

29 March 2010

The Hon Mrs Rita Lau
Secretary for Commerce and Economic Development
Hong Kong, China

Dear Secretary

I have the honour to refer to the signature on this date of the *New Zealand – Hong Kong, China Closer Economic Partnership Agreement* (“the CEP”). I have the further honour to confirm the following agreement reached by the Governments of New Zealand and Hong Kong, China (“the Parties”) during the course of the negotiations on the CEP on the negotiation of a comprehensive protocol to the CEP concerning investment (“Investment Protocol”) for enhancing promotion and protection of investment between the Parties:

1. As part of a wider process of economic integration and trade liberalisation between their two economies, the Parties agree to enter into negotiations on the Investment Protocol to the CEP and that the negotiations shall be concluded within two years from the date the CEP enters into force.
2. The negotiation on the Investment Protocol shall cover, *inter alia*, the following elements governing investment between the Parties:
 - (a) robust and comprehensive most favoured nation treatment and national treatment for different phases of an investment;
 - (b) according investments fair and equitable treatment and full protection and security in accordance with customary international law;
 - (c) building on the Parties’ commitments in the World Trade Organization *Agreement on Trade-Related Investment Measures*;
 - (d) appropriately restricting the imposition of nationality requirements for senior managers, and nationality or residency requirements for the majority of the board of directors;
 - (e) allowing appropriate rules for the free transfer of funds related to an investment;
 - (f) protecting investments from unlawful expropriation while also affirming the right of each Party to regulate in the public interest;

- (g) affirming the right of each Party to regulate, consistent with other provisions, to ensure investment activities are carried out in a manner with due regard to the environment;
 - (h) clarifying that only those investors with substantive business operations in the Areas of the Parties are able to benefit from the investment provisions; and
 - (i) the scheduling of non-conforming measures.
3. The Investment Protocol shall build on and be broader in scope than the Agreement between the Government of New Zealand and the Government of Hong Kong for the Promotion and Protection of Investments done at Hong Kong on 6 July 1995, and its provisions shall be drafted with reference to the New Zealand - China Free Trade Agreement done at Beijing on 7 April 2008.
4. The Parties shall also discuss how the Investment Protocol should:
- (a) replicate those provisions of the CEP that have general application, as appropriate;
 - (b) include appropriate dispute settlement procedures; and
 - (c) ensure that investors in the supply of a service through commercial presence ('Mode 3') are treated no less favourably than other investors.

If the above is acceptable to the Government of Hong Kong, China, I have the honour to propose that this letter and your letter of confirmation in reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date on which the CEP enters into force.

Yours sincerely

The Hon Tim Groser
Minister of Trade
New Zealand

29 March 2010

The Hon Tim Groser
Minister of Trade
New Zealand

Dear Minister

I have the honour to acknowledge receipt of your letter of this date, which reads as follows:

"I have the honour to refer to the signature on this date of the New Zealand – Hong Kong, China Closer Economic Partnership Agreement ("the CEP"). I have the further honour to confirm the following agreement reached by the Governments of New Zealand and Hong Kong, China ("the Parties") during the course of the negotiations on the CEP on the negotiation of a comprehensive protocol to the CEP concerning investment ("Investment Protocol") for enhancing promotion and protection of investment between the Parties:

1. *As part of a wider process of economic integration and trade liberalisation between their two economies, the Parties agree to enter into negotiations on the Investment Protocol to the CEP and that the negotiations shall be concluded within two years from the date the CEP enters into force.*
2. *The negotiation on the Investment Protocol shall cover, inter alia, the following elements governing investment between the Parties:*
 - (a) *robust and comprehensive most favoured nation treatment and national treatment for different phases of an investment;*
 - (b) *according investments fair and equitable treatment and full protection and security in accordance with customary international law;*
 - (c) *building on the Parties' commitments in the World Trade Organization Agreement on Trade-Related Investment Measures;*
 - (d) *appropriately restricting the imposition of nationality requirements for senior managers, and nationality or residency requirements for the majority of the board of directors;*
 - (e) *allowing appropriate rules for the free transfer of funds related to an investment;*

- (f) *protecting investments from unlawful expropriation while also affirming the right of each Party to regulate in the public interest;*
 - (g) *affirming the right of each Party to regulate, consistent with other provisions, to ensure investment activities are carried out in a manner with due regard to the environment;*
 - (h) *clarifying that only those investors with substantive business operations in the Areas of the Parties are able to benefit from the investment provisions; and*
 - (i) *the scheduling of non-conforming measures.*
3. *The Investment Protocol shall build on and be broader in scope than the Agreement between the Government of New Zealand and the Government of Hong Kong for the Promotion and Protection of Investments done at Hong Kong on 6 July 1995, and its provisions shall be drafted with reference to the New Zealand - China Free Trade Agreement done at Beijing on 7 April 2008.*
4. *The Parties shall also discuss how the Investment Protocol should:*
- (a) *replicate those provisions of the CEP that have general application, as appropriate;*
 - (b) *include appropriate dispute settlement procedures; and*
 - (c) *ensure that investors in the supply of a service through commercial presence ('Mode 3') are treated no less favourably than other investors.*

If the above is acceptable to the Government of Hong Kong, China, I have the honour to propose that this letter and your letter of confirmation in reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date on which the CEP enters into force."

I have the further honour to confirm that the above reflects the agreement reached by the Governments of Hong Kong, China and New Zealand during the course of the negotiations on the CEP and that your letter and this letter in reply shall constitute an agreement between our two Governments, which shall enter into force on the date on which the CEP enters into force.

Yours sincerely

The Hon Mrs Rita Lau
Secretary for Commerce and Economic Development
Hong Kong, China