and the environment, FTAs can affect sustainable development in a number of positive and negative ways. These are discussed below.

6.4.1 Regulatory effects

Existing environmental policies and standards can, in principle, be affected by FTAs. International experience related to these regulatory effects is that any potentially negative effects of FTAs on such policies can be avoided through careful application of FTA provisions. In particular, FTA negotiations should be approached in a fashion that does not undermine the ability of governments to pursue appropriate and effective environmental policies.

The MNZFTA, as with New Zealand's other recent FTAs, does not affect the New Zealand Government's ability to regulate for environmental protection. Its general exceptions are consistent with those provided for in international Agreements (GATT and GATS). These exceptions apply across all aspects of the MNZFTA, and allow Governments to introduce measures necessary to protect human, animal or plant life or health, and to conserve exhaustible natural resources, provided these measures are not applied in a manner that constitute an arbitrary or unjustifiable discrimination or a disguised restriction on trade or investment.

The Environment Agreement, which is recognised in the Preamble to the MNZFTA, provides an avenue for enhanced dialogue and cooperation on environmental matters. The Agreement further explicitly recognises that New Zealand and Malaysia have a sovereign right to set, administer and enforce their own environmental laws, regulations, policies and practices.

The MNZFTA will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in a discriminatory fashion. New Zealand has a suite of relevant existing legislation that is designed to address any potential adverse environmental outcomes of economic activity, including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Ozone Layer Protection Act 1996, the Soil Conservation and Rivers Control Act 1941, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Aquaculture Reform (Repeals and transitional Provisions) Act 2004, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1949 (amended 1993), the Forests Act 1949 (amended 1993), and the Wildlife Act 1953. Voluntary initiatives such as the Clean Streams Accord and the New Zealand Packaging Accord act alongside and support this legislative framework, and New Zealand also encourages multinational firms to promote environmental management systems through its support of the OECD's Guidelines on Multinational Enterprises.

6.4.2 Product effects

Trade liberalisation under the MNZFTA is likely to lead to a change in the mix of products that New Zealand exports and imports. This change in the composition of trade can have both positive and negative environmental effects.

The liberalisation of trade in environmental goods and services – a rapidly growing export sector for New Zealand – under the MNZFTA, will deliver both pure economic and sustainable development benefits. More generally, trade liberalisation results in a more efficient use of resources, and the additional income that is generated by trade liberalisation can also be used – at least in part – to invest in new technology and production processes that can have positive environmental outcomes.

At the same time, changes in the composition of New Zealand's imports that arise from the MNZFTA's trade liberalisation provisions may present a possible increase in biosecurity risk. These risks will need to be carefully monitored. However, it is assessed that New Zealand's existing framework of environmental laws, regulations policies and practices will be sufficiently robust to monitor and address any such change in the risk profile of its imported goods.

6.4.3 Structural effects

Structural effects relate to the ways in which trade liberalisation can affect the production of goods and services that have environmental side-effects. If trade liberalisation leads to a shift in resources away from environmentally-damaging production processes or techniques (such as over-production or land degradation associated with subsidised agricultural production), these structural effects are likely to be a net-positive for the environment. Negative structural effects can occur if domestic policy settings are not sufficiently robust to deal with a potential increase in the production of goods and services resulting from trade liberalisation that may damage the environment.

The MNZFTA is unlikely to have any discernable negative structural effects, given the degree of structural reform that New Zealand has experienced over the past three decades, natural resource and capacity constraints and the environmental management legislation already in existence.

6.4.4 Scale effects

As economies expand as a result of trade liberalisation, there is a risk of increasing pollution levels and other environmental factors. This risk stems largely from the potential product and structural effects outlined above. However, this risk may be offset by the productivity improvements (and hence income gains) that are also associated with liberalisation. As a result of allocative efficiency gains, it may in fact be possible to produce more goods and services using the same amount of aggregate resources. Also, over time, technological improvements, which can be hastened by trade liberalisation and broader economic integration, are also likely to contribute to a more efficient use of natural resources.

Given New Zealand's existing environmental and resource management policy frameworks, and the provisions in the MNZFTA to promote the liberalisation of environmental goods and services and to promote capacity building on environmental issues, it is unlikely that scale effects resulting from the MNZFTA would result in any environmental degradation.

Outcome: The MNZFTA and its associated instruments on Labour and the Environment are not expected to have any negative effects on the environment in New Zealand that cannot be managed using existing policy frameworks. Its provisions may encourage improved productivity in the use of natural resources.

