NEW ZEALAND – HONG KONG, CHINA CLOSER ECONOMIC PARTNERSHIP

(AND ASSOCIATED INSTRUMENTS)

NATIONAL INTEREST ANALYSIS

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Background

Negotiations towards a Closer Economic Partnership Agreement (CEP) with Hong Kong, China (hereafter 'Hong Kong') first commenced in 2001. These negotiations ran into a number of difficulties in 2002 and were suspended. Following a series of informal discussions between New Zealand and Hong Kong at both the ministerial and officials' level, it was agreed in February 2009 to resume the CEP negotiations. Formal negotiations resumed in May 2009. Prime Minister John Key and his Hong Kong counterpart, Chief Executive Donald Tsang, announced the successful conclusion of the CEP negotiations at the APEC Leaders meeting in Singapore in November 2009.

In conjunction with the CEP negotiations, New Zealand has also concluded the following binding treaty-level agreements: an Exchange of Letters on the Conclusion of an Investment Protocol ("the Investment EoL''), a *Memorandum of Understanding on Labour Cooperation between New Zealand and Hong Kong, China* ("the Labour MOU") and the *New Zealand – Hong Kong, China Environment Cooperation Agreement* ("the Environment Agreement"). These instruments will further contribute towards strengthening and expanding the bilateral economic and political relationship with Hong Kong. The CEP was signed in Hong Kong on 29 March 2010. The Labour MOU, Environment Agreement, and the Investment EoL have now also been signed.

This National Interest Analysis (NIA) assesses the CEP, the Labour MOU, the Environment Agreement, and the Investment EoL from the perspective of their impact on New Zealand and New Zealanders. The NIA does not seek to address the impact of any of these instruments on Hong Kong or other economies. The CEP and associated instruments are considered together in the same NIA as they were negotiated in tandem and form part of the CEP package.

Reasons for New Zealand becoming a Party

The key reasons for New Zealand entering into the CEP and the associated instruments are that they will:

- place the bilateral trading relationship on a more open and secure footing, with greater legal certainty for businesses wishing to operate in Hong Kong;
- secure more certain access to Hong Kong's services market and ensure that New Zealand services providers will benefit from future liberalisation by Hong Kong in particular sectors;
- commit the Parties to future negotiations towards an Investment Protocol to the CEP;
- enable traders to benefit from trade-facilitating rules of origin (ROO) accompanied by robust verification systems;
- provide a framework for regulatory cooperation and consultation;
- allow for more effective discussion and cooperation on labour and environment matters, in line with New Zealand's sustainable development and economic growth objectives;
- raise the profile of the bilateral trade and economic relationship;
- complement the New Zealand – China FTA: Hong Kong's proximity and special relationship with Mainland China, and its ability to serve as a platform for trading into China, make Hong Kong a strategically important trading partner for New Zealand; and

- enhance New Zealand's economic integration with the region following on from New Zealand's FTAs with Thailand (New Zealand – Thailand CEP), Singapore (New Zealand – Singapore CEP), China (the New Zealand – China FTA), with ASEAN and Australia (the Agreement Establishing the ASEAN – Australia-New Zealand Free Trade Area (AANZFTA)); with Malaysia (the New Zealand-Malaysia FTA), and with Brunei Darussalam, Chile and Singapore (through the Trans-Pacific Strategic Economic Partnership Agreement (P4)).

Advantages and Disadvantages to New Zealand of the Treaty Actions

Advantages

While Hong Kong already offers duty-free imports for all countries, the CEP will ensure New Zealand's existing duty-free access is "locked in" for New Zealand exports, giving New Zealand exporters added certainty that competitors (other than Mainland China) do not enjoy. The phase-out of certain remaining domestic duties may also reduce some costs for New Zealand producers who use imported Hong Kong components or capital equipment, for instance components or equipment across the electrical transformers, whiteware, and steel areas.

The CEP provides New Zealand with the ''early harvest'' of most of Hong Kong's Doha services commitments (i.e. Hong Kong is offering to New Zealand now through the CEP most of what it is offering the WTO membership in the yet to be concluded Doha negotiations). The commitments that Hong Kong makes to New Zealand in the CEP address services sectors of key export interest to New Zealand, including education, business, environmental and logistics services.

New Zealand service exporters have also secured strong future-proofing of their position in the Hong Kong market through Most Favoured Nation (MFN) treatment and a "ratchet'' clause. MFN treatment means that New Zealand exporters will automatically benefit from any preferential treatment that Hong Kong provides to future FTA partners subject to certain reservations and exceptions and the ratchet clause means that any future unilateral liberalisation undertaken by Hong Kong in certain sectors will be bound in and committed to New Zealand.

New Zealand will be using the same tariff reduction schedule as the New Zealand – China FTA for imported products from Hong Kong. In order to help mitigate the potential for any negative adjustment effects associated with the phase-out of these tariffs, the longest tariff phase-out periods apply to industry sectors in New Zealand that are particularly sensitive to imports from Hong Kong, such as textiles, clothing, and footwear. Delayed tariff phase-outs will apply to other products such as steel, furniture, plastic and rubber products.

The CEP includes robust ROO based on New Zealand's preferred approach. Hong Kong is primarily a trading hub with a small manufacturing sector. It was considered important for New Zealand to secure trade facilitating ROO with a robust verification system to help New Zealand Customs ensure that products imported from Hong Kong meet the requirements to be treated as produced in Hong Kong. Parallel phasing with the New Zealand – China FTA coupled with ROO based closely on those in the New Zealand – China FTA minimise the risk of Hong Kong being used as a channel for securing an advantage for products manufactured in China.

New Zealand will also benefit from:

- 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;
- a similar level of government procurement (GP) market access as Hong Kong has offered to other Parties to the plurilateral WTO Government Procurement Agreement (GPA) (which New Zealand is not a party to);
- a commitment to conclude an Investment Protocol within two years of entry into force of the CEP;
- provisions to facilitate the movement of New Zealand business people into Hong Kong; and
- legally-binding side agreements on labour and environment, in line with New Zealand's policy of integrating labour and environment into FTAs.

There are in addition important strategic benefits from the CEP. It will strengthen this important trading relationship, complement New Zealand's Free Trade Agreement with China and reinforce the potential of Hong Kong as a platform for trading into China, including to realise the opportunities opened up by that Agreement, and enhance New Zealand's economic integration into the region for which Hong Kong is an important trading hub.

Disadvantages

As with any FTA, there may be negative adjustment costs associated with the elimination of New Zealand tariffs over time. The longer phase-out periods for sensitive products should help to mitigate the potential for negative adjustment costs.

New Zealand would have preferred to have secured an investment chapter in the CEP itself, rather than an Investment EoL, which provides a legally-binding commitment to negotiate an Investment Protocol within two years of entry into force of the CEP. An investment chapter would have been able to include improved protections and disciplines around investment within the body of the CEP. However, until the Protocol enters into force, the provisions of the existing *New Zealand – Hong Kong Agreement for the Protection and Promotion of Investments* will continue to provide investors with the protections and benefits of that agreement.

Legal Obligations under the CEP and the Associated Instruments

The key new obligations for New Zealand include:

- identical tariff reduction phasing as provided to China (i.e. tariff elimination on entry into force on 54 percent of Hong Kong's exports and total tariff elimination of all tariffs by 2016);
- market access and national treatment[1] commitments to Hong Kong service providers similar to those provided in the P4 (Brunei, Chile and Singapore), along with some elements provided in other recent FTAs and a few commitments drawn from New Zealand's Doha offer (all within domestic policy settings);

1 These commitments mean that, where applicable, service suppliers of one Party wishing to operate in the other are entitled to access the market of that other Party without quota restrictions (market access) and on the same basis as domestic suppliers (national treatment).

- a (reciprocal) commitment to extend Most Favoured Nation (MFN) treatment to Hong Kong in relation to services, subject to specified reservations against this commitment;
- doubling the overseas screening regime threshold from existing WTO levels of $10 million to $20 million (in an associated non-binding letter, New Zealand has undertaken to later review this level with a view to increasing it);
- commitment not to take trade remedy actions in an arbitrary or protectionist manner, and to carry out trade remedy actions in a transparent manner;
- specific ROO to accommodate part-processing of certain clothing products in Mainland China, with robust verification procedures to mitigate any risks from this approach;
- commitments on the temporary entry of Hong Kong business visitors that go beyond New Zealand's existing WTO commitments, but no further than New Zealand's recent commitments in the New Zealand – Malaysia FTA;
- with respect to GP, a commitment that certain government entities will follow agreed procedures providing for transparent and competitive tendering where procurements are valued at or above the agreed thresholds, and a prohibition on the use of offsets (i.e. local content requirements); and
- a framework for cooperation in relation to customs procedures, sanitary and phytosanitary measures, and technical barriers to trade.

Obligations in a number of other areas of the CEP are consistent with existing New Zealand law and practice. The CEP does not prevent New Zealand from taking measures which it deems necessary to fulfil its obligations to Māori under the Treaty of Waitangi or to support creative arts of national value.

The Labour MOU and the Environment Agreement require New Zealand to commit to cooperating on labour and environment issues, including by establishing a cooperation programme and holding regular dialogue on these matters. The Investment EoL requires New Zealand to enter into negotiations with Hong Kong on an Investment Protocol to the CEP, to be concluded within two years of the CEP's entry into force.

