

## KEY OUTCOMES:

# New Zealand-Hong Kong, China Closer Economic Partnership Agreement

## Summary

- The New Zealand-Hong Kong, China Closer Economic Partnership Agreement (“the CEP”) is Hong Kong’s first Free Trade Agreement (FTA), aside from its Closer Economic Partnership Agreement with Mainland China.
- Hong Kong is New Zealand’s ninth largest export market, with exports worth over \$820 million dollars in the year ended June 2009. Hong Kong is a strategically important trading partner in the Asia region, particularly given its role as a regional trading hub.
- The CEP will complement New Zealand’s existing FTA with Mainland China.
- The CEP will provide New Zealand’s goods and services suppliers with greater certainty and transparency when exporting to Hong Kong.
- The CEP provides New Zealand with legal certainty that zero-tariff entry on all goods exported to Hong Kong will continue in the future. No other country, other than Mainland China, has this assurance.
- In services, the CEP provides New Zealand with an “early harvest” of most of what Hong Kong offered the World Trade Organisation (WTO) membership in the Doha negotiations.
- New Zealand service exporters are future-proofed through securing Most Favoured Nation Treatment (which requires Hong Kong to pass on preferential treatment provided to future FTA partners in many sectors of key interest to New Zealand), and a “ratchet clause” (which binds in unilateral improvements that Hong Kong makes to some sectors of interest to New Zealand where it currently has restrictions).
- The CEP provides commitments aimed at facilitating the movement of business persons into Hong Kong.



- The CEP offers New Zealand a similar level of government procurement market access to what Hong Kong has offered to other parties to the multilateral Government Procurement Agreement (which New Zealand is not party to).
- The CEP preserves New Zealand's ability to take trade remedy action in accordance with WTO rules.
- The CEP provides Rules of Origin built on New Zealand's preferred approach of "Change in Tariff Classification" and accompanied by robust verification systems.
- The CEP facilitates bilateral trade through 48 hour customs clearance of New Zealand exports.
- The CEP provides greater certainty and transparency for New Zealand businesses trading with Hong Kong by establishing a framework for regulatory cooperation and consultation, including around non-tariff barriers such as sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT), intellectual property, competition policy, and e-commerce.
- The CEP does not include a chapter on Investment. A legally-binding side agreement to negotiate an Investment Protocol, within 2 years of entry into force of the CEP, was concluded alongside the CEP. This will build upon the existing New Zealand/Hong Kong, China Investment Promotion and Protection Agreement (IPPA).
- Legally binding side agreements on labour and environment were concluded in the context of the CEP in line with New Zealand's broader objectives for sustainable development.
- The CEP includes a robust dispute settlement framework consistent with recently concluded FTAs.
- The CEP includes New Zealand's Treaty of Waitangi and Creative Arts exceptions, which enable New Zealand to take measures to accord more favourable treatment to Māori, including in fulfilment of Treaty of Waitangi obligations, and provide support for creative arts of national value provided that such measures are not used for trade protectionist purposes.

## Key Goods Outcomes

### Trade in Goods

- The CEP will ensure that New Zealand's existing duty-free access is "locked in" by binding in place duty-free access for New Zealand exports. Without the CEP Hong Kong would maintain the legal right to be able to introduce tariffs on a range of New Zealand imports including hides, plastics, and electrical machinery.
- The tariff reductions that New Zealand has offered Hong Kong are the same as the tariff reductions in the New Zealand-China FTA. Hong Kong will benefit from tariff elimination on 54% of exports upon entry into force. The remaining 46% of Hong Kong's exports covered by tariffs will progressively become duty-free by 2016.

- The longer tariff phase-out periods apply for import sensitive sectors in New Zealand, such as textiles, clothing and footwear. Slower initial tariff reduction will apply to other products such as steel, furniture, plastic and rubber products<sup>1</sup>.
- The phase-out of New Zealand's remaining tariffs over time may benefit some New Zealand producers who import Hong Kong components or capital equipment for use in the production of their goods. This will lower New Zealand firms' input costs and could help improve their international competitiveness.

## Key Services Outcomes

### Trade in Services

- The CEP provides New Zealand with an "early harvest" of most of what Hong Kong has offered the entire WTO membership in the yet to be concluded Doha Round services negotiations.
- The CEP uses a "negative list" approach to scheduling services commitments. This is New Zealand's preferred approach. Under a negative list, if a service sector is not listed in the services schedules (or otherwise excluded by provisions in the CEP) then the CEP obligations are applicable. This promotes greater transparency and is a more comprehensive approach to expressing services commitments than the alternative (a positive list approach).

