The 101 guide to navigating New Zealand's Free Trade Agreements with Malaysia

Market Report

NEW ZEALAND FOREIGN AFFAIRS & TRADE Manatū Aorere

JANUARY 2022

Prepared by the New Zealand High Commission in Kuala Lumpur.

Summary

New Zealand has negotiated four Free Trade Agreements (FTAs) with Malaysia. Their terms and conditions differ. Using the most relevant FTA could increase exporters' profits and/or reduce their costs. Finding the best FTA route to market is not always obvious but it is worth putting in the time, as it avoids leaving 'money on the table'. This report offers a sense of some of the differences between the FTAs, and advises where to go to get further assistance.

Report

Two of the FTAs are in force for Malaysia: the ASEAN Australia New Zealand FTA (AANZFTA) and the Malaysia New Zealand FTA (MNZFTA); two are yet to come into force for Malaysia - the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). These agreements are a mix of bilateral (MNZFTA) and regional (AANZFTA, RCEP and CPTPP) FTAs.

Deciding which FTA to use

Handy provisions for selling goods (kiwifruit, cheese, wood etc) to Malaysia

- Almost 2/3 of tariff lines between New Zealand and Malaysia are duty free without any FTA.
- For the other 1/3 of tariff lines, the Tariff Finder can be used to compare tariff commitments across the Agreements, to help determine which is most relevant for your business.
  - MNZFTA has the lowest tariffs for the other 1/3 of tariff lines. MNZFTA's rule of origin (ROO) requirements are the most facilitative out of the four FTAs, as exporters are only required to submit a declaration of origin (i.e. based on your own businesses' assertion) rather than a certificate of origin (which requires an external entity to confirm rules of origin are being met). MNZFTA also binds Malaysia to facilitate custom clearances[1] within 48 hours[2].
  - Once CPTPP comes into force for Malaysia, the Agreement will offer valuable market access improvements for wine and liquid milk exporters. CPTPP will also reduce technical barriers to trade (standards and regulations) for wine and distilled spirits, pharmaceuticals, medical devices, cosmetics, proprietary formulas for pre-packaged food and food additives, information and communications technology products and organic products. If you are an exporter of any of those listed goods, keep an eye out for when Malaysia ratifies CPTPP as the Agreement may provide a better route to market for your business.
  - Once RCEP comes into force for Malaysia, its accumulation rule may need to be considered by some exporters. RCEP's accumulation rule[3] considers goods obtained in or processed in one member country as originating in another country, which may provide your business with valuable regional value chain options. The Agreement will also offer binding provisions to facilitate customs[4] clearance for perishable goods within six hours. For

[1] Custom clearance means moving goods through customs so they can enter the country. It may involve declaring information on the shipment being exported, as well as the parties involved in the process.
[2] The 48 hour timeframe does not include other possible clearance requirements i.e. a health clearance.
[3] AANZFTA and CPTPP also have accumulation rules.
[4] The six hour timeframe does not include other possible clearance requirements i.e. a health clearance.

example, this could be useful for our horticultural exports.

- If you have a query about selling goods to Malaysia, the New Zealand team in Kuala Lumpur (Ministry of Foreign Affairs and Trade, New Zealand Customs, New Zealand Trade and Enterprise) can help answer your question. You can get in touch by emailing exports@mfat.govt.nz, calling 0800 824 605 or visiting the Export Helpdesk (www.tradebarriers.govt.nz).

Handy provisions for selling services (travel services, telecommunication services, government services etc) to Malaysia

- The four FTAs' service provisions provide legal guarantees around the maximum level of regulation that can be imposed on a service sector. This means that, while the actual in-market condition you experience in Malaysia may be better than what is stated in the four FTAs, it cannot legally be worse.
- In AANZFTA and MNZFTA, Malaysia has provided New Zealand with legal guarantees around the maximum level of regulation in accounting, architectural, engineering, urban planning, landscape, veterinary, computer, advertising, telecoms, education, financial, health, tourism, private education, environmental, tourism, veterinary, maritime and management consulting services. MNZFTA has a more expansive definition for business person for temporary entry commitments, so the definition is wider than service sellers only.
- Once 'in force for Malaysia, CPTPP and RCEP will also provide New Zealand with legal guarantees around the maximum level of regulation in global supply chain related services (logistics, transport), accounting and agricultural services. CPTPP also defines business persons for temporary entry commitments, to include visitors at meetings and conferences for the purpose of sales, and to include dependents on intra-corporate transfers.
- Once CPTPP is in force for Malaysia, the Services Exporter Tool can also be used to understand CPTPP's service provisions.
- If you think a service provision may apply to you, the New Zealand High Commission team in Kuala Lumpur (Ministry of Foreign Affairs and Trade, New Zealand Trade and Enterprise) can help you determine the best legal guarantee across the four FTAs. If a regulation imposed on you is worse than the best legal guarantee, we can also assist to ensure that the guarantee is met by Malaysia.

Investment

- AANZFTA supports investment in the ASEAN region by ensuring better protection and security through a range of investment protection provisions (related to the free transfer of payments, protection against arbitrary expropriation, regime transparency and investor state dispute settlement (ISDS)).
- Like AANZFTA, MNZFTA includes recourse to compulsory ISDS.
- CPTPP offers investment access in Malaysia unless the sector is specifically excluded. The list of excluded sectors in the Agreement will outline the sectors that Malaysia has maintained the right to impose restrictions. CPTPP's investor state dispute settlement (ISDS) provision also requires that, before a New Zealand investor initiates arbitration, consent from the Malaysia Government must be sought. Due to Malaysia's reservations under CPTPP's investment chapter, there are certain exclusions from ISDS that cover specific products (e.g. tobacco), as well as claims arising from policies created for legitimate public welfare objectives.
- RCEP does not include an ISDS provision.

When deciding which FTA to use, other factors such as intellectual property, competition, labour and environment provisions could be considered.

Need further assistance

This report offers a sense of some of the differences between the four FTAs, and is a high-level guide only. If you have specific questions or want to learn more about the FTAs, the New Zealand team in Kuala Lumpur (Ministry of Foreign Affairs and Trade, New Zealand Trade and Enterprise, Customs) are happy to engage with exporters and investors by zoom, email, phone or in-person to talk through the above.

Areas for FTA improvement

MFAT welcomes insights from New Zealand exporters, industry groups and investors on how they use New Zealand's FTA network with Malaysia, including opportunities they see for future improvements.

More reports

View full list of market reports from MFAT at www.mfat.govt.nz/market-reports

If you would like to request a topic for reporting please email exports@mfat.net

To get email alerts when new reports are published, go to our subscription page.

To contact the Export Helpdesk

Email exports@mfat.net
Call 0800 824 605
Visit Tradebarriers.govt.nz

Disclaimer