Economic, Social, Cultural and Environmental Effects

Economic Effects

The CEP is expected to have an overall positive effect on the New Zealand economy and to deliver economic benefits through the removal of non-tariff barriers to trade between New Zealand and Hong Kong over time. The costs of non-tariff barriers are difficult to quantify and, accordingly, robust estimates of the gains of removal are difficult to obtain. Economic modelling has not been undertaken in this instance. Economic modelling is also unable to accurately predict the ''demonstration effect'' that the conclusion of the CEP is likely to have in stimulating private sector interest in the respective markets.

Social Effects

The CEP is not expected to have any discernable negative social effects in New Zealand. In terms of employment, some minor negative effects could be expected in industries previously protected by tariffs, though tariff removal in sensitive areas will be gradual and firms in protected sectors will already be positioning themselves to transition to a tariff-free environment (given previous FTA commitments, most notably the New Zealand – China FTA). Positive employment effects can be expected in areas of the economy where activity increases, as a result of increased export opportunities and cheaper imports under this agreement. The Labour MOU includes explicit recognition by both Parties that labour laws, regulations, policies, and practices should not be used for trade protectionist purposes, nor weakened or reduced to secure trade advantage.

Cultural Effects

The CEP contains safeguards to help ensure that there are no adverse effects on New Zealand cultural values, including Māori interests (see section 6.3).

Environmental Effects

New Zealand has sufficiently robust environmental laws, policies, regulations, and practices in place to manage any potential negative implications of the CEP (see section 6.4). The Environment Agreement reinforces the commitment of both Parties to improving environmental protection standards.

Costs

As with any FTA that results in the reduction in tariffs, there will be a cost in terms of lost tariff revenue. In 2008-09 the estimated tariff revenue collected on imports from Hong Kong was $4 million.[2] As tariffs are phased out over time under the CEP, the New Zealand Customs Service will progressively collect less and, by 2016, no revenue from duty payments on imports from Hong Kong will be collected.

One-off costs associated with the CEP are estimated to amount to $150,000 for promotion and outreach activities (including processes and documentation required to support the legislative process). Funding for these activities has been secured from the inter-agency Trade Negotiations Fund (TNF). Further costs will arise from the negotiation of an Investment Protocol within two years from entry into force of the CEP. These negotiations will also be funded from the TNF.

Subsequent Protocols and/or Amendments to the Treaty

The CEP provides for amendment by agreement of the Parties. New Zealand would consider proposed amendments on a case-by-case basis. Any decision to accept an amendment would be subject to New Zealand's normal domestic approvals and procedures.

2 Estimated using New Zealand's 2009 MFN tariff and average 2008 and 2009 June years (value for duty (vfd)) trade data.

Specific provisions in the CEP envisage the possibility of review of existing commitments, or the conclusion of further agreements or arrangements between the Parties. In addition, the Investment EoL requires the Parties to negotiate an Investment Protocol to the CEP within two years of the CEP's entry into force, and a non-binding exchange of letters commits the Parties to review some specific movement of business person commitments one year after the CEP enters into force. A separate non-binding letter confirms that New Zealand will review the overseas screening regime threshold in the context of and upon conclusion of the negotiations of an Investment Protocol.

While the Labour MOU, the Environment Agreement and the Investment EoL have no specific provisions covering amendment, consistent with international treaty practice, the Parties could agree to amend these agreements if they wished.

Implementation

Legislative and regulatory amendments are required to align New Zealand's domestic regime with the rights and obligations created by the CEP relating to tariffs and the ROO. There are no legislative or regulatory amendments required for New Zealand to implement the Labour MOU, the Environment Agreement, or the Investment EoL.

Consultation

There was a process of consultation with interested stakeholders prior to the commencement of negotiations in 2001. 31 submissions were received. Further submissions were invited by interested stakeholders following the relaunch of negotiations in 2009 and this was supplemented by a programme of outreach with stakeholders considered likely to have an interest in the negotiations.

This also included an online survey of 236 New Zealand export companies, of which 54% (128 out of 236) identified Hong Kong as a current export market.

1 NATURE AND TIMING OF PROPOSED TREATY ACTIONS

The negotiations on a New Zealand – Hong Kong, China Closer Economic Partnership Agreement ("the CEP") were concluded in November 2009 and the CEP was in signed in Hong Kong on 29 March 2010. Negotiations on the Labour MOU, the Environment Agreement, and the Investment EoL were concluded alongside the CEP and those agreements have also now been signed.

The CEP will enter into force 30 days after New Zealand and Hong Kong have exchanged written notification that necessary internal procedures for entry into force have been completed (the Parties are aiming for 1 October 2010). The Investment EoL will enter into force on the same day as the CEP.

Both the Labour MOU and the Environment Agreement will enter into force 60 days after New Zealand and Hong Kong have exchanged written notification that any necessary domestic procedures for entry into force have been completed, or after such other period as the Parties may agree in the written notification. It is intended that these agreements will enter into force prior to or concurrent with entry into force of the CEP.

2 REASONS FOR NEW ZEALAND BECOMING A PARTY TO THE TREATIES

2.1 Background

Hong Kong was one of New Zealand's first bilateral FTA negotiating partners, with negotiations first commencing in 2001. Hong Kong was seen as an important strategic partner with which New Zealand could conclude a high quality and comprehensive FTA. Negotiations stalled in 2002, however, primarily because of difficulties over rules of origin (ROO). A possible way forward to solve those difficulties became evident once the New Zealand-China FTA had been concluded.

Following a series of informal discussions, it was agreed in February 2009 to resume the CEP negotiations. Negotiations were held in Hong Kong and New Zealand, with a final session in Singapore, between May and November 2009. In November 2009 the successful conclusion of negotiations was announced by Prime Minister Key and Hong Kong Chief Executive, Donald Tsang, in the margins of the APEC Economic Leaders meeting at Singapore.

New Zealand was the first OECD country to sign an FTA with China, and is poised to become the first country (outside of Mainland China) to sign a CEP with Hong Kong.[3]

2.2 Benefits from Enhanced Trade and Economic Links

This section sets out the direct and indirect benefits of the CEP in each key area.

2.2.1 Direct Benefits from Enhanced Trade and Economic Links with Hong Kong

The primary objective of New Zealand's trade policy is to improve opportunities for exporters by strengthening relationships with trading partners, removing barriers to trade, and establishing frameworks through which trade linkages can better develop. Concluding bilateral trade agreements is one avenue for achieving this objective.

The CEP with Hong Kong provides New Zealand with an opportunity to strengthen and deepen its relationship with an important trading partner, and provides greater certainty and transparency for New Zealand businesses wishing to operate in Hong Kong. Hong Kong has recently become one of New Zealand's top ten export destinations.

The CEP with Hong Kong is separate but complementary to the New Zealand-China FTA, and further enhances New Zealand's economic integration with the Asia region, following on from the conclusion of the Thailand and Singapore CEPs, the P4, the New Zealand-China FTA, AANZFTA, and the Malaysia FTA.

2.2.2 Indirect Benefits from Enhanced Trade and Economic Links with Hong Kong

Hong Kong is a strategically important trading partner in Asia. More than 70 percent of New Zealand's trade and investment occurs in the Asia-Pacific region. The CEP will leave New Zealand in a stronger position in the future to capitalise on new trade and investment[4] opportunities in this region.

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3 Hong Kong, known formally as Hong Kong, China, is a Special Administrative Region of China which inter alia has full autonomy in respect of trade.

4 While the CEP does not include an investment chapter, New Zealand and Hong Kong have agreed in the legally binding Investment EoL to negotiate a comprehensive Protocol to the CEP covering investment within two years of the CEP's entry into force.

The CEP complements New Zealand's FTA with China and enhances the potential for Hong Kong to be used as a platform for trade into China. Some New Zealand companies looking to expand their business into China choose to start out in Hong Kong. New Zealand Trade and Enterprise's New Zealand Focus was set up in Hong Kong with this objective; offering exporters a low risk, low cost vehicle to test their products in a sophisticated ethnic Chinese market. Hong Kong is also attractive to New Zealand companies for its commitment to the rule of law, the preservation of individual rights, and the independence of the courts.

Both New Zealand and Hong Kong are members of the World Trade Organization (WTO) and trade liberalisation through negotiations at the WTO remains New Zealand's primary trade policy objective. New Zealand works closely with Hong Kong in the WTO across a range of issues. The conclusion of the CEP constructively complements and strengthens cooperation between the two economies.

At the regional level, New Zealand and Hong Kong are both members of the Asia-Pacific Economic Cooperation (APEC) forum. APEC continues to make progress in facilitating trade and opening markets in member economies with a view to achieving free and open trade and investment in the Asia-Pacific region. Work is now being undertaken to identify possible pathways for the region to move towards a Free Trade Area of the Asia-Pacific (FTAAP).

New Zealand also works closely with Hong Kong on trade and economic issues in a range of other multilateral organisations including the Asian Development Bank (ADB), the World Customs Organization (WCO), the International Monetary Fund (IMF), and the International Chamber of Commerce (ICC).

2.3 Benefits of Closer Cooperation with Hong Kong on Labour and Environment

The New Zealand study on the benefits of a CEP between New Zealand and Hong Kong identified sustainable development as a core national objective for both economies. The Labour MOU and the Environment Agreement highlight the importance of the links between trade and environmental outcomes, and trade and labour standards. The agreements affirm shared understandings, and establish mechanisms for ongoing cooperation and for addressing any issues that may arise in these areas. The intention is that the Parties will work together in areas of common interest in relation to trade, labour, environmental performance, and sustainable development.

