



Protocol to Upgrade the New Zealand-China Free Trade Agreement

NATIONAL INTEREST ANALYSIS

JANUARY 2021

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Frequently Used Acronyms and Terms

AANZFTA	The ASEAN-Australia-New Zealand Free Trade Agreement
APEC	Organisation for Asia Pacific Economic Cooperation
ASEAN	The Association of South East Asian Nations
B2C	Business-to-consumer electronic commerce transactions
C2C	Consumer-to-consumer electronic commerce transactions
CPC	Central Product Classification system. A classification system based on the physical characteristics of goods or on the nature of the services rendered.
CPTPP	Comprehensive and Progressive Agreement for Trans Pacific Partnership
Customs	The New Zealand Customs Service
CVA	Customs Valuation Agreement
DEPA	The Digital Economy Partnership Agreement
ECA	Environment Cooperation Agreement
EEE MRA	The Mutual Recognition Arrangement on Electrical and Electronic Equipment
FTA	Free Trade Agreement
GATS	Global Agreement on Trade in Services (The WTO Agreement covering trade in services)
GATT	Global Agreement on Tariffs and Trade 1994 (The WTO Agreement covering trade in goods)
GDP	Gross Domestic Product
GPA	WTO Agreement on Government Procurement
HS	The Harmonized Commodity Description and Coding System (Harmonised System, HS), a near-universal method for classifying international trade
ICT	Information and communication technology
INZ	Immigration New Zealand
JEVS	Joint Electronic Verification System
MBIE	The Ministry of Business, Innovation and Employment
MEA	Multilateral Environment Agreement
MFAT	The Ministry of Foreign Affairs and Trade
MPI	The Ministry for Primary Industries
MFN	Most-favoured-nation, a requirement that preferential treatment extended to one country (the “most favoured”) be extended to others.
NIA	National Interest Analysis
NTM	Non-tariff measure

Frequently Used Acronyms and Terms

NZTE	New Zealand Trade and Enterprise
OECD	Organisation for Economic Co-operation and Development
PACER Plus	The Pacific Agreement on Closer Economic Relations
RCEP	Regional Comprehensive Economic Partnership Agreement
CEP	The New Zealand-Singapore Closer Economic Partnership
SMEs	Small and medium-sized enterprises
SPAM	Unsolicited commercial electronic messages
TBT (Agreement)	Technical Barriers to Trade (WTO Agreement on Technical Barriers to Trade)
TFA	WTO Agreement on Trade Facilitation
TNF	Trade Negotiations Fund. A New Zealand government inter-agency fund for the negotiation of Free Trade Agreements and to maximize the scope for New Zealand to enter and to gain from these agreements.
TPP	The original Trans Pacific Partnership Agreement
WTO	World Trade Organization
WCO	World Customs Organization

1 Executive summary

Background

The New Zealand-China Free Trade Agreement (FTA) has been very successful. It has contributed to significant growth in trade and has been a catalyst for closer trade and economic relations between New Zealand and China. Since the FTA came into force in 2008, New Zealand-China two-way trade has quadrupled from \$8 billion to over \$32 billion in 2019. At the end of 2019, China was New Zealand's largest goods market, largest source of international students, second largest source of tourists, and a significant foreign investor.

The scope and nature of the New Zealand-China trading relationship has changed since the original FTA was agreed over 10 years ago. While most tariffs on New Zealand exports to China have been eliminated under the 2008 FTA, a number of non-tariff barriers have continued to impact trade. Trade policy has also evolved to encompass new issues; and new technologies and business practices have created new opportunities, but also new challenges for New Zealand exporters. In addition, while the goods market access commitments in the 2008 FTA continue to be China's best ever, China's more recent trade deals with other FTA partners have meant that, in quality terms, New Zealand's FTA was falling behind in a number of other areas, like services.

An upgrade was seen as an opportunity to ensure that the New Zealand-China FTA continues to provide the best possible access for New Zealand exporters, reflects the current circumstances of trade and business between our two countries, and ensures that New Zealand maintains its position as one of China's leading FTA partners.

Negotiations to upgrade the existing FTA were launched in November 2016. After three years and nine rounds of talks, the negotiations were concluded on 15 October 2019 in Beijing, China. New Zealand and China jointly announced the substantive conclusion of negotiations on 4 November 2019, following a meeting between Prime Minister Jacinda Ardern and China's Premier Li Keqiang.

This National Interest Analysis (NIA) examines the Protocol to Upgrade the Free Trade Agreement between New Zealand and the People's Republic of China which amends and upgrades the original FTA signed by New Zealand and China in 2008.

There are also four related elements that sit alongside the Protocol text and form part of the outcomes to upgrade the FTA:

- a treaty status side letter on tariff elimination by China for 12 New Zealand wood and paper products, and the establishment of a process through the FTA Joint Commission to provide better transparency of China's implementation of its obligation to extend to New Zealand any future tariff cuts agreed with other countries;

- a treaty status side letter on New Zealand's readjustment of certain allocations and criteria for the temporary employment entry of natural persons in 'iconic Chinese occupations';
- a non-treaty status side letter that records the current New Zealand screening thresholds applicable to Chinese investments in significant business assets; and
- a non-treaty status side letter on cosmetics regulatory cooperation.

This NIA assesses the Protocol from the perspective of its impact on New Zealand and New Zealanders. The NIA does not seek to address the impact of the Protocol on China.

Reasons for New Zealand to become a Party to the Protocol

This NIA assesses the prospect of New Zealand signing the Protocol, and its associated instruments, and concludes that it would be in New Zealand's national interest to do so.

Signature and entry into force of the Protocol contributes to New Zealand's economic recovery from COVID-19. Trade will be a critical enabler of our economic recovery. One in four jobs in New Zealand depend on exports, and these jobs tend to be more productive and pay higher wages. New Zealand's trade agreements help facilitate New Zealand exports of goods and services to markets around the world, including China. That is why one of the pillars of New Zealand's Trade Recovery Strategy is reinvigorating our FTA network. Upgrading the NZ-China FTA will help to deliver on that strategy.

Strategically, entry into force of the Protocol also shows New Zealand and China's continued commitment to work together to strengthen the international rules-based system. This takes on even greater significance as these rules will be more important than ever in assisting with the global economic recovery from the impacts of the COVID 19 pandemic.

The principal gains for New Zealand in signing the Protocol are:

- Enhanced trade facilitation measures and other provisions that respond to concerns raised by New Zealand exporters regarding non-tariff barriers impacting trade. These outcomes will lower compliance costs, reduce the time exporters spend waiting for goods to clear customs, and enhance transparency and predictability around China's processes.
- Expanded services market access and 'Most Favoured Nation'¹ (MFN) commitments that are on a par with, or better than, China's other FTAs, and which will protect and enhance New Zealand's competitive position in sectors of importance, including education.
- Improvements to the existing FTA's goods market access outcomes, through tariff elimination on an additional 12 wood and paper products.
- A modern set of trade rules and the introduction of new trade commitments in areas like e-commerce to reflect today's business practices and provide additional legal certainty for New Zealand business in China.

¹ Most favoured nation (MFN) commitments require Parties to an FTA to extend any better treatment relating to market access agreed by either Party with third countries automatically to the other Party.

- “Future proofing” the FTA and deepening opportunities for trade policy dialogue, by putting in place improved processes to help tackle problems that may arise, and pathways to discuss issues over time.
- The support provided by the Protocol to New Zealand’s wider trade policy interests in strengthening economic integration in the Asia Pacific region, and to strengthening the international rules-based trading system.
- The strategic benefits of an upgraded FTA to the bilateral relationship including New Zealand’s position in China as a favoured trading partner. This will help to ensure the FTA continues to attract Chinese agency engagement and deliver ongoing and increasing benefit for our exporters.

The reasons for New Zealand entering into the Protocol are further expanded on in Section 3 of this NIA. Detailed commentary on the advantages and disadvantages of specific commitments are outlined in Section 4.

Obligations for New Zealand under the Protocol

Key new obligations for New Zealand under the Protocol include:

- The introduction of the ability for “approved exporters” from New Zealand or China to self-declare the origin of their goods for the purposes of claiming tariff preference under the FTA. These new commitments will be implemented through amendments to the existing Joint Electronic Verification System (JEVS). The option of obtaining a Certificate of Origin will continue to exist, so exporters will be able to choose the method that best suits their particular circumstances.
- New services market access commitments to China in 20 new sectors, including container station and depot services, maritime agency services, ground handling services and specialty air services; and expanded services MFN coverage to China for an additional 14 sectors.
- Adjustments to the temporary employment entry allocations and criteria for ‘iconic Chinese occupations’ under the existing FTA.
- New consultation and cooperation mechanisms on rules of origin and operational procedures, customs cooperation, e-commerce, environment and trade, government procurement and competition policy.

The legal obligations on New Zealand as a result of treaty action are detailed in Section 5 of this NIA.

Economic, social, cultural and environmental effects

While the Protocol will introduce new treaty level commitments with respect to China, the commitments made by New Zealand in the Protocol all sit within New Zealand’s existing domestic policy and legislative settings and established FTA practice. This means the Protocol is not expected to impact current policy space. Care has been taken to ensure that the flexibilities and safeguards secured in the existing FTA, which preserve the Government’s right to regulate for legitimate policy purposes, have not been altered and will continue to apply to the commitments in the existing FTA and the Protocol.

Economic effects

The outcomes achieved through the Protocol will assist with achieving the Government's Trade for All agenda by helping New Zealand exporters to realise additional cost savings and benefits from trade, while also improving the focus of the existing FTA on the three key dimensions of the Government's economic plan (productivity, sustainability, inclusiveness) and continuing to preserve the Government's right to regulate for legitimate policy purposes.

The Protocol is expected to deliver direct economic benefits through the removal of tariffs on an additional 12 wood and paper products exports to China, resulting in duty savings of about NZ\$1.7 million per year for New Zealand based on current trade once fully implemented. This will mean that 99% of New Zealand's nearly \$3 billion wood and paper trade to China will receive tariff-free access. Enhanced rules of origin and customs cooperation commitments will reduce administrative barriers and further facilitate goods trade. The expanded services market access and MFN commitments will level the playing field for New Zealand services exporters and protect and enhance New Zealand's future competitive position. Adjustments to the temporary employment entry allocations and criteria for 'iconic Chinese occupations' will better reflect the demands of the New Zealand tourism and education industries. New chapters on e-Commerce, Environment and Trade, Competition Policy and Government Procurement will introduce a number of trade commitments and new avenues for cooperation and dialogue on fast-changing and emerging issues, like e-commerce goods trade.

Social effects

The Protocol and associated side letters are not expected to have an impact on New Zealand's ability to develop social policy. The Protocol was negotiated so as not to impair New Zealand's right to regulate and make public policy. The changes to the temporary employment entry conditions and visa allocations are not expected to have a significant impact on domestic employment. The visa allocations under the FTA were re-distributed with a view to adding allocation only to those areas where the demand for workers outstripped available supply; and where industry feedback indicated difficulties in finding suitably qualified domestic employees due to specialised Mandarin language skills requirements. No other health, immigration or human rights implications have been identified.

Effects on Māori

When drafting and negotiating the Protocol, care has been taken to avoid commitments that would impair the Crown's ability to fulfil its obligations to Māori. The existing FTA contains safeguards to ensure there are no adverse effects on New Zealand cultural values, including Māori interests. These safeguards will remain unchanged as a result of the Protocol. The Treaty of Waitangi exception also remains unchanged from the existing FTA and provides clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi. The Māori businesses, iwi, hapū and whānau most likely to benefit from the Protocol's new tariff reductions and trade facilitation measures include those with interests in the forestry and food & beverage sectors. The Protocol's

enhanced focus on the environment and the introduction of a new Environment and Trade Chapter has been both welcomed² and described as aligning with Māori concern for the environment.

Environmental effects

The Protocol contains provisions which 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. The Protocol's treaty status commitments on environment and trade will require the Parties to effectively enforce their environmental laws, and not to derogate from them in order to encourage trade or investment. The Protocol will not inhibit the New Zealand Government's ability to regulate for the environment. The Protocol is not expected to have any negative product, structural or scale effects. The review provisions of the Protocol will also require New Zealand and China to review the impact of implementing the Protocol on the environment, and report on any effects over time.

Costs

One-off costs associated with implementing the Protocol were incurred in the 2019/2020 Financial Year. Any promotional activities to explain the key outcomes of the Protocol are expected to be undertaken as part of the Ministry and Foreign Affairs and Trade's wider trade policy outreach activities, which includes outreach for both consultations (for on-going negotiations of other treaties).

Costs of implementing the Protocol include one-off costs of \$250,000 secured through the inter-agency Trade Negotiations Fund (TNF) for software development to make changes to the Joint Electronic Verification System (JEVS) to implement the commitments related to self-declaration of origin.

The costs of servicing any FTA committees are expected to be met from the baselines of agencies involved, and will build on and combine with activities that were already a part of the relationship under the existing FTA and its established structures. A number of commitments in the Protocol establish mechanisms that allow for future cooperation between New Zealand and China 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 funded where possible from baselines. Where not possible, Cabinet approval for additional funding would be sought.

Consultation

As highlighted in Section 9 of this NIA, the Ministry of Foreign Affairs and Trade (MFAT), together with other government agencies, has been active in engaging with a wide spectrum of stakeholders throughout the New Zealand-China FTA Upgrade negotiation process and after its conclusion.

Like all bilateral treaties of significance, the Protocol will be scrutinised by a Parliamentary Select Committee and Parliament prior to entry into force.

² The Environment and Trade chapter was welcomed in a press release by Te Taumata, a key partner for dialogue with the New Zealand Government on trade related issues, see: <http://createsend.com/t/j-863C10429C8A426C2540EF23F30FEDED>

2 Nature and timing of proposed treaty action

The Protocol amends and upgrades *the Free Trade Agreement between New Zealand and the People's Republic of China* (the FTA) which was signed on 7 April 2008 and entered into force on 1 October 2008.

The negotiations to upgrade the FTA were formally launched in November 2016. A total of nine rounds of negotiations were held between April 2017 and October 2019. The negotiations concluded on 15 October 2019 in Beijing; and substantive conclusion of negotiations was jointly announced by New Zealand and China on 4 November 2019, following a meeting between Prime Minister Jacinda Ardern and China's Premier Li Keqiang.

The outcome of the FTA Upgrade negotiations consists of an updated Protocol text, along with four related instruments that sit alongside the Protocol:

- a treaty status side letter on tariff elimination by China for 12 New Zealand wood and paper products, and the establishment of a process through the FTA Joint Commission to provide greater transparency of China's implementation of its obligation to extend to New Zealand any future tariff cuts agreed with other countries;
- a treaty status side letter on New Zealand's readjustment of certain allocations and conditions for the temporary employment entry of natural persons in 'iconic Chinese occupations';
- a non-treaty status side letter that records the current screening thresholds applicable to Chinese investments in New Zealand significant business assets; and
- a non-treaty status side letter on cosmetics regulatory cooperation.