7 COSTS TO NEW ZEALAND OF COMPLIANCE WITH THE TREATIES

7.1 Tariff revenue

In 2008, the revenue collected on imports from Malaysia was \$8.25 million. As tariffs are phased out over time under the MNZFTA, the New Zealand Customs Service will progressively collect less revenue from duty payments on imports from Malaysia.

It is important to note, however, that the marginal loss of tariff revenue will be minimal given the existence of the AANZFTA. That is, New Zealand has already committed, under the AANZFTA, to eliminate tariffs on Malaysia's exports to New Zealand under that Agreement by 2020. So, even without the MNZFTA, the future stream of tariff revenue on Malaysian imports will be progressively reduced to zero by 2020.

The MNZFTA's faster tariff elimination timeframe, however, will lead to a faster reduction and elimination of tariff revenue than under the AANZFTA (i.e. by 2016 rather than 2020).

7.2 Costs to government agencies of implementing and complying with the treaties

The implementation of the MNZFTA and the Labour and Environment Agreements will have fiscal implications, comprising the following components. These are expected to be incurred across different departments and over a number of years.

7.2.1 FTA implementation costs

The MNZFTA establishes a Joint Commission to review the implementation of the Agreement. In addition to the Joint Commission the MNZFTA provides for the establishment of a number of specialist committees in the areas of:

- Trade in Goods;
- Trade in Services;
- Technical Barriers to Trade;
- Sanitary and Phytosanitary Measures;
- Investment;
- Trade in Services; and,
- Economic Cooperation.

The Environment and Labour Agreements also establish committees; however, these sit outside of the Joint Commission architecture.

While the objectives of these committees differ, in general, their objective is to facilitate the ongoing interaction of experts to discuss the implementation and operation of the Agreement and potential cooperation in areas of mutual interest. Many of the chapters without committees provide for the establishment of contact points to facilitate communications in specific areas.

The establishment and operation of the Joint Commission, specialist committees and contact points is expected to be undertaken within the baselines of the relevant agencies. Should it not prove possible to fund this within baseline the relevant agencies will seek Cabinet approval for additional funding.

A number of chapters of the FTA, as well as the Environment and Labour Agreements, establish mechanisms that allow for future cooperation between New Zealand and Malaysia in areas of mutual interest. Cooperation proposals are expected to be developed over time through these mechanisms and are expected to fall within the scope of existing departmental activity and be funded from within baselines. Any proposal for cooperation endeavours will however need to be assessed against other departmental priorities funded out of existing baselines. Specific Cabinet approval would be sought for any future activities unable to be resourced through baseline funding, having regard to our cooperation commitments under the FTA.

7.2.2 Agreed capacity-building programmes

Establishment between the parties of a joint 'economic cooperation framework' and an agreed work programme is expected to be undertaken as a baseline activity led by the Ministry of Foreign Affairs and Trade (MFAT) with participation from other relevant agencies.

The Treaty provides for the development of an economic cooperation work programme "subject to the availability of resources of each party", with particular attention given initially to potential areas for cooperation in Education, Forestry, Health Sector, Biotechnology, Agritechnology and Manufacturing.

Undertakings under the economic cooperation chapter are currently generalised, however, specific proposals are expected to be developed over time by the economic cooperation committee. It is expected that the fiscal cost associated with such proposals will be met within departmental baselines. Specific Cabinet approval would be sought for any future activities unable to be resourced through baseline funding.

7.2.3 Promotion and outreach costs

One-off costs associated with implementing the FTA are estimated to amount to \$110,000 for promotion and outreach activities (including processes and documentation required to support the legislative process). Funding for these activities has been secured from the relevant inter-agency Trade Negotiations Fund (TNF).

7.3 Costs to businesses of complying with the treaties

The MNZFTA is expected to reduce transaction costs for New Zealand businesses trading with Malaysia through trade facilitating outcomes in areas such as customs procedures, rules of origin, Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures (as outlined in section 3). Other opportunities for reducing transaction costs are expected to be identified over time through the regulatory cooperation platform the MNZFTA provides.

8 COMPLETED OR PROPOSED CONSULTATION WITH THE COMMUNITY AND PARTIES INTERESTED IN THE TREATY ACTIONS

8.1 Inter-departmental consultation process

The negotiation of the MNZFTA and associated instruments was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade (MFAT). The inter-agency team comprised of officials from the Ministry of Agriculture and Forestry, the Ministry of Culture and Heritage, the Department of Labour, the Ministry of Economic Development, the Ministry for the Environment, Treasury, New Zealand Customs Service, New Zealand Food Safety Authority, Te Puni Kokiri, New Zealand Qualifications Authority and New Zealand Trade and Enterprise (NZTE).

