

New Zealand-China Free Trade Agreement Upgrade

Outcomes Document

Summary

The New Zealand-China Free Trade Agreement (FTA) has been a success story. Since the FTA came into force in 2008, two-way trade (exports and imports of goods and services) has more than tripled from \$9 billion to over \$32 billion, and the FTA has been a catalyst for trade and economic cooperation between our countries.

Trade rules and business practices have evolved significantly over the past decade. It is against this backdrop that New Zealand and China agreed in November 2016 to launch negotiations to upgrade the New Zealand-China FTA; to ensure the Agreement continues to reflect the modern realities of our dynamic trading relationship. Nine rounds of negotiations were held over three years in both New Zealand and Beijing. New Zealand and China announced the conclusion of the FTA upgrade negotiations on 4 November 2019 on the sidelines of the East Asia Summit.

The upgrade will make the New Zealand-China FTA China's most modern and highest quality FTA.

The upgraded New Zealand-China FTA will make a number of improvements to the existing chapters on Customs Procedures and Cooperation, Rules of Origin and Operational Procedures, and Technical Barriers to Trade, to further facilitate trade between our countries. New chapters on Electronic Commerce, Environment and Trade, Competition Policy and Government Procurement have been added, to reflect advances in trade policy in the past ten years and provide avenues for enhanced cooperation. The Upgrade also contains new commitments on services and goods market access and outcomes on movement of natural persons and investment.

These results will ensure that the New Zealand-China FTA remains ambitious, modern and high quality, and will deliver a number of strategic and commercial benefits to our countries and our traders. The outcomes also demonstrate the strong and shared commitment of New Zealand and China to free trade, and respect for the rules-based trading system.

Key Features of the upgraded New Zealand-China Free Trade Agreement

Rules of Origin and Operational Procedures

The upgraded agreement will introduce several new provisions that will 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 improvements include:

- Introducing the ability for 'approved exporters' to self-declare the origin of their goods for the purposes of claiming tariff preference under the FTA (as a further option to obtaining a certificate of origin, which will still exist);

- agreement that minor errors and discrepancies in documentation will not prevent preferential tariff rates under the FTA being applied;
- New provisions simplifying processes for certain goods shipments – including through an extension of direct consignment coverage to cover goods in transit for up to twelve months, and by emphasising the use of existing commercial documents (instead of requiring certificates of non-manipulation) to verify direct consignment.

In addition, a new Rules of Origin and Operational Procedures Committee will provide enhanced mechanisms for cooperation and dialogue and effective administration of the Chapter.

Customs Procedures and Trade Facilitation

The FTA Upgrade will introduce several new provisions that will build and improve upon the existing Customs Procedures and Cooperation chapter in the existing FTA, to increase transparency, encourage the use of information technology and generally reduce red tape. These include a number of commitments that meet or exceed WTO Agreement on Trade Facilitation objectives related to documents and processes.

Key improvements include:

- the introduction of an expedited six hour clearance time for 'perishable goods' such as seafood, including release of such goods outside normal business hours, and ensuring such goods are stored appropriately;
- an extension of the scope of the advance rulings provisions in the existing FTA to include rulings on the valuation of a good (in addition to rulings on the origin and classification of goods), providing traders with additional assurance and certainty over treatment of their goods.
- new transparency provisions which will enhance access to information about customs laws and regulations, including the establishment of contact points at key ports in China to provide information and address issues and concerns.

In addition, a new Customs Committee will be established to facilitate discussion on non-tariff barriers impacting trade.

Technical Barriers to Trade

The FTA Upgrade will introduce several new provisions that will build and improve upon the existing Technical Barriers to Trade chapter in the existing FTA.

Key improvements include:

- additional provisions on marking and labelling and border measures, which will mean exporters can have additional languages on their products and use detachable labels where appropriate;
- an avenue for continuing discussions on updating the Electrical and Electronic Equipment Mutual Recognition Arrangement (EEEMRA); and
- a cosmetics regulatory cooperation side letter, establishing mechanisms for engagement on alternatives to animal testing and information sharing.

Trade in Goods

The New Zealand China FTA already provides for the highest level of tariff liberalisation of any of China's FTAs, with over 98% of New Zealand's exports to China by value receiving preferential access once fully implemented.

The FTA upgrade outcomes will build on this even further. China already enjoys tariff-free entry on 100% of goods imports to New Zealand.

As a result of the upgrade, China will eliminate tariffs on 12 additional lines of wood and paper products excluded under the existing FTA, covering \$36m of current trade to China. The commitments will be phased-in over a ten year period.

In addition, a new process will be established in the FTA Joint Commission to provide additional transparency around wood and paper products benefitting from tariff liberalisation as a result of forward looking commitments agreed in the existing FTA. About 50 forestry products have had tariffs liberalised or eliminated through this provision since the FTA entered into force.

Investment

A side letter confirms the monetary screening thresholds applicable to Chinese investments in New Zealand significant business assets, following the implementation by New Zealand of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The letter confirms that Chinese government investments in New Zealand significant business assets are screened at \$100 million, and non-government investments in New Zealand significant business assets are screened at \$200 million, to the level consistent with the 'Most Favoured Nation' obligation in the existing NZ-China FTA. This treatment will also be reflected through a corresponding technical adjustment to the services schedule.

Trade in Services

The upgraded FTA will provide New Zealand and China's services exporters improved access commitments into each other's services markets. Key developments include:

- New market access commitments in several services sectors, including in environmental services, airport operation services, specialty air services, ground handling services, audio-visual services (sound recording distribution) and more.
- Expanded market access commitments for the following services sector commitments in the existing FTA: real estate services, translation and interpretation, other education services, advertising services, and more.
- Expansion of the 'Most-Favoured Nation' (MFN) commitment in the original FTA to a number of new services sectors, including private education, architectural services, and more. This means that if New Zealand or China makes any commitments to future trading partners in these specific sectors the other Party will automatically benefit from this enhanced treatment as well. This will ensure that our exporters' competitive positioning in each other's markets for these services will not be eroded through future liberalisation.