The Protocol updates the structure of the existing FTA. It incorporates any amendments and new provisions to existing chapters of the FTA into replacement chapters, which are set out in appendices to the Protocol. It also inserts new chapters after chapter 18 (Final Provisions) of the existing FTA.

This NIA deals with the new or amended obligations in the Agreement and does not discuss in detail the rights and obligations that continue to apply to New Zealand and China under the existing FTA.

The table below provides an overview of the chapters and annexes of the existing FTA that are unchanged; chapters and annexes that have been amended through the FTA Upgrade negotiations; and chapters that are new.

Section 2: Nature and timing of proposed treaty action

Area	Change	Location in Protocol
Preamble	No change – further preambular language is included in the Protocol	-
Chapter 1: Initial Provisions	No change	-
Chapter 2: General Definitions	No change	-
Chapter 3: Trade in Goods	No change	-
• Annex 1 Part A: Tariff Schedule of China	Amended through a side letter (refer below)	-
• Annex 1 Part B: Tariff Schedule of New Zealand	No change	-
• Annex 2: Special Agricultural Safeguard Measures	No change	-
• Annex 3: Mid-Term Review Mechanism	No change	-
• Annex 4: China's Country-Specific Tariff Quotas for Wool and Wool Tops	No change	-
Chapter 4: Rules of Origin and Operational Procedures	Amended	Appendix 1
• Annex 5: Product Specific Rules of Origin	No change	-
• Annex 6: Certificate of Origin	No change	-
• Annex 7: Declaration of Origin	No change	-
• Annex 16: Necessary Elements in a Declaration of Origin by an Approved Exporter	New	Appendix 12
Chapter 5: Customs Procedures and Cooperation	Amended	Appendix 2
Chapter 6: Trade Remedies	No change	-
Chapter 7: Sanitary and Phyto-sanitary Measures	No change	-
Chapter 8: Technical Barriers to Trade	Amended	Appendix 3
Chapter 9: Trade in Services	Amended	Appendix 4
• Annex 8: Schedules for Specific Commitments on Services	Amended	Appendix 10
• Annex 9: Sectoral Coverage under Article 5 of Chapter 9 (Trade in Services)	Amended	Appendix 11
• Annex 17: Subsequent Negotiations on Trade in Services	New	Appendix 13
Chapter 10: Movement of Natural Persons	No change	-
• Annex 10: Commitments on Temporary Entry by Natural Persons	No change	-
• Annex 11: Commitments on Temporary Employment Entry by Natural Persons	Amended through a side letter (refer below)	-
• Annex 12: Visa Facilitation	No change	-
Chapter 11: Investment	No change	-
• Annex 13: Expropriation	No change	-
Chapter 12: Intellectual Property	No change	-
Chapter 13: Transparency	No change	-
Chapter 14: Cooperation	Amended	Appendix 5
• Annex 15: Television Programmes Co-Production Agreement between the Government of	No change	-

Section 2: Nature and timing of proposed treaty action

New Zealand and the Government of the People's Republic of China		
Chapter 15: Administrative and Institutional Provisions	No change	-
Chapter 16: Dispute Settlement	No change	-
Chapter 17: Exceptions	No change	-
Chapter 18: Final Provisions	No change	-
Chapter 19: Electronic Commerce	New	Appendix 6
Chapter 20: Government Procurement	New	Appendix 7
Chapter 21: Competition Policy	New	Appendix 8
Chapter 22: Environment and Trade	New	Appendix 9
Annex 14: The Agreement between the Government of New Zealand and the Government of the People's Republic of China on Cooperation in the Field of Conformity Assessment in Relation to Electrical and Electronic Equipment and Components	No change	-
Annex 18: Electronic Means Utilized by Parties for the Publication of Transparency Information	New	Appendix 14
Treaty status side letter on wood and paper products	New	Side Letter
Treaty status side letter on temporary employment entry of natural persons	New	Side Letter
Non-treaty status side letter on investment screening thresholds	New	Side Letter
Non-treaty status side letter on cosmetics regulatory cooperation	New	Side Letter

The Protocol will enter into force 60 days after New Zealand and China exchange written notification that their respective domestic legal procedures have been completed or after such other period as the Parties may agree. For New Zealand, the required domestic legal procedures include the Parliamentary Treaty Examination process. The side letter on wood and paper products and the non-treaty status side letter on cosmetics regulatory cooperation will enter into force on the date on which the Protocol enters into force.

The side letter on temporary entry of natural persons in 'iconic Chinese occupations' will enter into force 90 days after China's reply indicating acceptance to New Zealand.

The non-treaty status side letter on investment screening thresholds will reflect a shared understanding between New Zealand and China from the date of signature.

Neither the existing FTA, the Protocol, nor any of its associated instruments will apply to Tokelau.

3 Reasons for New Zealand becoming a Party to the Treaty

The reasons for New Zealand becoming a Party to the Protocol are both economic and strategic. New Zealand is an export-dependent country. Trade is critical to our continued growth and prosperity. One of New Zealand's core objectives in trade policy is to generate a better standard of living for all New Zealanders by helping businesses succeed internationally and grow jobs and opportunities locally, while safeguarding the Government's right to regulate and implement policies in the interests of New Zealand and our people. This contributes to New Zealand's overall economic strategy and helps realise the Government's vision of a productive, sustainable and inclusive economy that will be net carbon zero by 2050. Key to advancing this objective is removing and reducing barriers to trade and establishing frameworks through which trade linkages can evolve and expand, thereby driving economic growth. Continuing to grow our trade and export profile with key trading partners like China is an important means of achieving this.

Signature of the FTA Upgrade comes at a time of considerable disruption to international trade and supply chains due to COVID-19. The World Trade Organisation (WTO) now forecasts³ a 9.2% decline in the volume of world merchandise trade for 2020 as the COVID-19 pandemic disrupts economic activity on a scale not seen since the Great Depression.

In the early days of the pandemic, COVID-19 related border and travel restrictions and supply chain disruptions had an impact on New Zealand exports of goods and services around the world, including with China. New Zealand-China goods trade, including for medical supplies, continued largely to flow with some disruptions, but these have now mostly stabilised. Some exporters of highly perishable goods, such as live seafood, continue to experience higher than normal costs due to air freight capacity constraints. The hardest hit sectors continue to be tourism and education.

Signature and entry into force of the FTA Upgrade Protocol contributes to New Zealand's economic recovery from COVID-19. Trade is a key driver of New Zealand's prosperity, and will be a critical enabler of our economic recovery. One in four jobs in New Zealand depend on exports, and these jobs tend to be more productive and pay higher wages. New Zealand's trade agreements help facilitate New Zealand exports of goods and services to markets around the world, including China. That is why one of the pillars of New Zealand's Trade Recovery Strategy is reinvigorating our FTA network. Upgrading the NZ-China FTA will help to deliver on that strategy.

³ Based on latest (October 2020) estimates. These estimates are subject to uncertainty due to the evolving nature of the pandemic and government responses to it.

In the third quarter of 2020, China's economy grew by 4.9%, meaning the country has now recorded GDP growth (0.7%) over the first nine months of the year. China's economy is widely expected to achieve GDP growth for the full calendar year – the only major economy likely to achieve this in 2020. Despite the disruptions of COVID-19 and New Zealand's continued interest in diversifying our markets, China will continue to be a significant source of trade and economic opportunity for our exporters.

The New Zealand-China FTA has been very successful. It has contributed to significant growth in trade and has been a catalyst for closer trade and economic relations between New Zealand and China. Since the FTA came into force in 2008, New Zealand-China two-way trade has quadrupled from \$8 billion to over \$32 billion in 2019. New Zealand goods exports to China have increased almost six-fold, outperforming initial economic modelling estimates of the FTA's benefits⁴. At the end of 2019, China was New Zealand's largest goods market, largest source of international students, second largest source of tourists, and a significant foreign investor.

An upgrade to the FTA was seen as an opportunity to further deepen and broaden China-New Zealand economic relations; provide the best possible access for New Zealand exporters; and ensure the FTA continues to reflect current circumstances of trade, investment and business between New Zealand and China. In particular, New Zealand's broad objectives in advancing an upgrade to the existing FTA with China included:

- Addressing tariff and non-tariff barriers raised by New Zealand exporters as adding cost to or inhibiting trade with China;
- Updating the FTA to reflect developments in trade policy and domestic regulation in China since the original agreement was negotiated in 2008; and
- Deepening cooperation with China's regulators.

The outcomes achieved in the Protocol, as detailed in Section 4, contribute to meeting these objectives and will lead to a number of strategic and commercial benefits for New Zealand and our exporters, as outlined below.

3.1 Advancement of New Zealand's strategic interests

China is one of New Zealand's most important trading partners. New Zealand and China have a strong track record of constructive engagement on bilateral trade and economic issues, as well as cooperation to progress shared goals in the Asia-Pacific Economic Cooperation grouping, the East Asia Summit, the Regional Comprehensive Economic Partnership negotiations, and the World Trade Organisation (WTO). The entry into force of the Protocol will restore our FTA to its position as the highest quality of China's FTAs. The outcomes achieved will maintain and enhance the FTA's centrality to New Zealand's broader bilateral relationship with China, and ensure the FTA continues to deliver ongoing and increasing benefit. In strategic terms, it will help New Zealand's on-going positioning in China as a favoured trading partner, to the benefit of our exporters.

⁴ In 2004, the Australian Centre for International Economics estimated (with a model) that New Zealand exports to China would increase 123% as a result of the FTA (\$3.7 billion between 2007 and 2016). Actual trade has significantly outperformed these estimates – goods trade for the same period have risen by 382% (\$7.5 billion).

New Zealand as a small trading nation has benefited from a well-functioning, rules-based international trading system, underpinned by the WTO. But this international system is currently facing significant threats amid a global environment of rising protectionism. New Zealand remains committed to working with others, including China, to retain and revitalise the WTO system. In conjunction with this, developing a stronger, more coherent and modernised network of free trade agreements remains an important priority. Against this backdrop, the timing of the Protocol is significant. It contributes to the objective of expanding and refreshing our FTA network, and underlines the importance of New Zealand and China continuing to work together to strengthen the trade architecture that underpins the international system. It also sends a strong statement of New Zealand and China's continued commitment to the rules-based international trading system. In the context of the current COVID-19 pandemic, this takes on even greater significance as these rules will be more important than ever in assisting with the global economic recovery

3.2 Modernising the FTA, addressing non-tariff barriers and decreasing the cost of trade

The nature of the New Zealand-China trading relationship has changed considerably since the FTA was negotiated over 10 years ago. While most tariffs on New Zealand exports to China have now been eliminated under the existing FTA, a number of non-tariff barriers have continued to impact trade. Issues raised by New Zealand exporters include non-recognition of New Zealand test reports from accredited New Zealand laboratories by Chinese border agencies, customs delays and onerous customs requirements, and sector-specific restrictions such as animal testing requirements for cosmetics. The Protocol will modernise the rules of the FTA to respond to the changed nature of New Zealand-China trade. A number of outcomes respond directly to the practical challenges raised in consultations by New Zealand exporters as adding cost or restricting trade, and will provide additional guarantees for New Zealand exporters doing business in China. This includes a number of meaningful gains in addressing non-tariff barriers and other trade facilitation measures, including more efficient and streamlined processes and faster border clearance times for goods, and provisions to increase transparency.

The Protocol will also introduce entirely new provisions to the FTA to reflect advances in trade policy and business practices over the past decade. This includes new provisions on competition policy, government procurement, the environment and digital trade. None of these issues are currently included in the FTA, though all are a common feature of New Zealand's more recent FTAs.

3.3 New market access opportunities

The goods market access outcomes in the existing FTA already provide the highest level of tariff liberalisation of any of China's FTAs. Over 98% of New Zealand goods trade by value will have duty free access to China upon full implementation of the existing FTA. The Protocol will further improve upon the market access outcomes in the existing FTA by expanding tariff elimination for additional New Zealand exports of wood and paper products to China. These outcomes will provide further tariff

savings and help to increase the competitiveness of New Zealand exporters in these sectors, which will in turn contribute to New Zealand's regional economic development objectives.

In the area of services, our FTA was falling behind in quality terms. Progressive liberalisation by China has meant that its more recent FTAs and FTA Upgrades with about 20 other trade partners, including Australia, Korea and Switzerland, have contained better market access commitments. The Protocol will introduce a number of new services market access commitments and expand upon the commitments in our existing FTA. This will ensure that our FTA services outcomes are at least on par with, or better than, China's other FTAs and thus 'level the playing field' for New Zealand services exporters. A number of new or improved mechanisms for future liberalisation have also been agreed. This will protect New Zealand's future competitive advantage, including in services sectors of importance to New Zealand, like education.

3.4 Enhanced mechanisms for cooperation and dialogue

The Protocol will introduce new mechanisms for further deepening trade and economic policy dialogue and cooperation between New Zealand and China. A number of new committees will be introduced, including in Customs Procedures and Cooperation, Rules of Origin and Operational Procedures, E-commerce and Environment and Trade. Having these dedicated structures in place will help to ensure the effective monitoring and implementation of FTA commitments, and provide avenues to address any issues that may arise over time. This will ensure our FTA helps to secure Chinese political and agency engagement, to continue developing and protecting our economic relationship in an increasingly crowded space.

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force

This section of the NIA outlines the advantages and disadvantages that would accrue from the Protocol and related instruments entering into force for New Zealand. It concludes that it is in New Zealand's national interest for the Protocol and related instruments to enter into force. The counterfactual for comparison is if the Protocol and related instruments did not enter into force and the New Zealand-China FTA remains in its current form.

The net effect on New Zealand of these different elements in the Protocol is assessed in Section 7 of this NIA.

4.1 Trade in Goods

The Trade in Goods Chapter and associated Annexes set out the rules New Zealand and China apply to qualifying imports from the other Party, including the elimination of tariffs (customs duties). As part of the existing FTA, New Zealand and China each agreed a "schedule" of tariff commitments. Each schedule specifies the full list of national tariff lines⁵ of each country, and the preferential rate that will apply to qualifying imports from the other Party.

The goods market access commitments New Zealand achieved in the original FTA continue to be China's best ever, with over 98% of New Zealand goods trade by value benefitting from duty free access to China upon full implementation of the existing FTA. Despite this, there were some sectors that continue to face tariff barriers under the existing FTA. In particular, New Zealand's dairy and wood and paper sectors identified the remaining tariffs under the existing FTA as a priority issue. Improving upon the market access outcomes in the original FTA for these key sectors was one of New Zealand's objectives in the FTA Upgrade negotiations.

Key amendments to the existing Trade in Goods related commitments that will result from the Protocol are set out below.