Other relevant departments and agencies were also regularly consulted during the negotiations and in particular in the preparation of New Zealand's tariff schedule and services schedule.

The Department of Labour and the Ministry for the Environment were directly involved in the negotiation of the Labour and Environment Agreements with Malaysia.

The Department of the Prime Minister and Cabinet was also regularly consulted on the MNZFTA process.

8.2 Public consultation process

From September 2004, the Ministry of Foreign Affairs and Trade (MFAT), together with other government agencies, organised and conducted a wide-ranging consultation programme with the aims of informing public stakeholders of the negotiations, its objectives and possible timetables as well as seeking stakeholder views on the possible content of the MNZFTA.

Public outreach and consultation has taken place throughout the negotiation of MNZFTA, including with key stakeholders on negotiating objectives. This programme used printed, emailed and website information, supported by extensive specific discussions with key stakeholders such as exporters and industry sectors likely to be interested in or affected by the outcomes of MNZFTA and its associated instruments. In particular, stakeholders were consulted on the phase-out of tariffs, rules of origin, services and investment commitments and associated labour and environment outcomes

8.2.1 Communications programme

The communication programme supporting the negotiations and consultations included:

- a call for submissions in advance of the commencement of negotiations, in September 2004, seeking views on the possible content of a Malaysia-New Zealand FTA;
- regular updating of the MFAT website with information on the negotiations as well as providing contact details for feedback from stakeholders;

- bimonthly updates, on the progress of the negotiations, through MFAT's news bulletin, 'Business Link', which is distributed to over 900 subscribers;
- updates in MFAT's 'International Treaties List', produced every six months by MFAT and provided an update on the negotiation process, identified particular issues of interest to Māori. This was distributed to Iwi, and provided contact details for feedback from Iwi.
- an on-going call for submissions on what stakeholders would like the MNZFTA to address was posted on the MFAT website throughout the course of negotiations;
- meetings with, or otherwise directly contacting, interested companies, industry groups, and sectoral organisations, to discuss elements of the negotiations such as: phase-out of tariffs, the rules of origin, services and investment commitments as well as Labour and Environment Cooperation Agreements. Those contacted included (amongst others):
 - ASEAN-New Zealand Combined Business Chamber; Alliance Group; All Brite Industries; Canterbury Manufacturers Association; Blackburn Croft; Business New Zealand, New Zealand Chambers of Commerce, the Council of Trade Unions; Distilled Spirits Association of New Zealand Inc; the Dairy Companies Association of New Zealand; Education New Zealand; Fisher and Paykel; Fonterra; GlaxoSmithKline; Employers and Manufacturers Association (Northern); New Zealand Forest Industries Council; Furniture Association of New Zealand; Fletcher Aluminium; Healtheries of New Zealand; Marine Industry Association; Methanex New Zealand Ltd; McCain Foods New Zealand Ltd; New Zealand Mussel Industry Council; Opus International; Plastics New Zealand; Plankwall Ltd; Horticulture New Zealand; Meat and Wool New Zealand, Meat Industry Association, New Zealand Steel; Pacific Steel; New Zealand Retailers Association; Riverlands Ltd; Skope Industries; Seafood Industry Council; Tasman Insulation New Zealand; Talley's Fisheries Ltd; Tait Electronics; Turners and Growers Intl; Temperzone; Tonkin and Taylor; Ulrich Aluminium; the Warehouse; Winstone Wallboards; New Zealand Winegrowers; Wellington Chamber of Commerce; Zespri.
- The MNZFTA negotiations were also discussed (including a progress update and requests for further information) during the nationwide series of seminars following the conclusion of the AANZFTA. Approximately 500 people, representing businesses, business organisations and other stakeholders attended the seminars.

8.2.2 Submissions process

The consultation process, elicited a significant number of submissions, including from:

- Association of University Staff of New Zealand; Business New Zealand; International Business Forum; Canterbury Manufacturers Association; Management Concepts Asia Pacific Ltd; New Zealand Council of Trade Unions; the Dairy Companies Association of New Zealand; Deer Industry New Zealand; Education New Zealand; Federated Farmers; New Zealand Fruitgrowers Federation; the Employers and Manufacturers Association (Northern); Furniture Association of New Zealand; New Zealand Horticulture Export Authority; Heinz Watties Ltd; Kiwifruit New Zealand; Meat and wool New Zealand; Meat Industry Association; Marine Industry Association; New Zealand Forest Industries Council; New Zealand Forest Owners Association; Pacific International Insurance; New Zealand Poultry Association; National Council of Women; New Zealand Sugar Company Ltd; New Zealand University Student's Association; Seafic; Otago Chamber of Commerce and Industry Inc; Opus International Consultants; Pacific Steel Group; New Zealand Retailers Association; Temperzone; New Zealand Winegrowers; New Zealand Vegetable and Potato Growers Federation; Zespri.