The Labour MOU and Environment Agreement provide an opportunity for the New Zealand Government to seek input from non-government sectors in identifying and developing potential areas for cooperation.

The Labour MOU and Environment Agreement are broadly similar to the labour and environment outcomes negotiated within the context of other FTAs: including with Thailand (through the New Zealand – Thailand CEP); with Brunei Darussalam, Chile, and Singapore (through the P4); with China (through the New Zealand – China FTA); with the Republic of the Philippines (in the context of the AANZFTA)); and with Malaysia (through the New Zealand – Malaysia FTA).

3 ADVANTAGES AND DISADVANTAGES TO NEW ZEALAND OF THE TREATY ACTIONS

3.1 Advantages to New Zealand in Entering into the CEP

3.1.1 Trade in Goods[5]

- Hong Kong is the ninth largest export destination for New Zealand exports, accounting for $823 million of New Zealand's merchandise exports.
- New Zealand imported $199 million of merchandise goods from Hong Kong in the year ending June 2009, making it New Zealand's thirty-first largest source of imported goods.
- Hong Kong accounts for 1.9 percent of New Zealand's total goods exports and 0.4 percent of New Zealand's total goods imports.
- In the year to June 2009, goods exports to Hong Kong had increased 33.6 percent from the year prior, goods imports were down by 2.5 percent, and total goods trade had increased by 24.6 percent.

While Hong Kong already offers duty-free imports for all countries, the CEP will offer the following specific gains in relation to goods:

- The CEP will ensure that New Zealand's existing duty-free access is "locked in" by binding in place the duty-free access for New Zealand exports.[6] This means that Hong Kong cannot unilaterally change this duty-free level of access for New Zealand exporters without being in breach of its international obligations to New Zealand. This will give New Zealand exporters added certainty that all their competitors, outside of Mainland China, do not enjoy.
- 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 many New Zealand firms' input costs and could help improve their international competitiveness.

In order to help mitigate the potential for any negative adjustment effects associated with the phase-out of these tariffs, the longest tariff phase-out periods apply to industry sectors in New Zealand that are particularly sensitive to imports from Hong Kong, such as textiles, clothing, and footwear. Delayed tariff phase-outs will apply to other products such as steel, furniture, plastic and rubber products.

3.1.2 Rules of Origin (ROO)

ROO are designed to protect the integrity of free trade between countries by preventing exporters from third countries from gaining preferential access to the market of the Parties to the agreement. Hong Kong is primarily a trading hub with a small manufacturing sector. It is very important therefore to ensure that products imported into New Zealand from Hong Kong under preferential tariff rates are produced in Hong Kong. Verifiable ROO and robust verification procedures are required to ensure that only goods that qualify as genuinely originating under the ROO obtain the tariff preference.

5 All statistics cover the period from July 2008-June 2009.

6 Currently around 14% of NZ exports to Hong Kong are in tariff lines which are "unbound". This means Hong Kong is free to increase tariffs to any level without breaching its WTO commitments.

The ROO in the CEP are primarily based on the Change in Tariff Classification ("CTC") approach. A CTC approach ensures consistency for exporters across New Zealand's other current FTAs and:

- provides greater certainty of preferential access to New Zealand exporters;
- reduces compliance costs to exporters by simplifying administrative requirements for origin verification;
- facilitates access to global supply chains;
- facilitates changes to manufacturing processes as new technologies and systems develop; and
- simplifies border administration and verification.

The CEP ROO provide "co-equal" or alternative rules for certain product lines. This means that manufacturers/exporters can choose between a CTC, Regional Value Content (RVC), or a process rule, depending on which approach best suits a particular production model. The CEP will adopt product specific rules (PSRs) agreed under the New Zealand-China FTA for a majority of product lines. Some alternative PSRs were agreed for a few non-sensitive product lines where the variation was not significant and the tariff levels are either zero or less than 5 percent.

With respect to the products in clothing chapters 61 and 62 of the Harmonized System (HS), the PSRs are identical to those of the New Zealand-China FTA except that they allow Hong Kong to meet the PSR across Hong Kong and Mainland China. This allows Hong Kong to undertake part-processing (in an agreed manner) of clothing products of HS chapters 61 and 62 in China without losing its status of Hong Kong origin. This facility takes account of Hong Kong's small size and special relationship with China, along with the fact that New Zealand also has an FTA with China. Accordingly, part-processing of a limited category of goods in China makes little material difference for New Zealand, given the mirroring of tariff phasing between the two agreements. The same ability is provided for New Zealand also to partly-process these particular products in China.

The requirement for Hong Kong producers to obtain a certificate of origin and to retain records in relation to these products will help ensure that the origin of products with specified partial processing respectively in Hong Kong and China can be verified in the intended manner. For other products meeting standard ROO requirements for specified processing to be undertaken in Hong Kong, standard methods for verification of origin, based on self-declaration, will apply.

3.1.3 Customs Procedures and Cooperation

Provisions in the CEP on customs procedures and cooperation build upon longstanding assistance and cooperation provided in the *Co-operation Arrangement between the New Zealand Customs Department and the Hong Kong Customs & Excise Department*. This Arrangement reflects historically strong relations between the two Customs Administrations.

The chapter creates a binding framework for facilitating trade between New Zealand and Hong Kong at the least cost to government and stakeholders. It also provides a process for addressing any trade-related problems that might arise and for establishing a dialogue on issues of relevance to the two Customs Administrations. In doing so, this chapter in the CEP draws upon international best practice as advocated by the World Customs Organization and is consistent with the approach followed by New Zealand in its other recent FTAs.

The chapter includes key provisions on trade facilitation designed to ensure:

- that customs procedures and practices are predictable, consistent, transparent, and help facilitate trade;
- the efficient and expeditious clearance of goods and means of transport; and
- that increased levels of cooperation take place between the two Customs Administrations.

Outcomes which will achieve predictability and certainty and reduce costs for traders include:

- New Zealand goods will be cleared within 48 hours of the time of arrival, in the normal course of events;
- a provision for written advance rulings on tariff classification;
- a risk management approach which facilitates the clearance of low-risk goods; and
- provisions on review and appeal in relation to Customs administrative rulings, determinations, or decisions.

The customs cooperation provisions will lessen the likelihood of customs-related problems and will help both Parties effectively to deal with any issues which might arise.

3.1.4 Trade Remedies

The CEP Trade Remedies Chapter:

- retains New Zealand's ability to take trade remedy actions in accordance with WTO rules;
- requires that trade remedy actions are not taken in an arbitrary or protectionist manner, are carried out in accordance with the principle of procedural fairness, and apply accepted WTO standards of best practice;
- provides for enhanced rules on transparency, notification, and consultation;
- prohibits export subsidies on all goods; and
- allows for the exemption of New Zealand exporters from global safeguards applied by Hong Kong.

New Zealand manufacturers have consistently argued that there should be no weakening of New Zealand's ability to take trade remedy actions in accordance with WTO rules. The CEP preserves the ability of either Party to take anti-dumping, countervailing, and global safeguard actions under WTO rules. Hong Kong does not have legislation allowing it to undertake trade remedy actions, although this does not preclude it from adopting such legislation in future.

The prohibition of the use of export subsidies on all goods traded between the two Parties will help ensure that New Zealand manufacturers are not disadvantaged by having to compete with subsidised exports from Hong Kong and that the trade in goods generally is not distorted by the existence of export subsidies.

3.1.5 Sanitary and Phytosanitary (SPS) Measures

The CEP enhances the implementation of the WTO SPS Agreement by providing a framework for enhanced cooperation on the application of SPS measures, including equivalence and adaptation to regional conditions. The objective is to address SPS issues and to facilitate trade in goods affected by SPS measures through improved communication and consultation.

The framework offers both Parties a formal avenue to address any SPS-related practices or regulations which act as an unnecessary barrier to trade or which give rise to unnecessary costs. The SPS Chapter provides for the two sides to conclude implementing arrangements on technical matters to facilitate trade. Negotiations on the first SPS implementing arrangement, which sets out the competent authorities and the contact points for the two sides, were concluded at the same time as the CEP and the implementing arrangement will enter into effect on the same date as the CEP enters into force.

3.1.6 Technical Barriers to Trade (TBT)

The cost of complying with technical regulations can constitute significant barriers to trade in goods. Without formal arrangements, it is difficult to engage with other countries at the technical/regulatory level in a way that will produce tangible solutions to the adverse impacts that standards, technical regulations, and conformity assessment procedures can have on trade flows.

The CEP provides for mechanisms that enable due consideration to be given to any concern arising from different standards, technical regulations, or conformity assessment procedures. These mechanisms enable solutions to be explored with Hong Kong with a view to reducing and, where possible, eliminating TBT. The mechanisms include:

- exchange of information;
- cooperation between regulators, trade officials, and other technical experts;
- a toolbox of mechanisms to facilitate the acceptance of conformity assessment procedures; and
- regular meetings and working groups established to address specific issues.

In addition, provisions for greater transparency, cooperation and information sharing were designed to facilitate trade, reduce transaction costs for people doing business between the Parties, and strengthen risk management systems. The CEP also creates a platform for regulatory cooperation to support trade facilitation in the context of effective risk management. Provision is also made for the two sides to conclude arrangements or agreements/annexes to the CEP in the future on regulatory issues or agreed principles and procedures relating to technical regulations and conformity assessments.