4.1.1 Advantages

Tariff savings on New Zealand wood and paper exports to China

China has agreed to eliminate customs duties on 12 additional tariff lines of wood and paper products previously excluded from tariff elimination commitments under the existing FTA. These commitments

⁵ Both New Zealand and China follow the Harmonized Commodity Description and Coding System (Harmonised System, HS) to structure national tariffs. The HS system is a near-universal method for classifying international trade.

will be phased in through a process of linear tariff cuts, over a 10 year implementation period. Collectively, these 12 tariff lines represent NZ\$213 million in New Zealand's exports to the world and NZ\$35 million in New Zealand's exports to China.⁶ The new commitments will result in duty savings of approximately NZ\$1.7 million per year⁷ for New Zealand exporters, based on current levels of trade. Once fully implemented, it will mean that 99% of New Zealand's nearly \$3 billion wood and paper trade to China will receive tariff-free access.

Enhanced transparency of forestry products benefitting from tariff liberalisation

The Protocol side letter will also establish a new process in the FTA Joint Commission relating to implementation of a commitment China made in the existing FTA that, should China grant any third party more favourable tariff treatment in the future on wood and paper tariff lines, then this treatment would be extended to New Zealand.

Under the Protocol, the FTA Joint Commission will have a new oversight role in confirming and recording New Zealand wood and paper products benefitting from these existing commitments. Since the existing FTA entered into force in 2008, China has eliminated or reduced tariffs on 75 wood and paper tariff lines for New Zealand products, as a result of this provision, with an additional 14 tariff lines still pending. The new FTA Joint Commission process will provide better transparency of China's implementation of its obligation to extend to New Zealand any future tariff cuts agreed with other countries, and ensure up-to-date information on tariff treatment for New Zealand wood and paper exports to China.

4.1.2 Disadvantages

No disadvantages have been identified for New Zealand from the additional tariff commitments that China would make to New Zealand. Where these tariff commitments have an effect, they would be beneficial (leading to improved competitiveness for New Zealand wood and paper exporters). In addition, New Zealand has no additional tariff commitments under the Protocol, as China's imports to New Zealand have been fully liberalised since 2018, pursuant to commitments in the existing FTA.

The New Zealand dairy industry had expectations that the FTA Upgrade would improve market access through changes to the dairy special safeguards provisions in the existing FTA. These volume-based safeguards currently restrict the amount of New Zealand dairy exports that can benefit from tariff-free access. Under the terms of the existing FTA, these safeguards will expire for liquid milk and cream, butter and cheese at the end of 2021, and for milk powders at the end of 2023. During the Upgrade negotiations, New Zealand made significant efforts to negotiate earlier expiration dates for the dairy safeguards, but ultimately was unsuccessful.

China's objective in negotiations on dairy safeguards was to expand the safeguards. There was a risk, therefore, that re-opening the safeguards could result in a worse outcome for New Zealand, including the possibility of a permanent safeguard being imposed on key exports like whole milk powder, as in the case of the Australia-China FTA.

⁶ Based on average annual exports by New Zealand for last five calendar years 2015-19.

⁷ Based on average annual imports by China for last five calendar years 2015-19.

In light of these risks, it was judged that preserving the 2008 FTA commitment to remove all safeguards, which will provide full tariff-free trade for New Zealand dairy exports by 2024, was the best means of ensuring New Zealand's tariff advantage into the China market over the longer term. This means that New Zealand dairy exporters will continue to face tariff barriers for some products in the short term, but by January 2024, those barriers will be eliminated and New Zealand will have the best access to China for dairy products of any country.

4.2 Rules of Origin and Operational Procedures

The Rules of Origin and Operational Procedures Chapter establishes rules to determine when goods traded between New Zealand and China "originate" in the other Party, as well as the processes that must be followed to qualify for relevant tariff preferences and other benefits provided in the FTA. All FTAs include such rules, and they can be a key determinant in how easily exporters are able to access preferences (including market access) in an FTA.

The FTA Upgrade negotiations were an opportunity to build and improve upon the Rules of Origin and Operational Procedures Chapter in the existing FTA, to respond to practical challenges raised by New Zealand businesses and further facilitate goods trade.

Key outcomes of the Protocol in relation to rules of origin are set out below.

4.2.1 Advantages

Self-declaration of origin by 'approved exporters'

The existing FTA requires exporters to obtain a Certificate of Origin from an authorised issuing body, such as a Chambers of Commerce, in order to claim tariff preference under the FTA. Under the Protocol, a new category of exporter will be established called an 'approved exporter.' Approved exporters will be able to self-declare⁸ the origin of their goods as an alternative option to obtaining a Certificate of Origin from an authorised issuing body. This is New Zealand's preferred approach in trade agreements and significantly reduces transaction costs for businesses looking to use FTA tariff preferences.

New Zealand and China have agreed that each Party will be able to determine which of its exporters can be 'approved exporters' for the purposes of self-declaring the origin of their goods. New Zealand's intentions are to design the system in a way that ensures a broad range of businesses can become approved exporters, while also ensuring that appropriate checks are included to safeguard the integrity of the scheme. The option of obtaining a Certificate of Origin will continue to exist, so exporters will be able to choose the method that best suits their particular circumstances.

⁸ Where an approved exporter self-declares their goods, they will need to electronically submit a prescribed data set that will be provided to the importing Customs agency. For New Zealand exporters, this information will be transmitted through an extension to the New Zealand Customs Service's existing Joint Electronic Verification System (JEVS) with China Customs. This system is currently used to provide electronic information contained on Certificates of Origin to China Customs to facilitate the entry of New Zealand imports.

Amended direct consignment provisions

Due to New Zealand's geographical isolation and consolidation of shipping routes, many goods exports transit through a third country (e.g. Singapore) en route to China. The direct consignment provisions in an FTA set out the evidentiary requirements for exporters to demonstrate that their goods are only in transit through that third country, and therefore still of New Zealand origin and able to qualify for preferential tariff rates. The existing FTA states that 'customs documents' issued by the country of transit can be required as evidence of compliance with direct consignment requirements. At best this can be an additional compliance cost for traders, and at worst could result in preference being lost because many customs authorities do not issue such documents for goods in transit. The Protocol amends this provision to provide more facilitative and practical rules by enabling exporters to use 'existing commercial documents' to demonstrate the transit (and if needed the storage of goods) through third countries. Only when the importing Customs agency is not satisfied that readily available, existing commercial documents are sufficient to demonstrate direct consignment, can 'other documents' be sought. In addition, direct consignment coverage will be extended to cover goods in transit for up to twelve months.

New provision on 'minor errors'

A provision commonly included in many of New Zealand's FTAs, but not in the existing New Zealand-China FTA, ensures that minor errors or discrepancies in documentation cannot be used as the sole reason to render documents invalid. This is important because where traders' documentation is rendered invalid by the importing Customs authority, the necessary information to verify origin status under an FTA may be deemed not provided and the imported good may be disqualified from accessing preferential tariff rates under the FTA.

The Protocol introduces new provisions on minor errors which align the New Zealand-China FTA with New Zealand's preferred trade practice. This will remove a potential avenue for goods to be denied preferential tariff rates, thereby providing additional surety to traders.

Rules of Origin Committee

The Protocol will establish a new Rules of Origin and Operational Procedures Committee. This is New Zealand's preferred practice and will ensure effective mechanisms exist to oversee the implementation of chapter commitments, as well as provide avenues for cooperation and dialogue.

4.2.2 Disadvantages

The provisions agreed all sit within New Zealand's established and preferred FTA practice. As a result, there are no disadvantages expected as a result of the modernised rules of origin and operational procedures provisions.

The existing FTA requires exporters to obtain a Certificate of Origin from the Chambers of Commerce for a fee in order to claim tariff preference under the FTA. The New Zealand Chambers of Commerce have raised concerns regarding the Protocol's introduction of a mechanism for exporters to self-

declare the origin of their goods. The Chambers consider this will reduce demand for their services and could negatively impact small and medium enterprises who lack the scale and infrastructure for undertaking self-declaration. However this risk is considered minor as Certificates of Origin issued by Chambers will continue to exist as an option for New Zealand exporters under the Protocol.

4.3 Customs Procedures and Cooperation

The Protocol will introduce several new provisions, and amend a number of existing provisions, in the Customs Procedures and Cooperation Chapter of the existing FTA. These build on the commitments in the recently agreed WTO Agreement on Trade Facilitation (TFA) and extend these obligations in some areas. Collectively, these commitments are aimed at facilitating the flow of goods across borders, including through ensuring customs procedures and practices are transparent and consistent, and expediting certain forms of trade. This will benefit exporters through increased efficiency at the border and expedited release of goods, which should lead to a lower cost of trade, and simplified customs procedures for traders.

Key outcomes in relation to Customs Procedures and Cooperation are set out below.

4.3.1 Advantages

Perishable Goods commitments

Due to their nature, certain goods need to be conveyed rapidly from their point of origin to final destination and require the completion of customs procedures with minimal delay. Recognition of the need for expedited clearance of perishable goods is specifically provided for in the WTO TFA. The Protocol introduces new commitments, which set an expectation that perishable goods will be released from Customs control in the shortest possible time under normal circumstances, and to the extent possible within six hours. The commitments also require perishable goods to be released from Customs control outside of normal business hours in exceptional circumstances where appropriate, and for the proper storage of such goods pending their release. This will give New Zealand traders of high value products such as fresh seafood and rock lobster increased confidence that goods will be processed with minimal delay, and reduce the incidence of spoilage.

Extension of advance rulings to include rulings on valuation

Advance rulings are binding decisions by Customs in relation to specific particulars of an imported good. They facilitate the declaration and clearance process of goods, as assessments in relation to the goods have already been made prior to arrival. They also ensure consistency of decisions so that traders can have assurance and certainty as to how their goods will be treated by the importing Customs agency. This is important, as inconsistent application of customs rulings can have an impact on the amount of duties to be paid and ultimately on the end price of the product. New Zealand businesses often report that uncertainty about the treatment of their goods can represent a significant cost or barrier to trade.

The existing FTA already provides for advance rulings regarding the classification and origin of goods. However, more recent FTAs extend the scope of advance rulings to include rulings for determining the

value of a good (that is, how the importing Customs agency will determine the value of the good for tax and tariff purposes). The Protocol extends the scope of advance rulings to include such valuation rulings. This means the FTA now provides for comprehensive advance rulings coverage – to cover origin, classification and the method or criteria for determining the value of the goods, which will provide additional certainty to businesses.

Increased transparency and access to information

The Protocol builds upon the existing FTA's requirements for each Customs authority to publish all laws and procedures it currently applies or enforces. Parties are now also required, to the extent possible, to provide advance notification of any new laws or procedures, including providing the opportunity for interested persons in the other Party to provide comment during development of new laws and procedures. Parties are also required to provide access to information and documents and designate enquiry points at agreed ports to answer queries on customs matters from traders. Collectively, these commitments will ensure that our exporters have timely access to information about the rules and processes affecting their goods, and mechanisms for communicating with Customs authorities.

Customs Procedures and Cooperation Committee

The Protocol will establish a new Customs Procedures and Cooperation Committee. This is New Zealand's preferred practice and will ensure effective mechanisms exist to oversee the implementation of chapter commitments, as well as provide avenues for cooperation and dialogue.

4.3.2 Disadvantages

There are no disadvantages with the modernised Customs Procedures and Cooperation provisions. The provisions all sit within New Zealand's established FTA practice.

4.4 Technical Barriers to Trade

The Technical Barriers to Trade (TBT) Chapter aims to address the trade barriers and costs associated with standards, technical regulations and conformity assessment procedures. It builds on New Zealand and China's existing rights and obligations in the WTO TBT Agreement and seeks to eliminate unnecessary technical barriers to trade, enhance transparency and promote regulatory cooperation and good regulatory practice.

The approach taken is aligned with New Zealand's policy settings and the outcomes achieved in the TBT Chapters of New Zealand's previous FTAs. No changes would be required to New Zealand's current practices as a result of the new commitments. Key TBT outcomes are detailed below.

4.4.1 Advantages

New labelling and marking and conformity assessment procedure provisions

The Protocol introduces new provisions on conformity assessment procedures, marking and labelling and border measures to the existing TBT Chapter. The conformity assessment provisions respond to feedback from businesses regarding difficulties they have encountered with lack of recognition of test

reports from accredited New Zealand laboratories. The new marking and labelling commitments will enable exporters to have additional languages on their products and use detachable labels where appropriate. These provisions will provide New Zealand exporters with a more cost effective way to meet China's regulatory requirements.

Cosmetics regulatory cooperation

Sitting alongside the Protocol, a cosmetics regulatory-cooperation side letter has been agreed on alternatives to animal testing and information sharing. The side letter strengthens cooperation on trade in cosmetic products through the TBT Committee including by:

- exchanging information and discussing relevant policies, regulations and actions
- notifying each other of changes to relevant policies, regulations and standards
- cooperating on the facilitation of trade or reducing barriers to trade in cosmetic products
- cooperating to explore valid alternatives to animal testing for cosmetic products
- cooperating to reduce post-market animal testing for New Zealand cosmetic products in the Chinese market where alternative safety information exists.

This will be reviewed in two years' time to assess whether any changes to such policies, regulations and standards are required.

This is the first time in an FTA-context that China has agreed to explore validated alternatives to animal testing for cosmetic products and to cooperate to reduce post-market animal testing for New Zealand cosmetics products. China's cosmetics product safety requirements have traditionally mandated animal testing. This has been a significant barrier to trade for New Zealand's "cruelty free" cosmetics exporters. However, reforms to China's systems are being planned that are intended to enable exporters to use alternatives to animal testing to demonstrate product safety. The side letter outcome will help our industry to understand China's regulations and prepare for these changes, and any future changes, before they come into place.

Options for expanding the Electrical and Electronic Equipment Mutual Recognition Arrangement

Sitting alongside the existing FTA as an Annex to the TBT Chapter is a Mutual Recognition Arrangement on Electrical and Electronic Equipment (EEE MRA). The EEE MRA facilitates trade by making it easier for New Zealand exporters of such goods to meet China's testing, inspection and certification requirements. The Protocol introduces a new provision that will include an avenue for continuing discussions on updating the EEE MRA to take account of recent institutional and regulatory reforms in both New Zealand and China.

4.4.2 Disadvantages

The new TBT commitments introduced through the Protocol are consistent with New Zealand's existing regulatory regime and practice. They are not expected to bring any disadvantage to New Zealand's development of technical regulations, standards and conformity assessment procedures.

4.5 Trade in Services

The Services Chapter facilitates cross-border trade in services between New Zealand and China, including educational, environmental, engineering and architectural services sectors. The Services Chapter contains the substantive obligations, while the market access commitments for New Zealand and China are contained in schedules of commitments (Appendix 4 and Appendix 10 respectively).