### Hong Kong's Commitments to New Zealand

Hong Kong's commitments going beyond its existing WTO General Agreement on Trade in Services (GATS) levels include commitments in the following new services sectors of key interest to New Zealand:

#### BUSINESS SERVICES

- Professional services (Architectural, engineering, integrated engineering, urban planning and landscape architectural, veterinary).
- Computer and related services (Other).
- Other business services (Related to management consulting, technical testing, services incidental to manufacturing, related to scientific and technical consulting, packaging, printing and publishing, credit reporting, collection agency).

#### COMMUNICATIONS

- Telecommunications (Telex, telegraph, electronic mail, voice mail, online information and database retrieval, electronic data interchange, enhanced/value-added facsimile, code and protocol conversion).
- Audiovisual (Motion picture projection).

<sup>1</sup> Tariffs on carpet, some clothing and footwear products, and certain highly traded textile products will be phased out by 2014. Tariffs on the most highly traded clothing and footwear products will be phased out by 2016.

#### CONSTRUCTION AND RELATED ENGINEERING

- General construction work for civil engineering.

#### DISTRIBUTION

- Commission agents, wholesale trade, franchising.

#### EDUCATION

- Primary, secondary, higher and other education (see section below for a fuller discussion on the education outcome).

#### ENVIRONMENTAL

- Sewage, refuse disposal, sanitation, cleaning, noise abatement, nature and landscape protection, other.

#### SPORTING AND OTHER RECREATIONAL SERVICES

- Sporting and other recreational services.

#### TOURISM AND TRAVEL RELATED

- Lodging.

#### LOGISTICS

- Air transport (Selling and marketing, computer reservation systems, aircraft repair and maintenance).
- Maritime transport (Passenger transport, pushing and towing, supporting services, maritime freight forwarding, pre-shipment inspection).
- Services auxiliary to all modes of transport, except air and rail (Cargo-handling, storage and warehousing, freight transport agency).

In service sectors where Hong Kong has existing GATS commitments it has made a number of improvements of interest to New Zealand:

#### BUSINESS SERVICES

- Accounting and auditing, taxation, advertising, market research, management consulting, services incidental to agriculture, maintenance and repair of equipment, building cleaning, photographic, convention, translation and interpretation, public relations.

#### COMPUTER & RELATED SERVICES

- Installation, software implementation, data processing and database.

#### DISTRIBUTION

- Retailing.

#### TOURISM AND TRAVEL RELATED

- Hotel, restaurant and catering, travel agencies.

#### MARITIME TRANSPORT

- Freight, rental of vessels with crew, maintenance and repair of vessels, cargo-handling, maritime Agency.

These commitments will provide New Zealand service suppliers with the certainty of continued openness in these areas, consistent with the CEP.

New Zealand services exporters will also benefit from strong “future-proofing” of their position in the Hong Kong market so that in certain sectors New Zealand will automatically get the benefit of future liberalisation by Hong Kong. The two mechanisms which provide this are:

- a Most Favoured Nation (MFN) clause, which automatically provides to each other any better treatment which they provide to service suppliers of other countries in the future, subject to certain reservations and exceptions; and
- a “ratchet clause” where, in some sectors, Hong Kong binds in any unilateral liberalisation of specified restrictions currently in place.

In legal and energy services a separate, non-binding exchange of letters provides that Hong Kong will positively consider according MFN treatment to New Zealand service suppliers in the future.

#### **New Zealand’s Commitments to Hong Kong**

- New Zealand’s commitments go beyond its existing WTO GATS commitments but have either already been made in other FTAs or offered by New Zealand in the WTO Doha negotiations.
- New Zealand has agreed to an increase in the screening threshold to \$20 million and there is also a mechanism subsequently to review this \$20 million threshold with a view to increasing it. In practice, the threshold that applies under the Overseas Investment Act is \$100 million.
- None of New Zealand’s commitments go beyond New Zealand’s current regulatory environment or policy settings.
- For details on the services sectors excluded from New Zealand’s commitments, see New Zealand’s negative list on the Ministry of Foreign Affairs and Trade website: [www.mfat.govt.nz](http://www.mfat.govt.nz)

#### **Domestic Regulation**

- The CEP includes new rules relating to domestic regulation of a standard higher than has been reached in the WTO or in any of our earlier FTAs. This will provide greater certainty and transparency for New Zealand service suppliers, particularly in relation to qualification and licensing processes in Hong Kong.