3.1.7 Competition

The CEP recognises the importance of promoting and maintaining competition for the purposes of enhancing trade and investment, economic efficiency, and consumer welfare. The CEP places an emphasis on cooperation, which is important as the international development of competition policies and competition law complement open trade policies and help provide a stable and predictable trading environment, to the benefit of businesses in both economies.

The CEP provides that, at the request of either Party, the Parties shall consult on particular anti-competitive practices that adversely affect trade or investment between them. The CEP provides that, at the request of either Party, the Parties shall consult on particular anti-competitive practices that adversely affect trade or investment between them. This consultation mechanism will provide the Parties with an avenue to discuss competition issues that may arise. The Competition Chapter is not subject to the dispute settlement mechanism.

3.1.8 Electronic Commerce

Electronic commerce (e-commerce) plays an important and growing role in trade and investment activities, including by way of internet delivery of services, online purchasing, online monitoring, and electronic documentation. The e-commerce provisions of the CEP establish principles for the conduct of e-commerce between the Parties, and consultation between the Parties on e-commerce policies. The Electronic Commerce Chapter is not subject to the dispute settlement mechanism.

3.1.9 Intellectual Property

The intellectual property provisions of the CEP provide more certainty over the provision and enforcement of intellectual property rights in the bilateral trade and investment relationship. The CEP reaffirms the Parties' commitment to the provisions of the WTO *Agreement on Trade-Related Aspects of Intellectual Property* (TRIPS). In addition, the CEP affirms particular rights and obligations as relevant to the bilateral context, including by requiring Hong Kong to establish and maintain a transparent intellectual property rights system.

The CEP requires that, at New Zealand's request, Hong Kong will provide information to New Zealand about any new laws that enter into effect in relation to intellectual property and developments in the implementation of its intellectual property systems and in intellectual property rights enforcement. A consultation mechanism means that New Zealand can request consultations to seek a timely and mutually satisfactory solution on any intellectual property issue within the scope of the chapter.

3.1.10 Government Procurement

The CEP with Hong Kong is the first FTA since the P4 (2005) to include a Government Procurement (GP) chapter. This is a useful precedent as New Zealand pursues other FTA negotiations. Hong Kong and New Zealand are open and non-discriminatory in their GP practices. Suppliers of both Parties already enjoy open access to each other's GP markets. The GP commitments in this CEP agreement therefore have the advantage of binding current policy regimes in a formal agreement with treaty status, for those entities covered by the CEP.

The CEP secures the GP market between the Parties. Where procurements are valued at or above the thresholds, the Parties have agreed that those government entities covered by the CEP (listed in each Party's schedules) will follow certain procedures that provide for transparent and competitive tendering.

3.1.11 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.

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

- Business:
  - Professional Services (Architectural, Engineering, Integrated Engineering, Urban Planning and Landscape Architectural, Veterinary)
  - Computer & Related Services (Other)

  - Other Business Services (Related to Management Consulting, Technical Testing, Services Incidental to Manufacturing, Related to Scientific and Technical Consulting, Packaging, Printing & Publishing, Credit Reporting, Collection Agency).
- Communication:
  - 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).
- 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.
- 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. Since they are additional to those made to WTO members under the GATS, service suppliers of other countries will not benefit from them unless covered by similar CEP-type bilateral commitments. Were Hong Kong at some point to reduce the current levels of openness in these sectors, it could not do so for New Zealand suppliers if doing so breached its CEP commitments to New Zealand.

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).

New Zealand services exporters will also benefit from strong "future-proofing" of their position in the Hong Kong market. The two mechanisms which provide this are the Most Favoured Nation (MFN) clause (automatically providing 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 the "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.

The MFN clause in this CEP is similar to the clause in the P4 and goes further than AANZFTA (which has no MFN provision), the New Zealand – China FTA and the New Zealand – Malaysia FTA (both of which have limited MFN provisions).

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 authorisation and licensing processes in Hong Kong. None of the domestic regulation commitments go beyond New Zealand's current regulatory settings.

Education Services

As with recent FTAs, securing improvements in access for the education services sector was one of New Zealand's highest priorities for the services negotiations.

Hong Kong had previously made no commitments to education either in GATS or in its Doha Round offer. 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 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

The Services Chapter includes a number of mechanisms for review of the current commitments. There is a commitment to revisit Air Transport Services and subsidies under the CEP in light of any WTO developments and 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.

3.1.12 Movement of Business Persons (MBP)

The CEP provides commitments aimed at facilitating the movement of business people engaged in trade and investment and ensuring transparent application procedures for temporary entry processes for business people.

The CEP obliges both Parties to publish all relevant information about their immigration requirements in respect of the categories of business people and service suppliers covered by their schedules of commitments. Any changes to these regulations must also be published promptly. There is a requirement that fees for processing immigration formalities are reasonable and, within ten days of making an application for temporary entry, business visitors and service suppliers must be either informed of a decision, or informed when a decision will be made.

Like the Services Chapter, the rules relating to movement of business persons includes a schedule of specific commitments from each of the Parties. It is important to note that Hong Kong's commitments do not generally go beyond its current immigration policy settings. Commitments to New Zealand have the effect of guaranteeing certain treatment to New Zealand business people. Hong Kong's schedule contains commitments on the temporary entry and duration of stay for particular categories of business people, investors, and service suppliers on the following basis:

- The commitments for all business visitors (e.g. those attending meetings, taking orders, negotiating contracts – not just service suppliers) allow for temporary entry of 90 days.
- For service suppliers Hong Kong provides additional commitments beyond WTO levels for 'intra-corporate transferees' (senior managers or specialists) in a broad range of sectors, essentially reflecting the openness provided for the same services in its "negative list". These commitments allow entry for one year, extendable for up to five years.
- Hong Kong's commitments for 'installers or servicers' also go beyond its WTO commitments with temporary entry of three months in a year (subject to an economic needs test) in eleven new sub-sectors.

Hong Kong was not willing to expand the scope of its commitments beyond eleven sub-sectors for installers or servicers nor to make any commitments to independent service suppliers. Both Parties have, however, committed in a non-binding exchange of letters to review their MBP commitments in these two areas one year after entry into force, with a view to improving these commitments. This is important to New Zealand since many of our service suppliers may not have a commercial presence in Hong Kong and would therefore rely on being able to travel to Hong Kong for short periods to supply a service or support the installation of equipment.

3.1.13 Dispute Settlement

The CEP includes a consultation and dispute settlement mechanism for the avoidance or settlement of disputes that may arise out of the CEP. This mechanism is similar to New Zealand's previous FTA precedents and WTO procedures.

The CEP dispute settlement mechanism sets out clear and detailed processes to allow for disputes to be dealt with quickly and effectively. The process is compulsory and the outcomes are binding. It ensures that New Zealand is able to pursue a matter to arbitration should Hong Kong not act in accordance with its obligations under the CEP, and provides a bilateral channel which can sit alongside the WTO dispute settlement channel but which may be more expeditious to pursue.

3.1.14 Exceptions

The Exceptions Chapter provides the New Zealand Government with flexibility to introduce measures which would otherwise be inconsistent with the CEP in a range of sensitive areas, including measures necessary to accord more favourable treatment to Māori and supporting creative arts of national value.

Consistent with New Zealand's previous FTAs, the CEP:

- maintains New Zealand's ability to take measures which it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi; and
- does not preclude New Zealand from taking measures necessary to protect national treasures or specific sites of historical or archaeological value, or to support creative arts of national value.

In addition to the exceptions relating to the Treaty of Waitangi and creative arts of national value, the CEP will not prevent New Zealand from taking measures necessary to protect human, animal or plant life or health, or public morals.

The CEP will not prevent New Zealand from taking any actions necessary to:

- protect its essential security interests; or
- respond to serious balance of payments issues or financial difficulties.

Taxation measures are also largely excluded from the CEP. The CEP only affects taxation measures where there are corresponding rights granted or obligations imposed under the WTO Agreement.

3.1.15 Other Outcomes of the CEP

Consistent with New Zealand's previous FTAs, the CEP:

- provides for enhanced transparency by requiring each Party to publish or otherwise make available relevant rules, regulations, procedures and administrative rulings of general application;
- provides for notification and information exchange, should any proposed or actual measure affect the other Party's interests or operation of the CEP;
- establishes a Joint Commission to review the implementation and operation of the CEP, along with a number of specialist committees to maintain oversight and ensure interaction between officials on the various aspects of the CEP; and
- provides for the review of the CEP, which affords New Zealand and Hong Kong the opportunity to expand the commitments under the Agreement.

3.2 Advantages to New Zealand in entering into the Labour MOU and Environment Agreement with Hong Kong

These treaty-level agreements provide a basis for New Zealand to advance its objectives for environmental protection, labour standards, and building stronger bilateral relationships in these areas. The instruments have been concluded in the context of the CEP and are linked to the CEP via a reference in Article 4 of Chapter 18 of the CEP.

3.2.1 Advantages to New Zealand in entering into the Labour MOU with Hong Kong

The Labour MOU enumerates a set of shared commitments which include statements recognising that labour laws, regulations, policies and practices should not be used for trade protectionist purposes, nor weakened or reduced to encourage trade or investment. The Labour MOU establishes a broad framework for promoting the mutually beneficial sharing of experience and expertise, and represents an opportunity for New Zealand to improve dialogue and conduct cooperative activities with Hong Kong in areas of common interest and concern that are specifically identified by the Parties. The Labour MOU includes explicit references to the relationship between trade and labour.