Since 2008, China has progressively expanded its services commitments in other FTAs. This includes some modest improvements to rules regarding the transparency and implementation of domestic regulation, and more significant market access commitments, including commitments in new sectors not included in New Zealand's existing FTA, and improvements in sectors that are included. The Protocol will make a number of amendments to bring our FTA on par with more recent commitments China has made in other FTAs.

The main substantive changes to the Services Chapter text include additions to the Domestic Regulation text to bring it more in line with related negotiations at the WTO. New Zealand seeks such obligations to ensure greater certainty regarding procedures relating to licensing and qualifications that New Zealand services suppliers may have to follow when operating in China. The additional obligations are consistent with New Zealand's established practices and contribute to New Zealand's high ranking in the World Bank's Doing Business Report 2020.

The provisions on recognition of professional qualifications have been updated to recognise the work that has been done since the existing FTA was concluded and to recognise the need for further cooperation in this area between New Zealand and Chinese relevant authorities. Removing barriers to the recognition of vocational qualifications would benefit New Zealand education providers delivering vocational education services in China and in the wider New Zealand vocational training industry.

Agreement was also reached on a 'negative list' negotiation within two years of entry into force of the Protocol, including for the existing schedules of commitments to be converted into a 'negative list' framework. This format provides exporters with a simple way to determine whether the Services Chapter applies to their area of business in China's market. Under a 'negative list' approach, Parties commit to provide market access except in areas where restrictions are listed in services schedules.

4.5.1 Advantages

Services are critical to New Zealand's international competitiveness and a key component of our export and trading profile, comprising around 30% of total exports in the year ending December 2019. According to the New Zealand Productivity Commission,⁹ the service sector contributes to over 52% of the value of our exports, reflecting the contribution of embedded services such as logistics, software, finance and design to the final value of our exports (including goods). China's burgeoning services industry has become a major driver of economic growth, contributing approximately 54% to its GDP in 2019. Against this backdrop, the improvements to the Services Chapter and market access commitments present new opportunities for New Zealand services exporters, as detailed below.

⁹ Productivity Commission, *Boosting Productivity in the Services Sector*, May 2014.

Social services such as healthcare and public education continue to be excluded from the scope of New Zealand's market access commitments. This is to ensure that New Zealand preserves the ability to take decisions in the future to favour local providers or impose quotas in these sensitive sectors.

Enhanced market access commitments:

The Protocol goes beyond China's existing commitments to New Zealand under the WTO and the existing FTA. It incorporates a number of commitments China has made in its more recent FTAs, as well as China's best-ever services commitments in the areas of specialty air services and ground handling services.

The Protocol will provide New Zealand services exporters improved access commitments into China's services market through the following changes to China's commitments in Appendix 10:

- Brand new commitments in 22 sectors will be added to China's schedule. This includes market access commitments in environmental services (nature and landscape protection and other environmental protection services), airport operation services, selling and marketing of air transport services, specialty air services, ground handling services, and audio-visual services (sound recording distribution).
- The Protocol will also improve upon China's existing sectoral commitments in the FTA. A total of 17 sectors in the existing FTA will see improvements in market access coverage. This includes expanded access for real estate services, translation and interpretation services, other education services¹⁰, advertising services, and sport and recreation services.

Mechanisms for future liberalisation

The Protocol also expands upon the MFN provision in the existing FTA. This provision requires that any better treatment relating to specified services sectors that China extends to third countries in subsequent FTAs must also be automatically extended to New Zealand.¹¹ China's MFN commitments in the existing FTA cover the following seven sectors: construction services, environmental services, services incidental to agriculture and forestry, engineering services, integrated engineering services, computer and related services and tourism services. The Protocol will add the following 20 sectors to the scope of China's MFN commitments:

- private education services
- management consulting services
- building cleaning services
- packaging services

¹⁰ Other education services include education services in specific subject matters not elsewhere classified, including non-academic training in the following areas: English language, cooking and handicraft.

¹¹ An exemption for preferences either party grants under prior FTAs means New Zealand services suppliers will not automatically receive the benefit of any preferences China grants to ASEAN countries, Chile, Pakistan, or under any other FTA that China signs prior to the entry into force of the Protocol.

- convention services
- cinema theatre services
- interurban regular transportation
- freight forwarding agency services (excluding freight inspection)
- urban planning services (except general urban planning)
- taxation services
- architectural services
- courier services (except for those currently specifically reserved to Chinese postal authorities by law)
- translation and interpretation services
- franchising
- technical testing and analysis
- construction and related engineering services
- input preparation services
- freight transportation services by rail
- freight transportation services by road in trucks or cars
- legal services.¹²

The expansion of the MFN provision means that New Zealand exporters of these services sectors will automatically receive the benefit of any better commitments China makes in future agreements. This will help to protect the competitive position of New Zealand services exporters in the China market, including in sectors of significant commercial interest to New Zealand, such as education.

4.5.2 Disadvantages

As for China (Section 4.5.1 above), the Protocol also includes additional services commitments by New Zealand, including market access (Article 6) and national treatment (Article 4) commitments in 23 new sectors and MFN commitments in 14 new sectors. New Zealand's obligations are set out in more detail in Section 5.5 below. New Zealand already complies with the obligations, as our domestic regulatory regime already operates in an open and non-trade restrictive way. Both the rules and market access commitments are consistent with New Zealand's obligations under previous FTAs and do not involve a change to the status quo. They will, however, 'bind' New Zealand such that we cannot in the future reduce the level of market access described in the services schedule.

The new MFN commitments New Zealand has made to China would have potential implications for any commitments New Zealand may make related to screening thresholds in future FTAs with other countries. For example, should New Zealand make any commitments to extend the investment screening thresholds applicable to 'significant business assets' in a future FTA with another country, these would also need to be extended to China in the expanded list of sectors covered by New Zealand's MFN commitment under the Protocol.

¹² Excluding Chinese law practice – foreign law firms in China are not able to practice Chinese law.

The services outcome did not meet all of New Zealand's original negotiating objectives. New Zealand would have preferred services market access commitments to be made on a 'negative list' basis and full sectoral coverage for China's MFN commitments to New Zealand. Nonetheless, the review process and the commitment to begin negotiations on a 'negative list' within two years of entry into force of the Protocol will provide a pathway to progressively improve market access for New Zealand exporters over time.

4.6 Movement of Natural Persons

The Movement of Natural Persons Chapter of the existing FTA aims to facilitate entry of individuals from each Party into the other Party, by establishing transparent rules and criteria, while recognising the need for safeguards to ensure border security and to protect the domestic labour force. The chapter operates based on commitments set out in Annexes 10 and 11 to the FTA. In these Annexes, China and New Zealand have specified the conditions and limitations for entry and temporary stay provided to specific categories of nationals of the other Party.

Annex 11 to the Movement of Natural Persons Chapter of the existing FTA sets out a number of requirements around the temporary entry of Chinese nationals to New Zealand for employment purposes. As a negotiated outcome of the original FTA, New Zealand made commitments under Annex 11 to grant up to 800 visas to Chinese nationals in five 'iconic' Chinese occupations.¹³ Subject to a number of conditions and limitations, this allows Chinese workers in one of these five visa categories to work for a period of up to three years in New Zealand. The Protocol will make amendments to Annex 11 in response to New Zealand business and sector group requests to address Chinese language skills gaps in the education and tourism sectors.

In particular, some adjustments will be made through a side letter to the visa allocations in Annex 11. Within the overall visa cap of 800, there will be a redistribution of the visa allocations for 'iconic' Chinese occupations. There will be an increase in the allocations for Chinese Tour Guides (from 100 to 200 places) and Mandarin Teaching Aides (from 150 to 300 places). This will be balanced by a corresponding decrease in allocations for the other less-utilised visa categories of Traditional Chinese Medicine Practitioners (from 200 to 75) and Chinese Wushu Marshal Arts Coaches (from 150 to 25).

In addition, the existing Chinese Tour Guide category in the FTA will be broadened to "Chinese Tourism Specialist". A number of new eligibility criteria will be introduced that are designed to make it easier for New Zealand businesses to employ suitably qualified staff through this visa category.

4.6.1 Advantages

The amended visa allocations will better reflect demand from New Zealand education and tourism providers

The redistribution of visa allocations across the five categories has been agreed with a view to targeting increases to areas where New Zealand stakeholders have indicated un-met demand for suitably qualified staff. In recent years, there has been strong demand for Mandarin Teaching Aides in

¹³ The five categories are: Chinese Chefs, Mandarin Teaching Aides, Chinese Wushu Marshal Arts Coaches, Chinese Medicine Practitioners and Chinese Tour Guides.

New Zealand schools resulting in the current visa allocation of 150 being fully utilised. A doubling of the Mandarin Teaching Aides visa allocation to 300 places will respond to requests from stakeholders, and provide the opportunity for New Zealand schools to place additional teaching resource into classrooms if desired.

The doubling of the visa allocation for Chinese tour guides under the FTA from 100 to 200 places (in conjunction with amending the criteria, discussed below) will also respond to the New Zealand tourism sector's interest in having more appropriately qualified Chinese speaking front-line staff.

New "Chinese Tourism Specialist" visa criteria will be a better match to the skills needs of the New Zealand tourism industry

Since the FTA commitments were introduced in 2008, uptake of the "Chinese Tour Guides" visa category has been very low. Statistics from Immigration New Zealand (INZ) indicate that only four visas have been approved in the last three financial years (out of a total cap of 100 places at any one time). Feedback from the New Zealand industry suggests that the requirement in the existing FTA to hold a valid Tour Guide License in China may have acted as a barrier to applicants from obtaining a visa under this category. This is because one of the conditions of obtaining the visa is a full-time New Zealand job offer; however, tour guiding in New Zealand is rarely a full time job, and is often combined with other more general duties.

The Protocol will address this issue by broadening the visa category from "Chinese Tour Guide" to "Chinese Tourism Specialist". It will also broaden the criteria that could be used by a Chinese applicant to apply for a visa under this category. Chinese nationals that possess specified tourism qualifications, or that can demonstrate relevant New Zealand tourism industry work experience, will also be able to apply for a visa under this category (as an alternative to the existing Chinese Tour Guide licence requirement, which will remain an option).

By introducing these additional options, the new criteria will provide more flexibility and a better match between the skills and experience of applicants and the needs of the New Zealand tourism industry. Being able to employ more appropriately qualified Chinese speaking front-line staff will, in turn, assist the New Zealand tourism industry to better meet the expectations of one of our most significant tourism markets when global conditions rebound post-COVID-19.

4.6.2 Disadvantages

Increasing the number of non-labour market tested visas available under the temporary employment entry categories could impact upon the availability of employment for New Zealand workers. To mitigate this risk as far as possible, increases in allocations have been limited to occupations where there has been demonstrated unmet demand and the New Zealand labour market risks were considered low because of highly specialised Mandarin language skills requirements. All applicants will still need to satisfy the conditions and criteria in the FTA to be able to qualify for a visa under these categories. This includes being able to demonstrate an acceptable standard of English and having a New Zealand offer of employment.

While the overall visa cap of 800 places across the five visa categories remains unchanged, the overall numbers of visas issued under the FTA will likely increase, as some of the existing visa categories were only being utilised in very small numbers.

4.7 Electronic Commerce

The existing FTA does not include a chapter on electronic commerce (e-commerce). Since the FTA was signed, the role of e-commerce as a platform for facilitating both goods and services trade has increased significantly. China now leads the world in e-commerce. More than 40% of the world's e-commerce transactions currently take place in China, up from only 1% about a decade ago when the FTA was originally signed.¹⁴ This has benefitted both New Zealand exporters and consumers of goods and services. The Protocol will introduce an e-Commerce Chapter (consistent with New Zealand's more recent FTA practice) to ensure that the FTA supports and reflects the modern New Zealand-China trading reality.

The Protocol's e-Commerce Chapter aims to promote the adoption of domestic frameworks capable of building confidence among e-commerce users, as well as avoiding the imposition of unnecessary barriers to the use and development of e-commerce.

To support consumer confidence in e-commerce, the chapter contains provisions consistent with internationally developed model frameworks covering electronic authentication, online consumer protection, transparency of regulatory measures, protection of personal information, unauthorised commercial electronic messages (spam), and provisions that recognise the value of cooperation on cybersecurity matters.

A second group of provisions aims to minimise unnecessary barriers to e-commerce, including encouraging the adoption of paperless trading and prohibiting customs duties on electronic transmissions between New Zealand and China. The chapter also facilitates cooperation on areas such as traceability initiatives, cross-border flow of information, the development of e-commerce consultation mechanisms, cross-border e-commerce goods trade and the participation of SMEs.

4.7.1 Advantages

As the world's largest e-commerce market, China presents enormous opportunities for New Zealand companies to sell goods and services online. In 2019, China's retail e-commerce sales swelled to approximately \$1.5 trillion, representing a quarter of its total retail sales volume, and more than the retail sales of the ten next largest markets in the world combined.¹⁵ China's 855 million digital consumers – among some of the most avid users of mobile phones and social media in the world – represent one of the most sought after customers of businesses worldwide. Chinese e-commerce platforms have become an important plank into the China market for New Zealand goods and services exporters, and have helped our businesses, many of whom are SMEs, to overcome issues of reach and scale. New Zealand Trade and Enterprise (NZTE) estimates that almost all of the food and beverage

¹⁴ McKinsey 2018; figure comprises total online transactions including goods and services.

¹⁵ McKinsey China Digital Consumer Trends 2019 report; figure comprises total online retail transaction value for Business to Consumer (B2C) and Consumer to Consumer (C2C) transactions, forecasted to YE 2019.

and natural health sector businesses it works with in China are utilising e-commerce platforms as part of their sales and marketing strategies. This underscores the importance of e-commerce platforms for product discovery, branding and purchase amongst many Chinese consumers. New Zealand consumers are also active users of e-commerce, from the sale and purchase of goods via electronic platforms through to the provision of cloud-based storage services. In 2018, 1.8 million New Zealanders made a purchase via the internet.¹⁶ The e-commerce provisions of the Protocol will assist New Zealand business in harnessing the efficiencies of e-commerce, while ensuring the protection of consumers engaging online.

One of the objectives of the chapter is to encourage and facilitate consumer protection and personal information protection. The chapter includes requirements for both New Zealand and China to have a legal framework to ensure protection of personal information of e-commerce users, as well as a legal framework on online consumer protection. This will benefit New Zealand exporters and consumers through helping to build public confidence in the use of e-commerce between the two countries. The chapter requires Parties to provide protections for e-commerce consumers that are equivalent to that provided for brick and mortar consumers. New Zealand and China must publish information on how consumers can pursue remedies and how businesses can comply with legal requirements on consumer and privacy protection. New Zealand and China will also be required to have measures in place to deal with spam. In New Zealand's case, these obligations are already met through our broader regulatory framework covering privacy and consumer protection. The Protocol will ensure a comparable level of protection for New Zealand businesses and consumers engaged in cross-border e-commerce transactions in China.