New Zealand and China have also agreed to commence negotiation of a 'negative list' services framework within two years of entry into force of the upgraded FTA, which will provide scope for further services market access liberalisation. This 'negative list' format

would provide exporters with a simple way to determine whether the FTA services chapter applies to their area of business in either market.

Movement of Natural Persons

The FTA Upgrade will make adjustments to the chapter on Movement of Natural Persons of the existing FTA, to reallocate the visa allocations for “iconic Chinese occupations”. The overall visa cap of 800 places will remain unchanged, but the allocations within the existing five categories have been redistributed. In particular, there will be:

- an increase for Chinese Tour Guides (from 100 to 200 places)
- an increase for Mandarin Teaching Aides (from 150 to 300 places); and a corresponding decrease to other, less utilised categories (Traditional Chinese Medicine Practitioners and Wushu Martial Arts Coaches).

In addition, the existing Chinese Tour Guide category will be broadened to “Chinese Tourism Specialist”. 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.

Electronic Commerce

The FTA Upgrade will introduce a new Chapter on Electronic Commerce, which recognises the significant role of e-commerce in transforming the New Zealand-China trade relationship, and aims to promote the use of e-commerce by businesses and consumers.

A number of new trade commitments will be introduced, including:

- promotion of paperless trading through adoption of electronic authentication and digital certificates,
- promoting transparency of laws and access to information on e-commerce, and
- disciplines around unauthorised commercial electronic information.

The chapter also requires both sides to:

- have a legal framework to ensure protection of personal information of e-commerce users, and
- have a legal framework on online consumer protection.

The chapter also includes:

- an agreement to maintain the current practice of not imposing customs duties on electronic transmissions, in accordance with relevant WTO Ministerial Decisions; and;
- Cooperation provisions to facilitate collaboration and dialogue on emerging issues, including initiatives to facilitate use of e-commerce by small and medium sized enterprises, and the development of cross-border e-commerce goods trade.

Competition

The FTA Upgrade will add a new Competition Policy chapter to the FTA, which 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.

Government Procurement

The FTA Upgrade will add a new Government Procurement chapter to the FTA. This includes provisions that promote more open, fair, competitive and transparent procurement; and commitments to have laws and policies in place to conduct procurement with integrity and to prevent corruption. The Chapter also includes a built-in agreement to enter into market access negotiations with New Zealand once China completes its accession to the WTO Agreement on Government Procurement, or if it were to negotiate market access on government procurement with another country. This commitment puts New Zealand at the 'front of the line' if China were to open its government procurement market in the future.

Environment and Trade

A new Environment and Trade Chapter will be added to the FTA, which will build upon and complement the existing Environment Cooperation Agreement negotiated alongside the original FTA. The Chapter will:

- introduce 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, and that environmental standards are not used for trade protectionist purposes;
- establish provisions to facilitate cooperation on multilateral environment agreements (MEAs);
- establish provisions on bilateral cooperation on trade-related environmental issues; and
- establish a new Committee on Environment and Trade to facilitate dialogue and the effective implementation of the Chapter.

Agricultural Cooperation

The Upgrade incorporates a new provision on agricultural cooperation into the Cooperation chapter of the existing FTA. This recognises the benefits and importance of agricultural cooperation as part of the bilateral relationship.

Relationship to existing Agreement

The FTA Upgrade amends rather than replaces the existing New Zealand China FTA. This means that all elements of the existing FTA remain in place unless amended.

In particular, the existing FTA includes a specific provision found in all of New Zealand's FTAs preserving the pre-eminence of the Treaty of Waitangi in New Zealand.

This provision remains unchanged as a result of the Upgrade. Nothing in the existing FTA, or the upgraded FTA, will prevent the Crown from meeting its obligations to Māori and New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement.

In addition, the existing FTA contains a number of general exceptions to ensure that the Agreement does not impair New Zealand (or China's) ability to regulate for legitimate public policy reasons. These exceptions remain unchanged, and will continue to apply to the upgraded FTA.

Next Steps for New Zealand

As with any treaty action, there are several steps that need to be completed before the FTA Upgrade can enter into force in New Zealand:

- 1- *Legal verification and translation:* New Zealand and Chinese officials will engage in a technical process called legal verification to prepare the agreed FTA Upgrade text for treaty action. Once completed, an official Chinese translation of the English text will also be prepared.
- 2- *National Interest Analysis:* the Ministry of Foreign Affairs and Trade (MFAT) in consultation with other agencies will prepare a National Interest Analysis (NIA) and present this along with the legally verified text to Cabinet for approval. The NIA sets out the advantages and disadvantages for New Zealand of ratifying the FTA Upgrade.
- 3- *Signing:* If Cabinet approves the NIA and legally verified text, they will give authorisation to sign the FTA Upgrade Protocol. The text of the updated agreement would be released at the time of signature, likely in early 2020.
- 4- *Parliamentary Treaty Examination Process:* The signed FTA Upgrade text and NIA would be presented to the House. The text and NIA would then be considered by the Foreign Affairs, Defence and Trade Select Committee, which would then report back to the House.
- 5- *Ratification:* Once New Zealand has completed the Parliamentary Treaty Examination process (and China has also completed its corresponding domestic processes) the FTA Upgrade would enter into force. This is usually confirmed through an exchange of documents with China.

You can read more about New Zealand's general processes for treaty ratification on the Parliament website: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/parliament-s-role-in-international-treaties>