National contact points are established to oversee the implementation and operation of the Labour MOU, with the Parties meeting on a regular basis to establish an agreed work programme of cooperative activities, oversee the operation of the Labour MOU, and exchange views on labour issues of interest or concern. The Parties may consult or seek the advice of relevant stakeholders over matters relating to the operation of the Labour MOU. A process of consultation has been agreed to address issues that may arise which relate to any of the commitments or other matters in the MOU.

3.2.2 Advantages to New Zealand in entering into the Environment Agreement with Hong Kong

The Environment Agreement provides for shared objectives between New Zealand and Hong Kong aimed at improving the environment and enhancing the capacity and capability of each country's government agencies, research organisations, academic institutions and businesses to address trade and environment matters. A specific reference to the relationship between trade and environment is included.

The Environment Agreement enumerates a set of shared commitments, which includes statements recognising that the primary purpose of environmental laws, regulations, policies and practices should be to achieve environmental objectives, and that it is inappropriate either to encourage trade and investment by weakening the effectiveness of their environmental laws and regulations, or to set or use those laws and regulations for trade protectionist purposes. A framework is established for cooperation, with the intention of encouraging the Parties to work together to advance common interests in relation to trade, environment, and sustainable development. The Environment Agreement provides for the Parties to establish, oversee and evaluate cooperation activities.

The Parties will meet within the first year after the Environment Agreement enters into force and then on a regular basis by mutual agreement. Each Party is required to appoint a contact point to facilitate communication between the Parties for the implementation of the Environment Agreement, and to establish and coordinate a cooperation programme. Each party may consult with members of its public or other organisations on matters relating to the operation of the Environment Agreement and may, in consultation with the other Party, invite them to meetings of the Parties.

3.3 Advantages to New Zealand in entering into the Exchange of Letters on Investment (Investment EoL)

The treaty-level Investment EoL commits Hong Kong and New Zealand to conclude a comprehensive Investment Protocol within two years of entry into force of the CEP. The Parties have agreed that the Investment Protocol 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 also be drafted with reference to the New Zealand – China FTA. The Investment EoL sets out the elements and principles which the negotiations will cover, and will serve to guide New Zealand and Hong Kong towards a high quality outcome on investment.

3.4 Disadvantages to New Zealand entering into the CEP

3.4.1 Market Access – Imports

Any trade agreement involving reciprocal tariff removal, while providing better access for exporters, can create adjustment costs for domestic producers. Domestic producers are likely to face increased competition from imports as foreign suppliers take advantage of reduced protection at the New Zealand border. However, as previously explained, New Zealand will be using the same tariff reduction schedule as the New Zealand – China FTA for imported products from Hong Kong. The longest tariff phase-out periods apply to industry sectors in New Zealand that are particularly sensitive to imports from Hong Kong (and from China).

The impact of tariff liberalisation for Hong Kong products is expected to be minor as firms in protected sectors will already be positioning themselves to transition to a tariff-free environment given previous FTA commitments, including those in the New Zealand – China FTA[7]. It is relevant to note that products from these sectors produced in Hong Kong tend to be imported in much smaller volumes than products produced in Mainland China.[8]

3.4.2 Exchange of Letters on Investment

The key disadvantage in the approach agreed to in the Investment EoL (i.e. agreeing to conclude a comprehensive Investment Protocol to the CEP within two years of entry into force of the CEP), is that there will be no investment chapter in the CEP when it enters into force. While New Zealand investors in services seeking a commercial presence (mode 3) in Hong Kong will benefit from specific market access commitments provided for in the services outcome as well as services national treatment and MFN, investors in non-services sectors will not have the immediate benefit of any improved investment market access, higher quality disciplines governing national treatment and MFN, or other improved investment protections that would come from an investment chapter. Until the Investment Protocol has been concluded and has entered into force, New Zealand investors will continue to have the benefit of the current *New Zealand-Hong Kong Agreement for the Protection and Promotion of Investments*, which does provide some minimum protections for investors, including national treatment, fair and equitable treatment, and disciplines on expropriation.

3.5 Disadvantages to New Zealand entering into the Labour and Environment Agreements with Hong Kong

No disadvantages have been identified in New Zealand entering into these instruments with Hong Kong *(see section 4.21 for further information on these instruments)*.

7 The National Interest Analysis for the New Zealand-China FTA can be found at: www.chinafta.govt.nz/1-The-agreement/3-Publications/National-interest-analysis.pdf

8 In the June years 2008 and 2009 New Zealand imported on average NZ$21 million worth of apparel from Hong Kong, whereas we imported NZ$905 million worth of apparel from mainland China. During the same period New Zealand imported on average NZ$92 million worth of machinery and electrical machinery from Hong Kong, while we imported NZ$2.1 billion worth of the same products from Mainland China.

4 LEGAL OBLIGATIONS WHICH WOULD BE IMPOSED ON NEW ZEALAND BY THE TREATY ACTIONS AND AN OUTLINE OF THE DISPUTE SETTLEMENT MECHANISM

The CEP provides for the liberalisation of trade between New Zealand and Hong Kong, with the objective of building on a long standing economic and trading relationship and serving as an important building block towards regional economic integration and sustainable economic development.

The key obligations that New Zealand will assume in each chapter of the CEP are set out below in the sequence in which they appear in the CEP. Also included in this Section are the obligations arising from the Labour MOU, Environment Agreement, and Investment EoL.

4.1 Initial Provisions

The Preamble and Chapter 1 of the CEP set out the objectives of strengthening the Parties' bilateral relationship through establishing a closer economic partnership.

The Preamble and Initial Provisions (Chapter 1) of the CEP:

- outline the broad objectives of a deeper bilateral relationship in terms of liberalising, facilitating and expanding trade, and promoting conditions for an open and competitive market in the free trade area (Preamble and Chapter 1, Article 2);
- confirm the Parties' rights and obligations under the WTO and their support for the APEC goal of free and open trade and investment (Preamble and Chapter 1, Article 2); and
- confirm that the CEP is consistent with Article XXIV of GATT 1994 and Article V of GATS (Chapter 1, Article 1).

4.2 Trade in Goods

Under the provisions of Chapter 3, New Zealand is required to eliminate its customs duties (or tariffs) on goods originating from Hong Kong in accordance with the phase-out schedule in Annex I[9] to Chapter 3 (Trade in Goods) of the CEP, and may not increase existing customs duties.

The CEP imposes obligations, consistent with WTO requirements, to:

- accord national treatment in relation to internal taxes and regulations in accordance with WTO requirements (Chapter 3, Article 2) (i.e. to ensure New Zealand treats goods from Hong Kong no less favourably than New Zealand goods);
- ensure that any fees, charges, formalities and requirements imposed in connection with the importation and exportation of goods are consistent with their WTO obligations (Chapter 3, Article 4); and
- ensure that any non-tariff measures are consistent with WTO rights and obligations or with the CEP and do not create unnecessary obstacles to trade between the Parties (Chapter 3, Article 5).

9 A summary of the commitments in the tariff phase-out schedules is in Table 4 in section 6.1.5.

The Parties are also required to provide the legal means for their authorities and, to the extent permitted by their law, interested parties to prevent the sale of products which are labelled in a false, deceptive or misleading manner or likely to create an erroneous impression about the character, composition, quality or origin of the product (Chapter 3, Article 6). In addition, each Party is to provide the legal means for its authorities, to the extent permitted by its domestic law, and its interested parties to claim compensation for any loss suffered from such sale (Chapter 3, Article 6). These provisions are consistent with existing New Zealand law.

There is provision for consultation and discussion of any issues arising pursuant to the chapter (Chapter 3, Articles 7 and 8).

4.3 Rules of Origin (ROO)

Chapter 4 of the CEP establishes the rules for determining whether goods traded between New Zealand and Hong Kong qualify for bilateral tariff preferences.

The CEP provides three avenues through which goods can qualify for preferential tariff treatment (Chapter 4, Article 2):

- the goods are wholly obtained in either Party;
- the goods are produced exclusively from materials that originate from either of the Parties; or
- the goods are produced in one or both of the Parties using non-originating materials that conform to a Change in Tariff Classification (CTC) requirement, a Regional Value Content (RVC) requirement or other requirements as specified in Product Specific Rules Schedule (set out in Annex I to Chapter 4 (Rules of Origin)); and
- the goods meet the other applicable requirements.

Under the CTC approach, a good will qualify for preferential tariff treatment if all third party inputs used in its production have undergone a specified change of tariff classification. Most product lines under the CEP have an applicable CTC rule.

Under the RVC approach, a good will qualify for preferential tariff treatment provided the value of originating inputs is equal to or greater than the specified RVC value of that good. For certain products there is an optional RVC requirement, which allows producers to choose which rule best suits their particular business model, and also allows for origin conferring transformation where the structure of the Tariff Schedule does not provide for an appropriate CTC rule.

Under the alternative process rules, specified processes must be undertaken on the good in either of the Parties. Process rules are predominantly used in the chemicals chapters as an alternative to CTC rules.

For any good to qualify for the tariff preferences, it must be consigned directly between the two Parties (Chapter 4, Article 9). If transported through a third party, the good must not enter into the trade or commerce there or undergo any operation there other than unloading and reloading, repacking, or any operation required to preserve it in good condition or to transport it to the importing Party.