New Zealand has consistently advocated for the extension of the WTO moratorium covering Customs Duties on Electronic Transmissions. Ratifying the Protocol reinforces the WTO moratorium, providing additional certainty for New Zealand users of e-commerce that China would not move to impose customs duties on electronic transactions while the WTO moratorium continues. The moratorium does not prevent New Zealand introducing or amending domestic taxation measures, such as GST. Should the WTO moratorium discontinue, the chapter requires New Zealand and China to meet and review whether we should maintain a moratorium between us.

The Protocol also establishes a framework for ongoing cooperation on e-commerce, facilitating collaboration and dialogue on the fast-changing regulatory environment and other emerging issues, including initiatives to facilitate use of e-commerce by SMEs, and the development of cross-border e-commerce goods trade and traceability initiatives.

4.7.2 Disadvantages

Concerns have been raised generally¹⁷ about the potential for provisions on e-commerce in FTAs to impact on the Government's right to regulate. The risk of the Protocol impacting on Government's right to regulate is low. The e-commerce obligations all sit within New Zealand's current policy settings and established FTA practice, meaning that there will be no additional encroachment on

¹⁶ NZ Post; 2019 New Zealand e-commerce review.

¹⁷ See Trade for All Advisory Board report, <https://www.tradeforalladvisoryboard.org.nz/wp-content/uploads/2019/11/FINAL-with-cover-Trade-for-All-report.pdf>

New Zealand's domestic policy space. In addition, the FTA contains a number of exceptions that preserve the Government's right to regulate for legitimate public policy purposes.

New Zealand sought commitments on cross border transfer of information by electronic means, which aim to ensure that businesses can freely transfer data across borders in the course of business. This is important to New Zealand companies engaged in a wide range of innovative industries that rely on the transfer of information to conduct their business. It was not possible to agree to binding disciplines on these issues due to China's domestic laws still evolving in this area. The Chapter does, however, contain cooperation provisions that will provide a mechanism to discuss and cooperate on these issues in the future.

4.8 Government Procurement

The existing FTA does not include a Government Procurement Chapter. In the original FTA negotiations, a side letter was agreed, whereby New Zealand and China agreed a "Joint Understanding" to commence government procurement negotiations as soon as possible after China had acceded to the WTO Agreement on Government Procurement (GPA). The Protocol builds on the Joint Understanding by bringing a standalone Government Procurement Chapter into the FTA. This includes:

- provisions that promote more open, fair, competitive and transparent procurement
- commitments to have laws and policies in place that address issues that impact on the integrity of government procurement
- mechanisms for cooperation on government procurement.

The new chapter does not include market access commitments into China's (or New Zealand's) procurement markets. China's procurement market is one of the largest in the world and access to it would have the potential to open up significant export opportunities for New Zealand businesses. China has not opened its procurement market in any of its FTAs, and is not expected to do so until it has completed its accession to the WTO GPA. New Zealand has, however, secured a commitment not previously agreed to in any of China's existing FTAs. It commits China to enter into market access negotiations with New Zealand if it agrees market access on government procurement with another country, for example in the context of a bilateral FTA.

4.8.1 Advantages

The introduction of new transparency commitments in the Government Procurement Chapter will enhance the information available to New Zealand businesses on China's government procurement laws, regulations and procedures, and may include information on where tender opportunities are published. Cooperation provisions will also provide an avenue to enhance mutual understanding of New Zealand and China's respective government procurement laws, regulations and relevant international agreements; and a mechanism to facilitate consultation and exchange of information on such matters.

The Protocol represents a step forward on the path to New Zealand gaining access to China's procurement market in advance of its accession to the WTO GPA. In particular, the commitment for

an 'in-built review' will put New Zealand at the 'front of the line' if China were to open its government procurement market in future, whether that be following its accession to the WTO GPA or if it were to agree market access with any of its other trading partners.

4.8.2 Disadvantages

The provisions all sit within New Zealand's established government procurement policy frameworks and FTA practice. As a result, no significant disadvantages are expected to arise from this chapter for New Zealand.

4.9 Competition Policy

The Protocol will add a new Competition Policy Chapter to the FTA, which aligns with New Zealand's recent FTA practice and demonstrates New Zealand and China's shared commitment to building efficient, rules-based markets in which our businesses and consumers can trade confidently and fairly. The chapter is comprehensive, requiring both New Zealand and China to adhere to principles of transparency, non-discrimination and procedural fairness in competition law enforcement. The chapter contains commitments that require both New Zealand and China to have consumer protection laws, including those that prohibit misleading or deceptive conduct in the trade of goods or services, and to provide a right of redress if the goods or services are not of acceptable quality, are not fit for purpose, or do not match their description. The chapter also includes provisions on cooperation in competition law enforcement, and requirements to make competition laws, guidelines and administrative rules publicly available. The chapter confirms New Zealand and China's usual practice of excluding competition policy provisions from the FTA's dispute settlement mechanism. However, the chapter does contain consultation provisions to enable the parties to address specific matters that may arise related to competition policy affecting trade and investment between New Zealand and China.

4.9.1 Advantages

The disciplines agreed in the Protocol will mandate the maintenance of high quality and comprehensive competition policy and consumer protection regimes. This will promote the creation and maintenance of competitive markets (including through curtailing anti-competitive practices), and contribute to economic efficiency and consumer welfare, and the reduction of barriers to trade and investment.

The Protocol will establish cooperation avenues between competition authorities, to assist in the further development and effective administration of competition enforcement regimes. Provisions on transparency will ensure that businesses and consumers have access to information on competition laws, guidelines or other administrative rules, and any penalties for breach of those laws. Provisions on consultation will also ensure that mechanisms exist to address any issues that may arise under the Chapter.

4.9.2 Disadvantages

There are no significant disadvantages identified that are expected to arise from this chapter for New Zealand. All of the provisions sit within New Zealand's established policy and legislative settings.

4.10 Trade and Environment

The Protocol will introduce a new Environment and Trade Chapter to the FTA, which will build upon and complement the existing Environment Cooperation Agreement (ECA) negotiated alongside the existing FTA. The aim of the chapter is to promote mutually supportive trade and environment policies, promote high levels of environmental protection and effective enforcement of environmental laws, and enhance the capacities of New Zealand and China to address trade-related environmental issues. The commitments in the chapter are consistent with New Zealand's existing domestic legal settings and international legal commitments.

The Chapter contains obligations and undertakings for enhanced cooperation between New Zealand and China in several areas, including:

- new commitments aimed at ensuring that trade and environment policies are mutually supportive, including provisions to ensure that environmental measures are not weakened to promote trade and investment; that environmental standards are not used for trade protectionist purposes; and that laws and policies are in place that provide for high levels of environmental protection.
- provisions to facilitate cooperation on multilateral environment agreements (MEAs)
- provisions to promote bilateral cooperation on trade-related environmental issues
- a commitment to review the impact on the environment of implementing the FTA
- consultation mechanisms to address any matters that may arise in relation to the chapter
- establishment of a new Committee on Environment and Trade to facilitate dialogue and the effective implementation of the chapter.

4.10.1 Advantages

The Protocol outcomes seek to contribute to the Government's increased focus on environmental sustainability. New Zealand's policy in negotiating environment chapters in FTAs is guided by four objectives: to promote sustainable development; to ensure trade and environment provisions are mutually supportive; to ensure the Government has the flexibility to regulate for the environment in accordance with national circumstances; and to ensure that environmental provisions are not used as a disguised form of protectionism. The outcomes agreed in the Environment and Trade Chapter will directly support and promote these objectives and represents the highest level commitments China has agreed to in this area in any of its FTAs.

The existing ECA has provided a successful avenue for collaboration and dialogue with China on environmental issues. The addition of the Environment and Trade Chapter opens the way to an even deeper level of engagement on a broader range of issues that reflect current and emerging priorities across the spectrum of sustainability concerns. This will enable New Zealand to advance our trade and

environment interests, including those related to climate change, biodiversity protection, marine and oceans management, and circular economy. The establishment of an Environment and Trade Committee provides a platform for environmental cooperation and opens the way to work with China on both technical and policy issues that can significantly expand the potential environmental benefits to New Zealand.

4.10.2 Disadvantages

The chapter is not subject to the FTA's dispute settlement mechanism (New Zealand's preferred practice). However, it does contain specific procedures mandating consultation. These consultation provisions will enable both New Zealand and China to bring any matter arising under the chapter to the FTA Joint Commission for resolution, and place a greater emphasis on cooperation and dialogue to address any potential issues. In comparison to the counter-factual (no Environment and Trade Chapter) the Protocol still represents a significant advancement in pursuit of our environmental priorities.

4.11 Agricultural cooperation

The Protocol incorporates a new Article into the Cooperation Chapter of the existing FTA, which recognises the benefits and importance of agricultural cooperation in furthering a strong bilateral relationship. The text reflects a number of New Zealand's core objectives in undertaking agricultural cooperation activities and the benefits arising from such activities, including building mutual understanding of agricultural systems and sectors, developing closer partnerships in areas of joint interest, and maintaining constructive channels for dialogue and information exchange.

4.11.1 Advantages

While no direct additional outcomes are expected to flow from the Article on Agricultural Cooperation, the Protocol outcome is recognition of the efficiency and effectiveness of existing agricultural cooperation mechanisms between New Zealand and China's respective government agencies and businesses and the importance of agricultural cooperation in furthering a strong bilateral relationship.

4.11.2 Disadvantages

There are no disadvantages expected to arise from the Agricultural Cooperation provision.

4.12 Investment

The existing FTA already includes a comprehensive Investment Chapter, which contains provisions on National Treatment and MFN non-discrimination, together with investment protection disciplines and provision for investor recourse to arbitration procedures for resolution of disputes.

The Protocol will not introduce any changes to the Investment Chapter in the existing FTA; nor will it require any changes to New Zealand's domestic investment settings. However, a side letter has been agreed which confirms the updated screening thresholds currently applied to Chinese investments in New Zealand 'significant business assets' as a result of the MFN commitment in the existing FTA.

Under the existing MFN provision, any better treatment relating to either market access or protection for investment agreed by either party with third countries will automatically be extended to the other Party's investors. This provision future-proofs the investment commitments and ensures that the level of treatment afforded to New Zealand and Chinese investors will not fall behind in the event the other Party agrees new commitments with third countries. The MFN provision in the existing FTA applies to all investments in non-services sectors¹⁸, as well as seven proscribed services sectors.¹⁹

Since the New Zealand-China FTA entered into force, New Zealand has agreed more favourable treatment to third countries that has also been extended to China through MFN. In particular, under the Comprehensive and Progressive Agreement for Trans Pacific Partnership Agreement (CPTPP), New Zealand agreed to extend the screening threshold applicable to CPTPP non-government investors in New Zealand significant business assets from \$100 million (the screening threshold under the Overseas Investment Act 2005) up to \$200 million²⁰. In the case of China, the MFN commitments in the existing New Zealand-China FTA mean the \$200 million screening thresholds applicable to CPTPP non-government investors also apply to Chinese non-government investments in significant business assets in all non-services sectors and the seven proscribed services sectors.

The side letter agreed alongside the Protocol records the current practice with regards to screening thresholds applicable to Chinese non-government investors in significant business assets. It also notes that Chinese government investments in New Zealand significant business assets will continue to be screened at \$100 million. The Protocol also reflects this current treatment through a corresponding technical adjustment to the FTA's amended services schedule.

4.12.1 Advantages

The main advantage of the side letter is enhanced transparency, as it ensures that stakeholders from New Zealand (and China) will understand what the current screening thresholds are for Chinese government and non-government investments in New Zealand 'significant business assets'.

4.12.3 Disadvantages

No disadvantages have been identified with the side letter. The side letter confirms the status quo – it does not make any changes to the FTA's Investment Chapter or New Zealand's investment policy and regulations, nor does it alter in any way the treatment applied to Chinese investments in New Zealand.

¹⁸ This includes, for example, investment in agriculture, manufacturing, or infrastructure.

¹⁹ The seven services sectors are: construction services, environmental services, services incidental to agriculture and forestry, engineering services, integrated engineering services, computer and related services and tourism services.

²⁰ The advantages and disadvantages of extending the investment screening threshold in the CPTPP, including MFN implications are detailed in the CPTPP National Interest Analysis, www.mfat.govt.nz.

5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

This section sets out, by subject area, the legal obligations that would be imposed on New Zealand under the Protocol.

The Protocol provides for the further liberalisation of trade between China and New Zealand, and imposes general obligations on New Zealand that build upon the provisions contained in the existing FTA. The new or amended obligations that New Zealand will assume in each chapter of the Protocol are set out below. This section also includes the legal obligations arising from the side letters.

5.1 Trade in Goods

Alongside the FTA, New Zealand and China have executed a treaty-status side letter on the tariff treatment of wood and paper products. This side letter provides tariff elimination for 12 of New Zealand's wood and paper exports. It also establishes a mechanism for the FTA Joint Commission to confirm and note the tariff treatment extended to wood and paper products in accordance with China's commitment to New Zealand in the existing FTA that should it grant any third country more favourable tariff treatment in the future on wood and paper tariff lines, then this treatment would be extended to New Zealand.

5.2 Rules of Origin and Operational Procedures

New or amended provisions in the Protocol will facilitate goods trade with China by allowing claims for preferential tariff treatment in a range of formats. These include the option for "approved exporters" to self-declare the origin of goods to claim tariff preference, and waiving the requirement for origin documents in certain circumstances.

The direct consignment provision has been amended to include goods in transit through intermediary ports for up to 12 months provided those goods are subject to Customs' controls and do not undergo any substantial operation.

Traders are no longer required to obtain certificates for products shipped through intermediary ports and, instead, may simply be required to present evidence demonstrating the route and storage of goods.

The Protocol allows claims for preferential tariff treatment through any of the following forms of origin documents:

- certificate of origin (issued by an authorised body and which can be issued retrospectively within a year from shipment)
- declaration of origin based on an advance ruling (self-declaration by the importer as to origin provided those goods are covered by an advance ruling)
- declaration of origin by an approved exporter (an invoice or other commercial document that has the necessary data elements, the approved exporter's identification number and a serial number).

Where origin data has been transmitted through the JEVS, importers are not required to submit a physical copy of the same origin document.

In addition, the presentation of an origin document is waived for any consignment less than US \$1,000 (unless a higher amount is specified in either country's laws or regulations).

The Protocol requires an importer to:

- claim preferential tariff treatment at the time of importation of the originating good, if required
- make a written declaration that the good qualifies as originating, if required
- have the origin document in its possession at the time it declares origin
- on request, provide a copy of the origin document or other documents relating to the good's origin or importation (in accordance with that Party's laws and regulations)
- promptly make a corrected declaration and pay any duties owing where the information contained in the origin document was incorrect.