## Education Services

- The CEP contains a range of commitments affecting primary, secondary, higher and other education, although these are subject to a range of existing restrictions and a broad carve-out relating to the admission of non-local students to education institutions located in Hong Kong.
- These existing restrictions are subject to the “ratchet clause”, meaning that any future unilateral liberalisation undertaken by Hong Kong will be bound in and committed to New Zealand.
- New Zealand education exporters will also benefit from MFN treatment, ensuring that they will never be any worse off than their competitors in Hong Kong. The carve-out relating to non-local students will not extend to students from New Zealand.
- The CEP also allows for a closer relationship between New Zealand and Hong Kong regulators through an education cooperation arrangement.

## Review

- There is a commitment to revisit air transport services and subsidies under the CEP in light of any WTO developments.
- The Committee on Services established under the CEP will review the implementation of the services chapter and explore measures for the further expansion of trade in services.

# Other Key Outcomes

## Movement of Business Persons (MBP)

- The CEP provides commitments aimed at facilitating the movement of business persons (MBP) engaged in trade and investment, and ensuring transparent application procedures for temporary entry processes for business persons.
- Hong Kong must publish all relevant information about their immigration requirements in respect of the categories of business persons and service suppliers covered by their schedules of commitments. Any changes to these regulations must also be published promptly.
- Fees for processing immigration formalities must be reasonable and, within ten days of making an application for temporary entry, New Zealand business visitors and service suppliers must be either informed of a decision, or informed when a decision will be made.

## Hong Kong’s Commitments to New Zealand

Hong Kong have made commitments on the temporary entry and duration of stay for particular categories of business persons, investors, and service suppliers in the following ways:

- All business visitors (e.g. those attending meetings, taking orders, negotiating contracts – not just service suppliers) are allowed temporary entry of 90 days.

- Additional commitments are provided for ‘intra-corporate transferees’ (senior managers or specialists) in a broad range of service sectors, reflecting the openness provided for the same services in Hong Kong’s “negative list”. These commitments allow entry for one year, extendable for up to five years.
- Additional commitments are provided for ‘installers or servicers’ with temporary entry of three months in a year (subject to an economic needs test) in eleven new sub-sectors.

### **New Zealand’s Commitments to Hong Kong**

- All business visitors from Hong Kong will be able temporarily to enter New Zealand for a period not exceeding three months in aggregate in any one year.
- All intra-corporate transferees from Hong Kong will be able temporarily to enter New Zealand for a period of initial stay of up to three years. In the case of senior managers, they must have been employed by their business for at least 12 months prior to their transfer to New Zealand.
- Installers or servicers from 11 specified sub-sectors (matching those committed by Hong Kong) will be able to visit for periods not exceeding three months in any 12 month period.

New Zealand and Hong Kong have committed to reviewing their MBP commitments relating to ‘installers or servicers’ and ‘independent service suppliers’ one year after entry into force, with a view to improving these commitments.

## **Government Procurement (GP)**

- The CEP with Hong Kong is New Zealand’s first free trade agreement since the Trans-Pacific Strategic Economic Partnership (2006) to include a Government Procurement (GP) chapter.
- The GP outcome provides certainty of access for New Zealand suppliers and ensures that both New Zealand and Hong Kong will continue to be open and non-discriminatory in their GP practices.
- The CEP offers New Zealand a similar level of government procurement market access to what Hong Kong has offered to other parties to the WTO Government Procurement Agreement (which New Zealand is not party to).

## **Rules of Origin (ROO)**

- In order for goods being imported into New Zealand to qualify for tariff reductions under the CEP, the rules of origin (ROO) criteria must be met.
- The ROO are built on New Zealand’s preferred approach of “Change in Tariff Classification”, and based on the rules of origin in the New Zealand-China FTA.
- Product specific rules (PSRs) agreed in the New Zealand-China FTA are adopted for the majority of product lines.

- For products in clothing chapters 61 and 62 of the Harmonised System (HS), the PSRs are identical to those in the New Zealand-China FTA, except that they allow Hong Kong producers to meet the PSRs across Hong Kong and Mainland China by undertaking part-processing in China. A certificate of origin issued by Hong Kong authorities is required for these products, to provide assurance that they have been processed in accordance with the agreed rules.