Under the CEP, Hong Kong may require a declaration of origin of a good exported from New Zealand for which preferential tariff treatment is claimed (although at present all applied tariffs are zero and under the agreement all tariffs will be bound at zero from entry into force). New Zealand will require a certificate of origin to be obtained for Hong Kong products imported into New Zealand that fall within Chapter 61 or 62 of the Harmonized System and for which preferential tariff treatment is claimed.

The importing Party may, through its customs administration, conduct verification for eligibility for preferential tariff treatment, including through requesting information from the importer/exporter/customs administration or visits to the premises of the exporter/producer.

4.4 Customs Procedures and Cooperation

Chapter 4 involves a range of commitments on trade facilitation and customs cooperation. These commitments fall within current policy settings and include:

- providing consistency and predictability of procedural outcomes (e.g. providing advance rulings, customs valuations and using internationally accepted tariff classifications) (Chapter 5, Articles 4, 5 and 6);
- encouraging the use of international best practice on customs, such as applying information technology to support customs operations and applying a risk management approach which enables the faster release of low-risk goods (Chapter 5, Articles 7 and 10);
- encouraging customs cooperation and information exchange and providing for contact points and consultations to discuss any issues which might arise (Chapter 5, Articles 12 and 13); and
- publishing customs laws and administrative procedures (Chapter 5, Article 14).

4.5 Trade Remedies

Chapter 6 ensures that each Party retains its WTO trade remedy rights and obligations and that any trade remedy actions are carried out in accordance with the principle of procedural fairness and accepted WTO standards of best practice. The Trade Remedies Chapter imposes WTO-plus obligations on New Zealand, including to:

- prohibit export subsidies on goods exported to Hong Kong (Chapter 6, Article 2.1);
- exempt Hong Kong from any global safeguard action if the imports from Hong Kong do not cause, or threaten to cause, serious injury (Chapter 6, Article 3.2);
- notify Hong Kong of the initiation of a global safeguard investigation and provide the reasons for initiation (Chapter 6, Article 3.3);
- notify Hong Kong no later than 7 days after New Zealand receives a properly documented application for the initiation of an anti-dumping investigation (Chapter 6, Article 4.2);
- hold consultations on any trade remedies matters which arise between New Zealand and Hong Kong (Chapter 6, Article 5.2); and
- refrain from taking any trade remedy measures in an arbitrary or protectionist manner (Chapter 6, Article 1.1).

4.6 Sanitary and Phytosanitary (SPS) Measures

The CEP maintains New Zealand's existing rights and obligations under the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* (the SPS Agreement) (Chapter 7, Article 4). It also provides for the development of mechanisms to allow the Parties to enhance implementation of the SPS Agreement, including the development of Implementing Arrangements to determine and recognise the equivalence of each other's SPS measures, and each other's pest free areas or low pest prevalence areas (Chapter 7, Article 2,6,7, and 8).

The CEP designates the competent authorities of each Party as the agencies responsible for implementation of the chapter, including deciding on work programmes and ensuring that they are carried out (Chapter 7, Article 5). The details of competent authorities and their contact points are set out in Implementing Arrangement 1. There are specific procedures outlined in the chapter concerning verification of systems and notification of SPS-related changes by either side (Chapter 7, Article 9, 10, 11, and 12). The chapter also sets out a mechanism to seek an explanation of and consultations on any SPS measure that is affecting trade (Chapter 7, Article 14).

Decisions on matters affecting biosecurity and food safety will continue to be made and enforced in accordance with New Zealand's existing regulatory regime.

4.7 Technical Barriers to Trade (TBT)

The TBT Chapter (Chapter 8) preserves New Zealand's existing rights and obligations under the *WTO Agreement on Technical Barriers to Trade* (Chapter 8, Article 4). This includes the right to adopt or maintain technical regulations necessary to ensure national security, the prevention of deceptive practices and the protection of human health or safety, animal or plant life or health or the environment.

The key provisions of the TBT Chapter include commitments to:

- promote trade facilitation including through information exchange and strengthened regulatory cooperation (Chapter 8, Article 1);
- use relevant international standards, guides or recommendations (Chapter 8, Article 5);
- enable cooperation to support regulatory effectiveness and risk management (Chapter 8, Article 8);
- give positive consideration to accepting as equivalent technical regulations of the other party (Chapter 8, Article 6);
- facilitate the acceptance of conformity assessment procedures through the use of a broad range of mechanisms, on a case-by-case basis (Chapter 8, Article 7);
- uphold and reinforce the provisions of the TBT Agreement including through a commitment to transparency and the establishment of contact points (Chapter 8, Articles 9 and 10); and
- establish a Joint Committee on Technical Barriers to Trade and agree a work programme (Chapter 8, Article 10).

Consultations can be sought where any TBT-related matter arises between the Parties (Chapter 8, Article 12) and additional annexes or arrangements/agreements may be concluded by the Parties in the future (Chapter 8, Article 11).

4.8 Competition

Chapter 9 includes a commitment to promote competition and to endeavour to ensure that the design of trade and competition policies gives due recognition to the effect on competition (Chapter 9, Article 2). The Competition Chapter encourages cooperation and coordination by the Parties in the area of competition policy and requires them to consult on any anti-competitive practices adversely affecting trade or investment between the Parties (Chapter 9, Article 5). It also recognises that exemptions and exceptions from competition regimes may be necessary to achieve other legitimate policy objectives (Chapter 9, Article 3). The Competition Chapter is not subject to the dispute settlement mechanism.

4.9 Electronic Commerce

The Electronic Commerce Chapter of the CEP establishes principles for the conduct of e-commerce between the Parties. In particular, it requires the maintenance of a predictable and simple legal environment for e-commerce based on the UNCITRAL[10] Model law on Electronic Commerce 1996 and other model law(s) on electronic commerce as may be adopted or revised by the UNCITRAL or other international organisations from time to time (Chapter 10, Article 2). There is provision for consultation between the Parties on e-commerce policies (Chapter 10, Article 4). The Electronic Commerce Chapter is not subject to the dispute settlement mechanism.

4.10 Intellectual property (IP)

The Intellectual Property Chapter (Chapter 11) reaffirms the Parties' commitment to the WTO TRIPS Agreement (Chapter 11, Article 3.1). Both Parties are required to maintain transparent intellectual property regulations, efficient and non-discriminatory enforcement mechanisms and access to expeditious remedies, in accordance with TRIPS obligations (Chapter 11, Article 3.4).

At Hong Kong's request, New Zealand will have to provide information to Hong Kong about any new laws that enter into effect in relation to intellectual property and developments in the implementation of its intellectual property systems and in intellectual property rights enforcement (Chapter 11, Article 5). The cooperation provisions include committing New Zealand to cooperating with a view to eliminating trade in goods infringing intellectual property rights (Chapter 11, Article 6).

Each Party must, when requested by the other Party, enter into consultations with a view to achieving a mutually satisfactory resolution in relation to any intellectual property issue that arises within the scope of Chapter 11 (Chapter 11, Article 9). The CEP also recognises both Parties' rights to establish appropriate measures to protect genetic resources, traditional knowledge and folklore, subject to international obligations including the TRIPS Agreement (Chapter 11, Article 8).

4.11 Government Procurement

The commitments in the CEP (Chapter 12) are consistent with New Zealand's existing Government Procurement Policy and the Mandatory Rules for Procurement by Departments. No new obligations are created and, therefore, no new measures are required to implement the chapter.

10 United Nations Commission on International Trade Law

The CEP provides that, where procurements are valued at or above the specified thresholds (Chapter 12, Annex II), those government entities covered by the CEP (listed in each Party's schedules to Annex I) must afford national treatment (Chapter 12, Article 5) and follow certain procedures that provide for transparent and competitive tendering (Chapter 12, Articles 8-17). The thresholds are SDR 130,000 (approximately NZ$289,000[11]) for the procurement of goods and services and SDR 5 million (approximately NZ$11 million) for construction services.

New Zealand has committed 30 of the 37 government entities already obliged to conduct their procurement in accordance with the New Zealand Government Procurement Policy and the Mandatory Rules for Procurement by Departments (Chapter 12, Annex I). Hong Kong has committed all 59 of its central government entities, but not the 5 "other entities" included in its WTO GPA schedule[12] (Chapter 12, Annex I).

All goods are covered (Chapter 12, Annex I), but the list of services covered by Hong Kong, while consistent with the coverage offered under its GPA schedules, is more limited than the coverage offered by New Zealand, and does not include consultancy services or build-operate-transfer contracts (i.e. private-public partnerships) (Chapter 12, Annex I). Consistent with New Zealand's P4 commitments, New Zealand has excluded procurement of public education, health, welfare, and research and development services (Chapter 12, Annex I).

4.12 Trade in Services

The CEP is intended to facilitate expansion of trade in services between New Zealand and Hong Kong by building on current WTO commitments to further liberalise bilateral services trade.

The CEP establishes the general obligations of national treatment (Chapter 13, Article 5) and market access (Chapter 13, Article 4) though these are subject to some reservations and exceptions. This means that, where applicable, Hong Kong service suppliers wishing to operate in New Zealand are entitled to access the market without quota restrictions (market access) and on the same basis as domestic suppliers (national treatment).