Any excess import customs duty or excess import deposit must be refunded within a limited period of time.

Customs administrations have an additional way to verify origin claims by visiting the premises of the exporter or producer, with the prior consent and assistance of the exporting country in accordance with agreed procedures. Verification requests must be responded to promptly and the result of verification advised within six months, unless otherwise agreed. Minor transcription errors in an origin document will not invalidate it, however this does not prevent a Customs administration from initiating a verification process where there are reasonable grounds to doubt the origin document or the origin status of the good.

The Protocol establishes a Rules of Origin Committee to further the effective administration of the Chapter, review and address technical issues related to implementation and consider proposals to further facilitate trade between the New Zealand and China.

5.3 Customs Procedures and Cooperation

Updates to the Customs Procedures and Cooperation Chapter bring the FTA in line with new developments in Customs administration processes, international fora and information technology.

The Protocol requires that both New Zealand's and China's customs procedures and methods for determining the value of imported goods are consistent with the commitments in the WTO TFA and the Customs Valuation Agreement (CVA). China and New Zealand will also take into account the methods agreed by international organisations (such as the World Customs Organisation (WCO) and WTO) in the development of its own initiatives on paperless trading.

Customs administrations must apply information technology to support its customs procedures. China and New Zealand will also, to the extent possible, make and accept trade administration documents in electronic form. New Zealand and China will work together to promote awareness and acceptance of electronic trade administration documents.

The Protocol requires a "single window" for traders to submit documentation or data requirements to the relevant authority. That authority must notify traders of the results in a timely manner and hold information for future applications. To the extent possible and practicable, the single window should be supported by information technology.

The chapter's transparency obligations require:

- publication of customs laws and any administrative procedures
- advance publication of draft laws and regulations relevant to trade on the internet, to the extent possible and consistent with laws and regulations
- a reasonable period of time between the publication of new or amended laws, regulations and procedures, and their entry into force
- timely notice (where possible, within 30 days) of any significant modification of customs laws or procedures that could substantially affect the chapter
- enquiry points to respond to public enquiries on customs matters
- laws and regulations be administered in a uniform, impartial and reasonable manner.

Each Party must also provide contact points for direct Customs administration communication on customs matters.

The Protocol includes new obligations requiring Customs administrations to release perishable goods in the shortest possible time under normal circumstances (to the extent possible within six hours), and outside of business hours in exceptional circumstances where appropriate.

Perishable goods will be given priority in scheduled examinations. Customs administrations will arrange for proper storage of perishable goods after release, or allow importers to do so in any approved or designated storage facility (if required). Customs administrations will also carry out any procedures for release of goods at those storage facilities, where practicable and consistent with laws and regulations.

The Protocol establishes a Customs Committee to further the effective administration of the chapter, support adoption of international customs practices and standards, consider matters referred to it for consultation, and consider proposals to further facilitate trade.

5.4 Technical Barriers to Trade

The Protocol has updated provisions on conformity assessment procedures as well as marking and labelling requirements in the TBT Chapter.

The existing FTA has obligations to increase efficiency, avoid duplication and ensure cost effectiveness in conformity assessment procedures. The mechanisms through which this can be achieved have been updated to include:

- cooperation between accreditation agencies and recognising cooperative arrangements between those agencies (including the International Laboratory and Asia Pacific Cooperation Mutual Recognition Arrangements)
- unilateral recognition by one Party of the results of conformity assessments performed by the other Party, where appropriate.

The Protocol requires conformity assessment procedures to grant access to “like” products of each Party under the same conditions as domestic equivalents.

Marking and labelling requirements constitute a “technical regulation” under TBT Agreement. Accordingly, mandatory marking and labelling requirements must not be more trade restrictive than necessary to fulfil legitimate objectives. Where mandatory marking or labelling of products are required, China and New Zealand:

- will endeavour to minimise marking or labelling requirements for non-consumers or users of the product
- may specify the form of labels or markings or require prior approval of specific information, but not require any prior approval, registration or certification for such labels or marks
- where required, issue a unique identification number to be affixed to products to economic operators of the other Party without delay or discrimination
- may require information in a specific language on the marks or labels, but cannot prohibit the simultaneous use of another language if that information is identical or not deceptive
- accept non-permanent or detachable labels if its objectives are not compromised.

5.5 Trade in Services

The Protocol further liberalises trade in services by extending the disciplines in the Trade in Services Chapter²¹ to measures affecting:

- specialty air services (any non-transportation air services such as flight training or surveying)
- ground handling services (certain activities performed at an airport by third party)
- airport operation services (air terminal, airfield and other airport infrastructure services excluding security and ground handling services).

The Protocol also limits New Zealand and China's ability to qualify or amend its commitments in certain services sectors in the future.

Additional obligations related to China and New Zealand's domestic regulation have been imposed in certain services sectors.

Where authorisation is required to supply a service, the chapter requires both countries to:

- accept electronic applications under the same conditions as paper ones, where possible
- inform the applicant of its decision within a reasonable period of time after the submission is complete
- establish an indicative timeframe for processing an application, to the extent practicable
- schedule any required examinations at frequent intervals and allow applicants a reasonable period of time to request examination.

Copies of documents legally authenticated must be accepted in place of original documents.

New Zealand and China must consult within two years after entry into force of the Protocol, then every three years, to review implementation of the chapter and consider other trade in services issues of mutual interest, with a view to the progressively liberalise trade in services.

New Zealand has made market access and national treatment commitments in its services schedule in the following new sectors:

- integrated engineering services
- consultancy related to urban planning and landscape architecture
- management consulting services
- services related to management consulting
- placement and supply services of personnel
- convention services

²¹ The relevant commitments are: Article 4 (National Treatment) – to the extent of commitments taken in schedules; Article 6 (Market Access) – to the extent of commitments taken in schedules; Article 8 (Additional Commitments) – to the extent of commitments taken in schedules; Article 9 (Domestic Regulation) – since both China and New Zealand have made commitments in these three sectors; Article 10 (Recognition); Article 11 (Professional Qualifications and Recognition); Article 12 (Payments and Transfers); Article 13 (Denial of Benefits); Article 21 (Monopolies and Exclusive Service Suppliers).

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- credit reporting services
- collection agency services
- interior design services
- telephone answering services
- mailing list compilation and mailing services
- other business services – services generally provided to business not elsewhere classified in the CPC and not including convention services. These include: business brokerage services, appraisal services (other than for real estate), secretarial services, demonstration exhibition services, etc.
- renting services related to equipment for construction or demolition of buildings or civil engineering, with operator
- aircraft repair and maintenance services (as defined in paragraph 6 (a) of the GATS Annex on Air Transport Services)
- airport operation services (excluding navigation aids)
- other supporting services for air transport (excluding firefighting and fire –prevention services)
- specialty air services
- ground handling services
- airfreight storage and warehousing services
- airport management services
- container station and depot services
- maritime agency services
- washing, cleaning and dyeing services

New Zealand has made the following improved sectoral commitments in its services schedule:

- full market access commitments and a national treatment reservation for mode 3 services for dairy herd database access
- market access commitments for general construction work for buildings, general construction work for civil engineering, site preparation, new construction (other than pipelines) and maintenance and repair of fixed structures improvement on mode 1 services and changed its national treatment commitments for these sectors from “unbound*” to “none for consultancy services”
- removed market access limitations on apple and pear marketing for non-life insurance services and insurance intermediation, such as brokerage and agency services.

New Zealand’s services schedule also reflects that China is entitled to the monetary screening thresholds of \$100 million for government investors and \$200 million for non-government investors in the circumstances set out in New Zealand’s overseas investment regime. A non-treaty status side letter explains this in further detail.

5.6 Movement of Natural Persons

New Zealand and China executed a treaty status side letter amending New Zealand's commitments on temporary employment entry by natural persons, as follows:

- Broadening the visa category from “Chinese Tour Guide” to “Chinese Tourism Specialist” and adding the following new alternative ways to be eligible for the visa (provided that the applicant has an acceptable standard of English):
 - holding a New Zealand qualification at level 5 or above in tourism (or a related field); or
 - holding a Chinese bachelor degree qualification or higher in tourism (or a related field); or
 - completing one year of work in New Zealand as a tourism specialist with an endorsed tourism business.
- Reallocating the existing 800 temporary employment entry visa places for ‘iconic’ Chinese occupations by:
 - increasing the quota for Chinese Tourism Specialists from 100 to 200
 - increasing the quota for Mandarin Teaching Aides from 150 to 300
 - decreasing the quota for Traditional Chinese Medicine from 200 to 75
 - decreasing the quota for Chinese *Wushu* Martial Arts Coaches from 150 to 25.

5.7 Electronic Commerce

The Protocol includes a new Chapter on e-commerce.

New Zealand and China agree to maintain their current practice to not impose customs duties on electronic transmissions, but may adjust or review this in light of any further WTO Ministerial Decisions on the Work Programme on Electronic Commerce. However, they are not precluded from imposing taxes, fees or other charges on electronic transmissions that are consistent with the FTA.

The new e-Commerce Chapter imposes transparency obligations. New Zealand and China must, as promptly as possible, publicise measures of general application affecting the chapter and respond to any requests for information on such measures.

New Zealand and China must maintain domestic legal frameworks governing electronic transactions, and protect the personal information of e-commerce users, taking into account relevant international standards or principles.

New Zealand and China must also minimise regulatory burden on e-commerce and ensure that regulatory frameworks support industry-led development of e-commerce.

The Protocol provides that an electronic signature is valid, except where laws and regulations provide otherwise. New Zealand and China must:

- permit participants in electronic transactions to determine appropriate authentication technologies and implementation models
- not limit recognition of these technologies and models

- provide opportunities for participants in electronic transactions to prove their electronic transactions comply with the Party's legal requirements for authentication.

However, New Zealand's or China's laws and regulations may require that the method of authentication meets certain standards or is certified by an accredited authority. New Zealand and China will work towards mutual recognition of digital certificates and electronic signatures, and encourage the use of digital certificates in its business sector.

New Zealand and China must, to the extent possible, provide equivalent protection for consumers using e-commerce as other forms of commerce.

New Zealand and China must publish information on consumer and personal information protection for e-commerce users, including how to pursue remedies and how businesses can comply with legal requirements. They must also encourage businesses to publish, including on the internet, their policies and procedures related to consumer and personal information protection.

Electronic versions of trade administration documents will be accepted, unless there is a legal requirement to the contrary or it would reduce the effectiveness of the trade administration process. New Zealand and China will:

- cooperate to enhance acceptance of electronic versions of trade administration documents
- endeavour to take into account the methods for paperless trading agreed by international organisations
- endeavour to make electronic versions of trade administration documents publically available.

New Zealand and China must have measures regarding unsolicited commercial electronic messages in place to ensure suppliers have recipient's consent to receive messages, minimise such messages and help recipients stop receiving such messages. There must also be recourse against those suppliers who do not comply with these measures. New Zealand and China will endeavour to cooperate on the regulation of such messages in cases of mutual concern. Note that, in respect of New Zealand, "unsolicited commercial electronic messages" do not include voice calls.

The Protocol encourages further cooperation between New Zealand and China to promote electronic commerce, building on rather than duplicating efforts in international fora

The e-Commerce Chapter is not subject to dispute settlement mechanisms, but New Zealand and China can request consultations on any matter arising from the chapter. Those consultations will take place within 45 days of the request, unless another timeframe is mutually agreed. Matters that are not resolved through consultations can be referred to the FTA Joint Commission.

5.8 Government Procurement

The Protocol established a new Government Procurement Chapter. It requires government procurement to be conducted in accordance with principles of openness, transparency, fair competition, impartiality and good faith. Accordingly, New Zealand and China must:

- make publicly available their laws, regulations and possibly procedures on government procurement

- ensure that laws, regulations, policies or procedures address issues that impact on the integrity of government procurement
- cooperate, consult and exchange information on government procurement laws, regulations and international agreements with each other.

Negotiations on government procurement (including market access) will commence as soon as possible following:

- completion of negotiations on China's accession to the WTO GPA; or
- China's agreement to market access commitments on government procurement with another FTA partner.

The Government Procurement Chapter is not subject to dispute settlement mechanisms.

5.9 Competition Policy

The Protocol established a new Competition Policy Chapter. It requires New Zealand and China to prohibit anti-competitive business practice in commercial activities, with limited exemptions.

It requires competition laws to be enforced in a non-discriminatory manner, and independence in decision-making by competition law enforcement authorities. Anybody under investigation for violating its competition laws will be given:

- the reasons for the allegations promptly and, where possible, in writing
- the opportunity to be legally represented and to present a defence
- the opportunity to review or appeal against any sanction or remedy imposed.

New Zealand and China will cooperate to promote effective competition law enforcement, where its laws and resources allow.

The Protocol sets out transparency obligations that require:

- publication of competition laws, regulations, penalties, exemptions, guidelines and any administrative rules (including online)
- final administrative decisions on a violation of competition laws to be in written form and set out the relevant findings; and
- publication of decisions and any implementing orders (except where information is protected from public disclosure).

Obligations exist to ensure that any confidential information shared by competition policies will:

- only be used for the purpose for which it was disclosed (unless specific permission is granted)
- not be disclosed to an unauthorised person or entity; and
- be subject to any other conditions imposed by China or New Zealand.

New Zealand and China must maintain or adopt consumer protection laws, including those that prohibit misleading or deceptive conduct, and provide redress if the quality of goods or services is unacceptable.

The Competition Policy Chapter is not subject to dispute settlement mechanisms, but New Zealand and China will consult in good faith on matters arising from the chapter upon request.

5.10 Trade and the Environment

The Protocol includes a new Environment and Trade Chapter that focuses on the adoption, enforcement and implementation of environmental measures that affect trade and investment under the FTA, together with broader cooperation on trade-related environmental issues.

The Protocol requires New Zealand and China to ensure high levels of environmental protection in its laws and policies, and strive to continuously improve on those protections. In particular, they must not:

- fail to enforce environmental measures in a manner affecting trade and investment
- waive or derogate from the protections contained in environmental measures in order to encourage trade or investment
- use environmental standards as trade protection.

After the Protocol enters into force, New Zealand and China will review the impact of the FTA's implementation on the environment.

New Zealand and China will cooperate on trade-related environmental issues of mutual interest that arise in multilateral environmental agreements and existing bilateral agreements.

The Protocol establishes an Environment and Trade Committee to oversee implementation of this Chapter, which New Zealand and China have committed to provide with adequate financial resources.

The Environment and Trade Chapter is not subject to dispute settlement mechanisms, but New Zealand and China may request consultations through the FTA Joint Commission on any matter arising under this chapter and make every effort to reach a mutually satisfactory resolution.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

The obligations in the Protocol and associated side letters are already met by New Zealand's existing domestic legal and policy regime, and no regulatory changes will be required in order to implement the Protocol.