## Customs Procedures

- New Zealand goods will be cleared within 48 hours of the time of arrival in most cases.
- Traders can obtain written advance rulings on tariff classification.
- A risk-management approach to customs clearance will facilitate the clearance of low-risk goods.
- The CEP contains provisions on challenging Customs decisions.

## Trade Remedies

- Under the CEP New Zealand retains the ability to take trade remedy actions against unfairly traded imports from Hong Kong which are dumped or subsidised and injure New Zealand producers, consistent with WTO rights and obligations.
- While global safeguard action may still be taken by either Party, both Parties must exclude the other Party from safeguard action if the imports from the other Party are not causing serious injury<sup>2</sup>.
- New Zealand and Hong Kong have agreed under the CEP that neither Party will introduce or maintain any form of export subsidy on products being exported to the other Party.

## Sanitary and Phytosanitary Measures (SPS)

- The SPS outcome establishes mechanisms and procedures to improve communications and consultations that should allow for more streamlined and timely resolution of bilateral SPS issues.

## Technical Barriers to Trade (TBT)

- The CEP establishes a framework to enable the resolution of TBT issues as they arise.
- The CEP encourages New Zealand and Hong Kong to accept each other's technical regulations as being equivalent, so that satisfying one set is equivalent to satisfying the other.

## Intellectual Property (IP)

- New Zealand and Hong Kong's commitments on intellectual property rights under the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement are reaffirmed in the CEP.
- The CEP requires New Zealand and Hong Kong to provide, on request, information, on any new

<sup>2</sup> Global Safeguard Measures are temporary measures designed to slow imports of a particular product from all countries, to enable a domestic industry to adjust to heightened competition from foreign suppliers.



laws which enter into force in relation to intellectual property, and to exchange information on developments in intellectual property policy.

- Both Parties have agreed to endeavour to reduce transaction costs associated with implementing their respective intellectual property regimes.
- The CEP provides that, subject to existing international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

## Competition

- The Competition Policy Chapter provides a principles-based approach to the development and enforcement of competition policies, based on the APEC Principles to Enhance Competition and Regulatory Reform. It also provides a mechanism for the Parties to consult on competition issues and encourages cooperation through, for example, information exchange.

## Electronic Commerce

- The CEP establishes principles for the conduct of e-commerce between the Parties and requires the maintenance of a predictable and simple legal environment for e-commerce.

## Dispute Settlement

- The Dispute Settlement Chapter of the CEP provides a mechanism for resolving disputes between New Zealand and Hong Kong resulting from the implementation of the CEP, with provision for the establishment of an arbitral tribunal should consultations fail to settle the dispute.

## General Exceptions

### The Treaty of Waitangi

- Consistent with New Zealand's previous FTAs, the CEP maintains New Zealand's ability to take measures that it deems necessary to accord more favourable treatment to Maori, including in fulfilment of its obligations under the Treaty of Waitangi, provided that those measures are not used for trade protectionist purposes.

### Creative Arts

- The CEP does not preclude New Zealand from taking measures necessary to protect national treasures, specific sites of historical or archaeological value, or support creative arts of national value, provided that those measures are not used for trade protectionist purposes.

## Reviews

- In addition to some subject-specific reviews provided for in individual chapters, New Zealand and Hong Kong have agreed to carry out a general review, at Ministerial level, of the CEP within two years of entry into force, and every three years after that.

## **OTHER INSTRUMENTS:**

### **New Zealand-Hong Kong, China Environment Cooperation Agreement**

- The Environment Cooperation Agreement establishes a set of shared trade and environment principles and a framework for cooperation, consultation, and issue resolution.

### **Memorandum of Understanding on Labour Cooperation between New Zealand and Hong Kong, China**

- The Memorandum of Understanding on Labour Cooperation establishes a set of shared trade and labour commitments, and establishes a framework for consultation and for promoting the mutually beneficial sharing of experience and expertise.

### **Exchange of Letters on the Conclusion of an Investment Protocol**

- There is no investment chapter in the CEP. New Zealand and Hong Kong have, however, concluded a legally-binding agreement to negotiate a comprehensive Protocol to the CEP on investment. The negotiations towards an Investment Protocol to the CEP are to be completed within two years of entry into force of the CEP.
- The Investment Protocol to the CEP will build upon and be broader in scope than the existing New Zealand-Hong Kong Agreement for the Promotion and Protection of Investments and will be drafted with reference to the New Zealand-China FTA.