In addition, in most cases New Zealand cannot require a Hong Kong service supplier to establish a local presence (for example, set up a representative office) or be resident, as a condition for supplying their service in New Zealand (Chapter 13, Article 6). This obligation is referred to as 'local presence'.

The CEP also provides for Most Favoured Nation treatment (MFN) treatment (Chapter 13, Article 12). This means that Hong Kong service suppliers receive the benefits of any better treatment which New Zealand provides to service suppliers of other countries, subject to certain reservations and exceptions (for example, better treatment of service suppliers under an existing FTA would not have to be extended to Hong Kong service suppliers)

11 Thresholds are expressed in IMF Special Drawing Rights (SDRs). The conversion from SDRs to New Zealand dollars may change periodically with currency fluctuations.

12 These entities are: Housing Authority and Housing Department, Hospital Authority, Airport Authority, MTR Corporation Limited, and Kowloon-Canton Railway Corporation.

New Zealand's market access, national treatment, local presence and MFN treatment commitments in the CEP go beyond New Zealand's existing WTO commitments, but have either already been made by New Zealand in other FTAs or offered by New Zealand in the WTO Doha negotiations. None of these new commitments go beyond New Zealand's current regulatory environment or policy settings.

The CEP uses a "negative list", which allows each party to list reservations to the market access, national treatment, local presence and MFN treatment obligations. Each party's schedule has two parts. The first part (Annex I) sets out existing measures (laws, regulations, decisions, procedures etc) that restrict the access of foreign service suppliers – for example, by imposing quotas that restrict market access and/or caveat national treatment. These reservations are subject to the so-called "ratchet" clause (Chapter 13, Article 7(1)(c)). This means that New Zealand is required to automatically extend the benefit of any future unilateral liberalisation of a measure listed in Annex I to Hong Kong. The liberalisation becomes the new level of commitment in the CEP and cannot be taken away from Hong Kong service suppliers – even if the measure is repealed or made more restrictive in the future. Unless specifically reserved against, Annex I reservations are also subject to the MFN obligation.

The second part of the schedule (Annex II) lists sectors and activities that are exempted from the market access, national treatment, MFN treatment, and/or local presence obligations. The "ratchet" clause does not apply to any measure captured by one of these reservations. New Zealand's services reservations are detailed in Box 1 below.

BOX 1: NEW ZEALAND'S RESERVATIONS ON TRADE IN SERVICES

New Zealand's commitments were guided by the existing reservations in the P4 Agreement negotiated in 2004/05. Those reservations were in turn developed on the same 10 guiding principles that were used to guide the preparation in 2003 of New Zealand's initial offer in the WTO Doha Round services negotiations, and revised services offer that was tabled in June 2005.

Below is a summary of some of the reservations that New Zealand has taken.

New Zealand's **Annex I** reservations include:

- financial reporting requirements on foreign companies;
- registration of patent attorneys;
- limitations and obligations related to herd testing data and investment in the Livestock Improvement Corporation under the Dairy Industry Restructuring Act 2001;
- Telecom shareholding;
- the acquisition of licences or management rights to use the radio frequency spectrum; and
- marketing and distribution services relating to certain statutory marketing organisations.

New Zealand's **Annex II** reservations include:

- New Zealand's overseas screening regime including a $20m threshold; categories that trigger screening; criteria used for assessing applications;
- social services established for a public purpose, covering childcare, health, income security and insurance, public education, public housing, public training, public transport, public utilities, social security and insurance, and social welfare;
- the provision of public law enforcement and correctional services;
- water, including the allocation, collection and treatment and distribution of drinking water;
- the sale or devolution of state-owned enterprises or assets;
- protected areas, including land and water, set up for heritage management purposes, public recreation and scenery protection, and species owned or protected under enactments by the Crown;
- animal welfare, and the preservation of plant, animal and human life and health. This includes food safety, animal feeds, food standards, biosecurity, biodiversity and certification of plant or animal health status;
- measures in respect of the foreshore, seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, Exclusive Economic Zone and issuance of maritime concessions in the continental shelf;
- publicly funded legal services, firefighting services, research and development services carried out by state-funded tertiary institutions or Crown research institutes for public purposes, testing and analysis services, licensing of immigration advice;
- fishing, and activities of foreign fishing vessels;
- nuclear energy;
- services incidental to mining;
- postal services;
- film and television co-productions, public broadcasting services;
- the holding of shares in the co-operative dairy company arising from amalgamation under the Dairy Industry Restructuring Act 2001;
- marketing and distribution services relating to kiwifruit under the Kiwifruit Industry Restructuring Act 1999;
- cooperative dairy company and quota allocation schemes for rights to export agricultural products, agricultural export marketing;
- use of educational terms and titles protected by statute;
- financial services limited to WTO GATS obligations;
- adoption services, hospital services, medical services, pharmaceutical services, maternity and midwife services;
- gambling, betting and prostitution services;

- cultural heritage of national value, including ethnological, archaeological, historical, literary, artistic, scientific or technological heritage, as well as collections of museums, galleries, libraries, archives and other heritage-collecting institutions; public archives; library and museum services; and preservation of historical or sacred sites or historical buildings.
- maritime and port services; and
- "Market Access" commitments in all sectors are limited to WTO GATS levels, except in the case of the following sectors: Professional Services (Integrated Engineering, Consultancy related to Urban Planning & Landscape Architecture); Computer and Related Services (Maintenance & Repair, Other); Other Business Services (Management Consulting, Services Related to Management Consulting, Services Incidental to Animal Husbandry, Placement and Supply of Personnel, Photographic Services, Convention Services, Interior Design, Credit Reporting Services, Collection Agency services); Environmental Services; Maritime Auxiliary Services (Customs Clearance, Container Station and Depot Services; Maritime Agency services).

In the CEP, New Zealand has agreed to doubling the overseas screening regime threshold from existing WTO levels of $10 million to $20 million. In a separate non-binding letter New Zealand has also committed, in the context of and upon conclusion of negotiations on an Investment Protocol to the CEP, to review this threshold with a view to increasing it.

The CEP also contains provisions relating to domestic regulation. The core function of these provisions is to ensure that, for those services on which New Zealand has made commitments, access to the services markets of each party is not made unnecessarily difficult by onerous regulation. The main obligation implementing this function is the obligation to ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, do not constitute unnecessary barriers to trade in services (Annex III to Chapter 13, Article 6).

Other domestic regulation provisions aim to facilitate the attainment of licenses and qualifications, and the fulfilment of technical standards, by service suppliers through setting standards of practice for governments and their competent authorities. Examples of these include requirements that licensing fees are determined with regard to the administrative costs involved (Annex III to Chapter 13, Article 21) and that adequate procedures exist for verifying a service supplier's qualifications (Annex III to Chapter 13, Article 22).

None of the domestic regulation commitments go beyond New Zealand's current regulatory settings.

4.13 Movement of Business Persons

The CEP also provides commitments by New Zealand aimed at facilitating the temporary entry of Hong Kong business visitors (i.e. services suppliers, goods sellers and investors) to New Zealand through expeditious (Chapter 14, Article 5) and transparent (Chapter 14, Article 6) immigration processes. None of these commitments go beyond existing regulatory settings.

Like the Services Chapter, the rules relating to movement of business persons (MBP) includes a schedule of specific commitments from each of the Parties. These schedules contain commitments on the temporary entry and stay of particular categories of business people, investors and service suppliers.

Key elements of the New Zealand schedule (Chapter 14, Annex I) are that:

- all business visitors from Hong Kong (e.g. those attending meetings, taking orders, negotiating contracts – not just service suppliers) will be able to temporarily enter New Zealand for a period not exceeding three months in aggregate in any one year;
- all intra corporate transferees (senior managers and specialists) 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; and
- 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.
- These commitments go beyond New Zealand's existing WTO commitments but no further than New Zealand's recent commitments in the New Zealand-Malaysia FTA. All are consistent with current New Zealand immigration practice. The MFN and "ratchet" clause do not apply to these commitments.
- Both Parties have committed, in a non-binding exchange of letters, to review their MBP commitments on independent service suppliers and installers or servicers one year after entry into force with a view to improving these commitments.

4.14 Transparency

The CEP's Transparency Chapter contains obligations that ensure that each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application (Chapter 15, Article 2). There are additional requirements for each Party to make available information on their business laws and to encourage cooperation between their regulatory authorities on business law (Chapter 15, Article 3). Each Party commits to providing impartial administrative proceedings and reviews and appeals in accordance with general due process requirements (Chapter 15, Articles 4 and 6). The CEP also provides for notification and information exchange should any proposed or actual measure substantially affect the other Party's interests or materially affect the operation of the CEP (Chapter 15, Article 7). Contact points are also established to facilitate communications between the Parties (Chapter 15, Article 5). These transparency provisions are consistent with New Zealand's existing law and administrative practice.

4.15 Dispute Settlement

The Dispute Settlement Chapter of the CEP provides a mechanism for the resolution of disputes between Hong Kong and New Zealand resulting from the implementation of the CEP.

The dispute settlement mechanism provides effective, efficient and transparent processes to settle any disputes arising. The process is compulsory and the outcomes are binding (Chapter 16, Articles 6(4) and 12). This ensures that New Zealand is able to pursue a matter to arbitration should it consider that Hong Kong has not acted in accordance with obligations under the CEP. Conversely, New Zealand may also be held to account if Hong Kong considers that New Zealand has not fulfilled its obligations.