One of the key drivers of the negotiations to upgrade our existing FTA with China was to modernise the provisions of the 2008 Agreement to align them with New Zealand's more recent trade agreements. While the Protocol will introduce a number of new commitments and chapters to the FTA, the outcomes agreed sit within New Zealand's established FTA practice.

7 Economic, social, cultural and environmental costs and effects of the treaty action

This section of the NIA assesses the overall costs and effects of the Protocol to Upgrade the New Zealand-China FTA for New Zealand. It draws on the advantages and disadvantages outlined in Section 4 above. The fiscal costs to New Zealand of ratifying the Protocol are outlined in Section 8.

While the Protocol will introduce new treaty level commitments for New Zealand with respect to China, the commitments made by New Zealand in the Protocol all sit within New Zealand's existing domestic policy and legislative settings and established FTA practice. This means the Protocol is not expected to encroach further upon New Zealand's domestic policy space. Care has been taken to ensure that the flexibilities and safeguards secured in the existing FTA, which preserve the Government's right to regulate for legitimate public policy purposes, have not been altered and will continue to apply to the commitments in the existing FTA and the Protocol.

7.1 Economic effects

7.1.1 Economic benefits from trade

Trade makes a significant contribution to New Zealand's economic performance, with exports of goods and services valued at 28% of New Zealand's GDP. FTAs help New Zealand exporters remain competitive in international markets by providing access into larger markets. This access enables companies to benefit from economies of scale and specialise in the areas in which they have an advantage. New Zealand's connections into international markets also improves the domestic economy by allowing for access to more knowledge and resources, improved technology and foreign investment, which help boost productivity and income for New Zealand firms.

However, engaging with the world can have associated environmental, social and other costs, and these costs, together with the benefits of trade, are likely to be unevenly distributed across society. Extensive economic research has established that the gains nations receive from trade are both wide and large in magnitude.²² New Zealand has seen the benefits of trade through wider integration into

²² Singh (2010), *Does International Trade Cause Economic Growth? A Survey*. The World Economy, 33; Wacziarg and Welch (2008), *Trade Liberalization and Growth: New Evidence*. World Bank Economic Review, Oxford University Press, Vol. 22(2); Greenaway and Kneller (2008), *Exporting, Productivity and Agglomeration*. European Economic Review, 52(5).

South East Asian markets, with the percentage of New Zealand total exports of goods rising from 15% in 2007, to almost 35% in 2018. This integration through existing trade agreements has helped provide opportunities for New Zealand exporters to access different markets at better prices. One of the primary benefits of the New Zealand-China upgrade is further modernisation and increased quality of the existing agreement to further enhance the facilitation of trade between countries.

7.1.2 Economic benefits from the existing New Zealand-China Free Trade Agreement

China is New Zealand's largest trading partner for goods and services. Since the FTA came into force in 2008, two-way trade (exports and imports of goods and services) has quadrupled from \$8 billion to over \$32 billion in 2019, and the FTA has been a catalyst for trade and economic cooperation between our countries.

Recent research has shown how New Zealand gained in export trade with the introduction of the New Zealand-China FTA in 2008. A counterfactual exercise showed that New Zealand's exports to China were more than 200% higher in 2013 and 2014 than what they would have been if New Zealand never signed the FTA with China in 2008. This led to a trade creation effect of 22% in 2014.²³ This means that 22% of the trade to China was 'created' rather than 'diverted' from other markets. It should be noted, however, that these export gains did not flow through to observable increases in real GDP per capita.

7.1.3 Key features of the upgraded New Zealand-China Free Trade Agreement

The Protocol will eliminate Chinese customs duties on 12 additional wood and paper products previously excluded from tariff elimination commitments under the existing FTA. These commitments will be phased in through a process of linear tariff cuts, over a ten year implementation period. This means New Zealand exporters could export such goods to China with a tariff advantage over other suppliers.

These 12 tariff lines collectively represent NZ\$213 million in New Zealand's exports to the world and NZ\$35 million in New Zealand's exports to China annually. China's new commitments will result in duty savings of about NZ\$1.7 million per year for New Zealand that are likely to be distributed across consumers, importers and exporters, based on current levels of trade. Once fully implemented, it will mean that 99% of New Zealand's nearly \$3 billion wood and paper trade to China will receive tariff-free access.

Further improvements brought by the Protocol are the enhancement of the rules of origin requirements, which will also have significant impact for affected exporters, particularly smaller exporters. A highlight in this area is the ability for 'approved exporters' to self-declare the origin of

²³ Verevis, and Üngör (2019), *What Has New Zealand Gained From The FTA With China?: Two Counterfactual Analyses* (Economics Discussion Papers Series No. 1906). University of Otago.

their goods for the purposes of claiming tariff preference under the FTA. This is expected to increase preferential tariff utilisation, as self-declaring origins reduces compliance costs, subsequently lowering the fixed costs faced by firms, who would otherwise face additional costs for certifying the origin of their exports.

Simplifying and harmonising laws and regulations, reducing administrative barriers and facilitating communication technology with fewer human interactions all help enhance the ability for economies to trade, by reducing time and improving overall trade facilitation. The outcomes on customs procedures and trade facilitation in the Protocol will make it easier to trade. Specifically, the introduction of a requirement to release 'perishable goods' in the shortest time possible and to the extent possible within six hours, outside of business hours in exceptional circumstances where appropriate, and ensuring the goods are stored properly will reduce losses suffered by New Zealand exporters through spoilage and enhance overall competitiveness.

Although trade facilitation improvements can be hard to estimate, evidence suggests that reducing trade transaction time by 1% could increase trade by 0.64%.²⁴ Further evidence found that a 1% reduction in the time to export increased exports roughly by 0.4%.²⁵

7.1.4 Link to the Government's wider economic transformation goals

The Government's economic plan and the Trade for All Agenda are focused on improving the wellbeing and living standards of all New Zealanders. Trade and other international connections (including investment, people and information flows) have an important role to play in supporting the economic plan. More specifically, the outcomes achieved through the Protocol will assist with achieving the Government's Trade for All agenda by helping our exporters to realise additional cost savings and benefits from trade, while also putting an increased focus on the three key dimensions of the Government's economic plan (productivity, sustainability, inclusiveness) and continuing to protect the Government's right to regulate for legitimate policy purposes.

7.2 Social effects

The Protocol and associated side letters are not expected to impact on New Zealand's ability to develop social policy. The Protocol's preamble reaffirms each Government's right to regulate for legitimate public policy purposes, and preserving flexibility to safeguard the public welfare. The following section examines potential effects on domestic employment, health, social regulation, immigration and human rights.

²⁴ Hausman et al (2013), *The Impact of Logistics Performance on Trade*.

²⁵ Djankov et al (2010), *Trading on Time*. The Review of Economics and Statistics 92 (1).

7.2.1 Employment

FTAs may have both positive and negative employment effects. On the positive, MFAT has estimated that 8,565 New Zealanders are employed for every \$1 billion of exports²⁶. The relationship between employment and exports may not be linear, and employment growth will be constrained by labour supply, but it is likely that employment will expand due to expansion of exports generated by trade agreements. While in theory highly-protected sectors can experience increased competition following liberalisation of protective barriers (such as tariffs or other restrictions on imports), New Zealand has very few if any such protected sectors.

The changes to the temporary employment entry conditions and visa allocations in Annex 11 could have an impact on domestic employment. In particular, the increase in the quotas for Mandarin Teaching Aides (from 150 to 300) and Chinese Tourism Specialists (from 100 to 200) will mean that there are more visas available for Chinese nationals, which could mean more competition for New Zealand job seekers in those particular fields. However, this impact is expected to be small. The visa allocations for 'iconic Chinese occupations' were re-distributed with a view to adding allocation only to those areas where the demand for workers outstripped available supply; and where industry feedback indicated difficulties in finding suitably qualified domestic employees due to highly specialised Mandarin language skills requirements.

7.2.2. Health Impacts

There are no quantifiable direct economic benefits to the health portfolio arising from the Protocol. The Protocol does not change the Government's existing ability to regulate for legitimate public policy purposes, including public health objectives. The Protocol does not change the existing FTA's incorporation of relevant WTO general exceptions (from GATT and GATS). This includes incorporation of the GATT Article XX(b) exception that Parties may take measures necessary to protect human, animal or plant life or health, providing that such measures are not used for trade protectionist purposes. In the context of the COVID-19 pandemic this takes on added significance. The Protocol will not prevent New Zealand, or China, from implementing measures necessary to protect their citizens from the pandemic. This includes for instance the ability to implement export restrictions that are necessary to protect public health.

7.2.3 Social Regulation

New Zealand's social regulation frameworks would not be affected by the Protocol. The Protocol was negotiated so as not to impair New Zealand's right to regulate for legitimate public policy purposes. The Protocol's preamble reaffirms the rights of Governments to regulate in order to meet national policy objectives, and the importance of preserving flexibility to safeguard the public welfare. In the area of trade in services, the FTA continues to follow the approach of the GATS and New Zealand's past FTA practice and therefore excludes services supplied in the exercise of government authority. Moreover, New Zealand has not made any commitments in respect of social services established for a public purpose, such as child care; health; income security and insurance; public education; public

²⁶ Ford and Bayley, MFAT Working Paper: Estimating Employment in New Zealand Producing Goods and Services for Export. See: <https://www.mfat.govt.nz/en/trade/trade-statistics-and-economic-research/#papers>

housing; public training; public transport; public utilities; social security and insurance; or social welfare.

7.2.4 Immigration

Outside of the specific commitments in respect to short-term employment entry, the Protocol does not require any changes to New Zealand immigration policy or legislation.

7.2.5 Human Rights

The Protocol does not include any provisions that are inconsistent with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Its implementation would have no effect on human rights in New Zealand.

7.3 Effects on Māori

The advantages and disadvantages of the protocol to Aotearoa whānui also apply to Te Iwi Māori with the most notable effects being greater opportunities for Māori exporters and businesses. As was the case with the original FTA, when drafting and negotiating the Protocol, care has been taken to avoid commitments that would impair the Crown's ability to fulfil its obligations to Māori.

7.3.1 Opportunities for Māori exporters and businesses

The Māori businesses, iwi, hapū and whānau most likely to be affected by the protocol include those with interests in the forestry and food & beverage sectors. Tariff elimination commitments on New Zealand wood and paper exports to China are expected to result in further duty savings to Māori exporters. Enhanced trade facilitation measures, including new self-declaration of origin commitments, streamlined clearance for perishable goods, and contact points for New Zealand exporters at key ports in China are all designed to reduce the cost of trade, save time and money, to the benefit of Māori businesses engaged in trade with China.

7.3.2 Taiao

The Protocol's enhanced focus on the environment and the introduction of a new Environment and Trade Chapter has been both welcomed and described as aligning with Māori concern for the environment by Te Taumata²⁷ (a key partner for dialogue with the New Zealand Government on trade-related issues).

7.3.3 Mātaurangi Māori

The existing FTA contains safeguards to ensure there are no adverse effects on New Zealand cultural values, including Māori interests; and these safeguards will remain unchanged as a result of the Protocol. In particular, the Protocol does not change the Intellectual Property Chapter of the existing FTA, including the provision in the chapter that allow both New Zealand and China to establish measures to protect genetic resources, traditional knowledge and folklore consistent with international obligations.

²⁷ www.tetaumata.com

7.3.4 Treaty of Waitangi exception

As the founding document of New Zealand, the Treaty of Waitangi is fundamental to the on-going relationship between the Government and Māori. All of New Zealand's FTAs, including the New Zealand-China FTA (as amended by the Protocol) have provided extra protection to ensure that the unique relationship between the Crown and Māori is preserved.

The Treaty of Waitangi exception remains unchanged from the existing FTA and provides clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi. It is designed to work alongside other provisions to ensure that successive governments retain flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities. The exception applies in respect of matters covered by the entire FTA (as modified by the Protocol). This includes trade in goods and services, investment, environment, intellectual property and all other matters dealt with in the existing FTA and Protocol. New Zealand's approach of including the Treaty of Waitangi exception in its FTAs is unique, and reflects the constitutional significance of the Treaty of Waitangi to New Zealand.

7.4 Cultural effects

7.4.1 Culture

The Protocol does not change the existing FTA's incorporation of relevant WTO general exceptions (from GATT and GATS). This includes incorporation of the GATT Article XX(f) exception that Parties may take measures necessary to protect national treasures of artistic, historic or archaeological value, providing that such measures are not used for trade protectionist purposes. New Zealand maintains reservations in relation to the use of government funding for the promotion of Māori language and culture by the Broadcasting Commission and Te Reo Whakapuaki Iriangi (the Māori Broadcasting Funding Agency), as well as assistance for New Zealand films by the New Zealand Film Commission.

The existing FTA also confirms that each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore, in accordance with its international obligations.

7.4.2 Digital economy

The digital economy increasingly affects the way New Zealanders connect economically and socially to the world – connectivity is also a crucial driver of New Zealand's economic growth, and can have significant cultural affects.

The e-Commerce Chapter of the Protocol could be expected to foster e-commerce in a way that would deliver economic benefit for New Zealand exporters and consumers, through creating an environment capable of making it easier to sell and purchase goods and services online, and facilitating the growth of new products. The Protocol also includes provisions that relate to the regulatory environment relevant to the way New Zealanders interact with electronic products and physical goods bought online, such as consumer protection, privacy and spam.

The overall effect of the e-Commerce Chapter is expected to support New Zealand's digital culture – helping create an environment conducive to the growth of weightless exports and other forms of e-commerce, and increasing the uptake of new online products and services (for example through facilitating the protection of personal information for New Zealand users of e-commerce based in China, or helping address spam).

7.5 Environmental effects

New Zealand has long recognised the links between trade and the environment. One of New Zealand's aims in trade agreements is to ensure that the outcomes contribute to sustainable development and environmental objectives.

The Protocol contains provisions which 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. The Protocol includes legally binding commitments on trade and environment, requiring New Zealand and China to effectively enforce their environmental laws, and not to derogate from them in order to encourage trade or investment. The Protocol contains provisions for New Zealand and China to review the impact of implementing the FTA on the environment. This will enable New Zealand to examine and report on the regulatory, product, structural, and scale effects of the FTA on the environment.

Given the links between trade and the environment, trade agreements can affect sustainable development in a number of positive and negative ways, principally through the following regulatory, product, structural, and scale effects:

7.5.1 Regulatory effects

Existing environmental policies and standards can, in principle, be affected by trade agreements. International experience related to these regulatory effects suggests that any potentially negative effects of trade agreements on such policies can be avoided through careful design of the relevant provisions so as not to undermine the ability of governments to pursue appropriate and effective environmental policies.