The key messages were that:

- there was general support for an FTA with Malaysia;
- AANZFTA-plus goods market access commitments from Malaysia would be of modest benefit to businesses and consumer bodies;
- the 'binding in' of Malaysia's current applied tariff rates would give exporters valuable certainty in an otherwise uncertain environment;
- some unions and import sensitive producers (in particular, margarine, wooden furniture, steel and plasterboard), sought the maintenance of tariff protection for as long as possible. The MNZFTA includes longer phase-out periods for these import sensitive items;
- the MNZFTA needed to include strong anti-dumping measures and retain New Zealand's right to pursue trade remedy action through the WTO. This has been secured;
- the FTA should seek to address 'behind the border' barriers to trade, such as standards, import licensing, labelling requirements, quarantine requirements, mandatory testing, etc. Organisations noted that number of these measures as obstacles to doing business in Malaysia. The TBT, SPS, and goods chapters all provide for future cooperation to reduce unnecessary compliance costs for exporters and facilitate greater regulatory compatibility around international standards;
- investment rules restricting foreign equity were widely cited as an issue for New Zealand investors and service suppliers with a 'commercial presence' in Malaysia. To this end, the MNZFTA secures a number of commercial presence commitments from Malaysia that go beyond its GATS and AANZFTA commitments;

- that private education market access was a priority for New Zealand education services exporters. The MNZFTA outcome for private education market access is one of the best New Zealand has secured in the context of any of its FTAs to date;
- The FTA should facilitate the movement of business persons and professionals between New Zealand and Malaysia. The MNZFTA allows for the expeditious processing of applications for temporary entry, within a specified timeframe, and improved Malaysian commitments for temporary entry of New Zealand business visitors;
- a number of submissions also registered concern with a lack of Intellectual Property (IP) protection in Malaysia. The MNZFTA provides for bilateral cooperation around the enforcement of intellectual property rights, as well as cooperation around the development of measures to improve domestic competition and IP protection;
- there is a need for simple and transparent customs processes and rules of origin that help New Zealand exporters access Malaysian markets. The MNZFTA Rules of Origin (ROO) outcome provides the most trade facilitating access to tariff preferences New Zealand has secured in an FTA to date. Furthermore the customs chapter secures key commitments from Malaysia that will make exporting to Malaysia easier, including 48 hour customs clearance, self-declaration for New Zealand exporters and advanced rulings; and,
- concerns about Malaysia's non-adherence to some internationally accepted labour and environment standards. In some submissions this was given as a reason to oppose the MNZFTA, in others these concerns underlined the need for the Government to pursue trade and labour and trade and environment agreements in the context of the MNZFTA. Negotiators were able to take this into account by establishing treaty-level Labour and Environment Agreements with Malaysia.

9 SUBSEQUENT PROTOCOLS AND/OR AMENDMENTS TO THE TREATIES AND THEIR LIKELY EFFECTS

The MNZFTA provides that the Agreement may be amended by agreement in writing by the Parties, and that any amendments would come into force on the date or dates agreed between them (Chapter 18, Article 18.9).

The investment chapter sets out a work programme for the negotiation of schedules of non-conforming measures which are to be concluded six months after the MNZFTA enters into force (Chapter 10, Article 10.17). An amendment of the Agreement to incorporate the schedules of non-conforming measures would be required at that time. The trade in services chapter also sets out a number of areas for review or further discussion that may result in amendments to the Agreement in the future (Chapter 8, Articles 8.9, 8.12 and 8.15).

New Zealand would consider any proposed amendment on a case by case basis and any decision to accept an amendment would be subject to the normal domestic approvals and procedures.

10 WITHDRAWAL OR DENUNCIATION PROVISIONS IN THE TREATIES

Either Party to MNZFTA may terminate the Agreement by giving six months' advance notice in writing.

11 ADEQUACY STATEMENT

The Ministry of Foreign Affairs and Trade has reviewed the aspects of the extended National Interest Analysis (NIA) that cover the regulatory impact statement (RIS) elements and considers the extended NIA is adequate according to the adequacy criteria.