The Protocol will not inhibit the New Zealand Government's ability to regulate for environmental protection. The FTA (as amended by the Protocol) contains general exceptions that are consistent with those provided for in existing international agreements (GATT and GATS) which are designed to provide policy space for Governments to regulate for legitimate public policy purposes, such as the protection of natural resources. The Protocol 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 manner which would constitute a disguised restriction on trade. New Zealand has a suite of relevant existing legislation that is designed to address potential adverse environmental outcomes of economic activity.

The core obligations in the Environment and Trade Chapter limit both New Zealand and China's ability to reduce environmental protection through derogation from existing environmental measures, or non-enforcement of them. The provisions on cooperation provide an avenue for enhanced dialogue

and engagement on environmental matters, which could potentially generate ideas that contribute to New Zealand environmental policy development.

7.5.2 Product effects

In general, trade liberalisation under an FTA can 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. However, the existing FTA already has a very high level of trade liberalisation, with 100% of China's imports to New Zealand entering duty-free, and over 98% of New Zealand's exports to China by value entering duty-free upon full implementation. The Protocol is therefore not expected to have a significant impact on the composition of trade to and from New Zealand.

7.5.3 Structural effects

Structural effects relate to the ways in which trade liberalisation can affect the production of goods and services that have environmental 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 some types of 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 Protocol is not expected to have any negative structural effects, given the degree of structural reform that New Zealand has experienced over the past several decades, natural resource and capacity constraints, the open nature of the New Zealand economy, and the environmental management regime already in place.

7.5.4 Scale effects

When economies expand as a result of trade liberalisation, there is a risk that increased production in some sectors can result in increased pollution and other adverse environmental impacts. This stems largely from the potential product and structural effects outlined above. These risks 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 be possible to produce more goods and services using the same amount of aggregate resources. Also, over time, technological improvements, which can be facilitated by trade liberalisation and broader economic integration, are also likely to contribute to a more efficient use of natural resources.

Given the limited expected structural and product effects of the Protocol, the overall high level of trade liberalisation between New Zealand and China under the existing FTA, and New Zealand's robust existing environmental and resource management policy frameworks, the scale effects resulting from the Protocol are expected to be minimal.

8 The costs to New Zealand of compliance with the treaty

8.1 Tariff revenue

The Protocol will not have any impact on overall tariff revenue. Chinese imports to New Zealand have been subject to comprehensive tariff-free entry since 2018, pursuant to commitments in the existing FTA.

8.2 Costs to government agencies of implementing and complying with the Protocol

The implementation of the Protocol will have some fiscal implications. Activities undertaken by government agencies in support of the Protocol are expected to be funded within departmental baselines. The inter-agency Trade Negotiations Fund (TNF) has a funding pool available to assist with implementing FTA commitments.

8.2.1 Promotion and Outreach Costs

One-off costs associated with implementing the Protocol were incurred in the 2019/2020 Financial Year and are sourced from the TNF pool. This includes promotion and outreach activities to explain the key outcomes of the Protocol, and a series of wider trade policy engagements in New Zealand prior to entry into force to outline the content of the Protocol to New Zealand businesses, Māori and the wider stakeholder community. These engagements are undertaken as part of the Ministry and Foreign Affairs and Trade's wider trade policy outreach activities, which includes outreach for both consultations and engagement (for on-going negotiations of other FTAs) as well as promotional activities. The total costs of trade policy outreach activities for the 2019/2020 Financial Year is estimated at NZ\$35,000²⁸.

8.2.2 FTA Implementation Costs

The costs of implementing the Protocol are expected to be modest relative to New Zealand's other FTAs. This is because as an upgrade to an existing FTA, much of the baseline institutional structures to

²⁸ This comprises outreach events and publicity for CPTPP, the Pacific Agreement on Closer Economic Relations (PACER Plus), the New Zealand-Singapore Closer Economic Partnership (CEP) Upgrade, Regional Comprehensive Economic Partnership (RCEP), Pacific Alliance, WTO E-commerce negotiations, Digital Economy Partnership Agreement (DEPA), the ASEAN-Australia-New Zealand (AANZFTA) FTA Upgrade and the New Zealand-EU FTA; as well as the New Zealand-China FTA Upgrade.

ensure implementation of the FTA, such as the FTA Joint Commission and many chapter-specific committees, are already in place.

One-off costs of implementing the Protocol incurred in the 2019/2020 Financial Year will be met within existing baselines. This includes one-off costs of \$250,000 secured through the inter-agency TNF for software development to implement changes to the JEVS to implement the commitments related to self-declaration of origin. Further funding may be required once the initial system is in place and additional operational requirements become known, which could be sought from the inter-agency TNF or through separate Cabinet approval. Following this, ongoing costs associated with maintenance of the enhanced JEVS system would be met from agency baselines.

There will be ongoing resourcing costs to meet new obligations agreed in the Protocol. This includes the establishment of a number of new chapter-specific committees in the areas of Rules of Origin and Operational Procedures, Customs Procedures and Cooperation, Electronic Commerce, Competition Policy, and Environment and Trade. The costs of servicing these committees are expected to be met from baselines of agencies involved, and will build on and combine with activities that were already a part of the relationship under the existing FTA and its established structures.

A number of commitments in the Protocol establish mechanisms that allow for future cooperation between New Zealand and China 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 where possible from baselines. Where not possible, Cabinet approval for additional funding would be sought.

9 Completed or proposed consultation with the community and parties interested in the treaty action

The Government has engaged widely with the public, Māori, business and civil society on the Protocol. The focus of the government's engagement has been to:

- Outline the process, scope and timeframes for the negotiation, and update on progress as the negotiations progressed.
- Outline and seek feedback on the reasons why New Zealand pursued an FTA Upgrade with China, including the potential benefits, both economic and strategic.
- Provide an opportunity for stakeholders to express their views on the existing FTA and to raise any concerns or suggest any improvements that they would like to see addressed through the Protocol. These views have also been recorded and reported to Ministers.
- Raise awareness about the outcomes of the negotiations so that stakeholders understand what it means for them and can be ready to take full advantage of any opportunities created.

The Ministry of Foreign Affairs and Trade has a webpage that provides detailed information and documents relating to the Protocol and existing FTA, including information on areas covered by the FTA upgrade negotiations and New Zealand's priorities in the negotiation. This page also provides contact details for New Zealand's negotiators: China.FTA@mfat.govt.nz.

9.1 Public consultations process

With the Government's focus on strengthening outreach and engagement on trade, the Ministry of Foreign Affairs and Trade, together with other government agencies, organised and conducted a wide-ranging consultation programme to raise public awareness of the New Zealand-China FTA Upgrade negotiations; and to seek stakeholder views on priority interests and potential concerns, so as to shape New Zealand's objectives and approach to the negotiations.

9.1.1 Stakeholder communications

A range of communications methods were used to support consultations with stakeholders and elicit feedback, including:

- an initial public call for submissions between April-May 2015, which sought feedback from stakeholders to inform New Zealand's priorities in the negotiations
- an ongoing call for submissions and feedback, posted on the MFAT website throughout the negotiation period
- updates on the negotiations process were regularly published on the MFAT website, through industry association newsletters and on social media, including on Facebook
- information on the New Zealand-China FTA Upgrade negotiations was included in the biannual updates on New Zealand's current treaties in progress that are circulated to around 170 individuals and groups. The New Zealand Treaties Online website is also regularly updated to reflect this information.
- regular updates on the negotiation process were emailed to stakeholders who had registered an interest in the negotiations
- regular updates and calls for feedback were distributed through NZTE channels, both in New Zealand and across its China network of offices.

9.1.2 Stakeholder engagement

Officials met regularly with the public, business and civil society throughout the course of the negotiation. This included:

- Targeted outreach to services exporters. This involved seeking feedback from over 160 New Zealand firms active in the China market based on a list developed in conjunction with NZTE; as well as through a services exporters reference group.
- Regular presentations by New Zealand's negotiating team to business representatives and sector groups with specific interests in the China market. This included presentations to the New Zealand-China Trade Association, New Zealand business workshops in Shanghai, and business roundtable sessions in Auckland, Wellington and Christchurch. Each engagement provided an opportunity for stakeholders to ask questions, and to raise potential interests and concerns.
- As part of the Government's outreach to the public on trade agreements, the New Zealand-China FTA Upgrade negotiations were discussed at public information sessions in the following 15 locations, covering both large and regional centres: Auckland, Wellington, Christchurch, Tauranga, New Plymouth, Dunedin, Hamilton, Nelson, Napier, Whangarei, Palmerston North, Invercargill, Timaru, Rotorua, Gisborne.
- Regular meetings by New Zealand's negotiating team with individual interest groups to update them on progress, including the New Zealand Council of Trade Unions.

9.1.3 Submissions process

The call for public submissions elicited a number of written responses from organisations and businesses including: Wood Processors and Manufacturers Association of New Zealand, New Zealand Forest Owners Association, Carter Holt Harvey, Fonterra, Dairy Companies Association of New Zealand, Beef+Lamb, Seafood New Zealand, Lobster Exporters of New Zealand, Tourism Industry Association New Zealand, Tourism Export Council New Zealand, Backpacker Youth and Adventure Tourism Association, Wool Exporters Council, National Trade Academy Ltd and Fisher & Paykel Production Machinery Limited. Further feedback (both written and oral) from a number of individuals, organisations and businesses was also provided throughout the course of the negotiations as part of the stakeholder consultations process.

9.1.4 Issues covered in the consultation process

A key theme emerged from the written submissions and follow up discussions from businesses: the existing FTA had been largely successful in reducing tariffs on New Zealand goods exports to China and assisting New Zealand businesses to establish a ‘stronghold’ in the China market. However, an upgrade was needed to reflect the modern realities of the New Zealand-China trade relationship, ensure the long-term relevance of our FTA vis-à-vis competitor countries, as well as to address a number of non-tariff barriers continuing to impact trade.

A number of submissions focused on the need for better trade facilitation measures that reflect the realities of trading in China, for example through improvements to the Customs Procedures and Cooperation and Rules of Origin and Operational Procedures Chapters. Several submissions argued for amendments to the temporary employment entry visa allocations and criteria, to respond to New Zealand industry demand in areas such as tourism and education. Several submissions sought improvements to goods market access commitments, including new market access for products previously excluded from the existing FTA (wood and paper products); as well as the elimination of the dairy special safeguard quotas earlier than scheduled²⁹. Several submissions also sought improved conditions and new provisions in areas such as trade in services, government procurement and electronic commerce. One stakeholder raised concerns that the introduction of a self-declaration scheme for proving origin of goods would impact negatively on the revenue streams of third parties that provide Certificates of Origin under the existing scheme.

²⁹ The dairy special safeguards will expire at the end of 2021 for liquid milk and cream, butter and cheese; and the end of 2023 for milk powders.

During public outreach sessions a number of individuals provided feedback on the New Zealand-China FTA Upgrade negotiations. One individual raised concerns about the impact of the FTA on natural resources, particularly water bottling. Several individuals raised concerns about the export of New Zealand logs offshore at the expense of processed, higher value products. One individual raised questions about China's growing global influence and the impact on our FTA.

9.2 Engagement with Māori

Engagement with Māori is guided by the 2001 Strategy for engagement with Māori on international treaties. The government's approach to engagement has also been influenced by commitments made during the Waitangi Tribunal proceedings relating to the original Trans Pacific Partnership (TPP), to improve the way Government consults and engages with Māori. The result is an approach to engagement with Māori which aims to ensure that issues of relevance to Māori in international treaties are identified early, that engagement with Māori on a particular treaty is appropriately tailored to the nature, extent and relative strength of the Māori interest and that Māori have the ability to contribute to the design and implementation of policy.

Key engagement activities with Māori in the course of the New Zealand-China FTA Upgrade negotiations included:

- A panui on the New Zealand-China FTA Upgrade progress was regularly sent to relevant Māori interest groups as part of New Zealand's broader trade agenda outreach.
- Consultation hui with Māori groups³⁰ on current FTA negotiations including the New Zealand-China FTA Upgrade were held between November 2017 and September 2019, including in Auckland, Wellington, Rotorua and Kaikohe.
- Written updates on negotiations were provided to the Iwi Leaders' Forum in July 2017.
- Information on the New Zealand-China FTA Upgrade was included in the biannual updates on New Zealand's current treaties in progress that are circulated to iwi, hapū, and Māori organisations. The New Zealand Treaties Online website is also regularly updated to reflect these updates.

The Ministry has also been engaging with the independent Māori Engagement Taumata on the Māori interest in the Protocol.

9.3 Inter-departmental consultation

The negotiation of the Protocol was conducted by an inter-agency team led by MFAT. The inter-agency team primarily comprised officials from MFAT, the Ministry of Business, Innovation and Employment (MBIE), the Ministry for Primary Industries (MPI) and New Zealand Customs Service. A wide range of other Ministries were consulted throughout the negotiations, including the Ministry for the

³⁰ These included Federation of Māori Authorities (FOMA), Te Taumata and Waitangi Tribunal Claimants.

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Environment, Te Puni Kōkiri, the Ministry of Education, the New Zealand Qualifications Authority and the Treasury.

The Department of the Prime Minister and Cabinet was regularly notified of developments on the negotiations and New Zealand's position.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

The Protocol forms an integral part of the existing FTA, therefore the provision on reviews and amendments in the existing FTA apply with respect to the Protocol as well. The existing FTA includes a general provision for review and amendment subject to the agreement of China and New Zealand, and the completion of necessary domestic legal procedures.

Specific provisions in the Protocol envisage further amendments arising in:

- The Trade in Services Chapter, as subsequent negotiations for the liberalisation of trade in services (on the basis of a negative list approach) and possible new textual proposals will commence no later than two years after entry into force of the Protocol. China and New Zealand, through the Committee on Trade in Services, will also conduct a review to possibly incorporate into the FTA the results of the negotiations on:
 - Article VI(4) of GATS (“Domestic Regulation”) or similar negotiations in other multilateral fora; and
 - the Annex on Air Transport Services of GATS.
- The Government Procurement Chapter, as China and New Zealand will commence negotiations on government procurement obligations once China accedes to the WTO GPA or if it agrees market access commitments on government procurement with another country.

New Zealand would consider any amendments to the FTA and associated instruments on a case by case basis, and any decision to accept an amendment would be subject to the usual domestic approvals and procedures, including Parliamentary Treaty Examination as applicable.

11 Withdrawal or denunciation provision in the treaty

The Protocol and side letter on wood and paper products form an integral part of the existing FTA and the side letter on temporary employment entry is an amendment to the existing FTA. Therefore the provision on termination in the existing FTA applies with respect to the Protocol, the side letter on wood and paper products and the side letter on temporary employment entry as well. The existing FTA provides that either New Zealand or China, on giving written notice to the other Party, may withdraw from the FTA. The FTA terminates after 180 days after the date of the notice of termination.