If consultations are not able to resolve a dispute, the complaining Party may request the establishment of an arbitral tribunal to make findings and rulings on the issue. Such findings and rulings are binding on the Parties to the dispute (Chapter 16, Article 12).

The CEP dispute settlement mechanism includes the non-violation ground of complaint (where a Party considers that the benefit it could reasonably have expected to accrue to it is being nullified or impaired as a result of a measure that is not inconsistent with the CEP) (Chapter 16, Article 2(1)).

The findings and rulings of the arbitral tribunal must be complied with immediately or within a reasonable period of time (Chapter 16, Article 12). If there is disagreement as to whether the relevant Party has complied with the findings and rulings within a reasonable period of time, then the disagreement will be decided through recourse to the dispute settlement procedures (Chapter 16, Article 13). If a Party's failure to comply with the findings and rulings of the arbitral tribunal is established, then there are options for compensatory adjustment to be negotiated or benefits of equivalent effect to be suspended (Chapter 16, Article 14).

Commitments under the Competition (Chapter 9, Article 6) and Electronic Commerce (Chapter 10, Article 5) Chapters are excluded from the scope of the dispute settlement mechanism. Specified commitments under the Transparency Chapter are also excluded (Chapter 15, Article 3(3)), and commitments under the Movement of Business Persons Chapter are subject to the dispute settlement mechanism only in limited circumstances (Chapter 14, Article 7).

The Model Rules of Procedure for Arbitral Tribunals are annexed to the Dispute Settlement Chapter. These provide clarity and certainty around the process and procedures related to arbitral tribunal proceedings, such as requiring all written communication to be copied to all the arbitrators and the other Party (Annex I, Rule 2), requiring the arbitral tribunal to set the timetable for the arbitral tribunal process (Annex I, Rule 8 following), providing for confidentiality (Annex I, Rule 27 following) and setting out details for the conduct of the hearing (Annex I, Rule 16 following).

4.16 Administrative and Institutional Provisions

The CEP's Administrative and Institutional Provisions Chapter sets out how the implementation of the CEP will be overseen by a Joint Commission comprising representatives from New Zealand and Hong Kong.

A Joint Commission is established under the CEP to consider any matters relating to the implementation of the CEP (Chapter 17, Article 1). Its functions include monitoring the various specialist committees created by the CEP, establishing additional committees or working groups and exploring measures for further expansion of trade and investment among the Parties (Chapter 17, Article 2). The Joint Commission will meet within one year of the CEP entering into force and thereafter every second year or as otherwise agreed by the Parties (Chapter 17, Article 3).

A general review of the Agreement will take place, at Ministerial level, within two years of entry into force of the Agreement and at least every three years thereafter, unless the Parties agree otherwise (Chapter 17, Article 4). This review provides the opportunity to accelerate and expand the commitments under the CEP.

4.17 General Provisions

The General Provisions Chapter confirms that nothing in the CEP derogates from any rights and obligations of New Zealand or Hong Kong under the WTO Agreement, or any other agreement to which either country is a Party (Chapter 18, Article 3). It also confirms that, in the event of any inconsistency between the CEP and any other agreement to which the Parties are party, the Parties shall immediately consult with each other with a view to finding a mutually satisfactory solution (Chapter 18, Article 3).

The Parties also agree to enhance their communication and cooperation on labour and environment matters through the Labour MOU and the Environment Agreement (Chapter 18, Article 4). Any cooperative activities under the CEP are subject to the availability of resources and to the domestic laws and policies of the Parties (Chapter 18, Article 7).

4.18 Exceptions

The CEP Exceptions Chapter contains provisions that allow New Zealand to take measures in certain circumstances to deal with an emergency or to achieve certain priority policy outcomes, even if these measures may affect their obligations. These exceptions contain disciplines to ensure that they are not used for trade protectionist purposes.

The WTO *General Agreement on Tariffs and Trade (GATT) Article XX and General Agreement on Trade in Services* (GATS) Article XIV are incorporated into the CEP. These provisions stipulate that Parties are able to adopt or enforce measures necessary to protect public morals, human, animal or plant life, provided that those measures are not used for trade protectionist purposes. Other exceptions include the ability to take measures relating to the conservation of living and non-living exhaustible natural resources, and to protect national works or specific sites of historical or archaeological value or to support creative arts of national value (Chapter 19, Article 1).

The CEP also provides that a Party is not prevented from taking action which it considers necessary for the protection of its essential security interests (Chapter 19, Article 2) or from taking measures for prudential reasons (Chapter 19, Article 5), or to deal with serious balance of payments and external financial difficulties (Chapter 19, Article 6).

New Zealand's ability to take measures to accord more favourable treatment to Māori, including in fulfilment of Treaty of Waitangi obligations, is expressly provided for (Chapter 19, Article 3), as long as such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services.

The CEP only affects taxation measures where there are corresponding rights granted or obligations imposed under the WTO Agreement (Chapter 19 Article 4).

4.19 Final Provisions

The Final Provisions Chapter provides that the CEP is open to accession or association, on terms to be agreed between the Parties, by any WTO member, State or separate customs territory (Chapter 20, Article 3).

4.20 Notification to the WTO

Upon signature, New Zealand and Hong Kong will need to notify the CEP to the WTO as a free trade area within the meaning of GATT Article XXIV (goods) and GATS Article V (services).

4.21 Labour Memorandum of Understanding and Environment Cooperation Agreement

The Labour MOU and the Environment Agreement commit New Zealand to cooperate on labour and environment issues, including establishing a cooperation programme, and holding regular meetings between senior officials in these areas with Hong Kong.

Labour MOU

The Labour MOU contains the generally recognised "core" trade and labour principles and is consistent with the policy framework for integrating labour into free trade agreements. These include explicit recognition by both Parties that labour laws, regulations, policies and practices should not be used for trade protectionist purposes, nor weakened or reduced to secure trade advantage.

The specific (reciprocal) obligations for New Zealand under the MOU on cooperation and related matters are:

- to maintain close dialogue with its stakeholders in the formulation of labour policies and practices (art. 2(5));
- to promote public awareness of its labour laws and regulations domestically (art. 2(6));
- to cooperate with Hong Kong on labour matters of mutual interest and benefit (art. 3(1));
- to designate a national contact point for labour matters to facilitate communication between the Parties and establish a cooperation programme (art.4(1));
- to seek to provide funding to support mutually agreed cooperative activities (art.4(3));
- to meet within the first year of the Labour MOU's operation and thereafter as mutually decided by the Parties (art. 4(4)); and
- to consult the other Party in the event of an issue arising over the MOU's interpretation or application (art. 5(1)).

Under the provisions of the MOU, any differences or issues between the Parties concerning the Labour MOU shall be settled amicably through mutual consultation and/or negotiations between the Parties, and not by any third party or international tribunal (art. 5(1)). If consultations fail to resolve the matter and a Party seeks a meeting to assist in its resolution, the Parties shall meet as soon as practicable, and no later than 90 days following the request (art. 5(2)). If issues are unable to be resolved, they can be referred to a joint meeting of the Parties, which may include Ministers (or their Hong Kong equivalent – art 5(3)).

Environment Agreement

The Environment Agreement is consistent with the policy framework for integrating environment objectives into free trade agreements and includes the core principles that establish a foundation for the bilateral relationship. These include explicit recognition by both Parties that environmental laws, regulations, policies and practices should not be used for trade protectionist purposes, nor weakened or reduced to secure a trade advantage.

The specific (reciprocal) obligations for New Zealand under the Agreement on cooperation and related matters are:

- to cooperate with Hong Kong on mutually determined environmental issues of common interest and to provide a list of areas of New Zealand's interest and expertise (Art 3.1, 3.5);
- to encourage and facilitate information and cooperation activities between relevant experts (Art 3.3);
- to designate a national contact point to enable the Parties to meet to establish, oversee and evaluate cooperation activities; to serve as a channel for dialogue on matters of mutual interest or concern; and to review the operation and outcomes of the Environment Agreement (Art 4.1, 4.3);
- to seek to obtain the resources required to support cooperation activities (Art 4.2);
- to meet within the first year after the Environment Agreement enters into force and then on a regular basis when deemed necessary (Art 4.3); and
- in the event that Hong Kong requests a meeting with New Zealand to discuss any issue arising over the interpretation, implementation or application of the Agreement, to meet as soon as practicable and, unless otherwise mutually agreed, within 90 days following the request Art 5.1, 5.2).

4.22 Exchange of Letters on Investment

The Investment EoL requires New Zealand and Hong Kong to negotiate and conclude an Investment Protocol to the CEP within two years from the date the CEP enters into force. The Parties have agreed that the negotiations must cover those elements referenced in the Investment EoL (paragraphs 2 and 4), and that the resulting Investment Protocol 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 also be drafted with reference to the New Zealand – China FTA (paragraph 3).

5 MEASURES WHICH THE GOVERNMENT COULD OR SHOULD ADOPT TO IMPLEMENT THE TREATY ACTIONS

A small number of legislative and regulatory amendments are required to align New Zealand's domestic legal regime with the rights and obligations created under the CEP and thereby enable New Zealand to ratify the CEP.

The following changes have been identified as being required:

- an amendment to the Tariff Act 1988 to enable the application of preferential tariff rates, and regulations to implement these rates;
- regulations will also need to be made under the Customs and Excise Act 1996 to implement the agreed rules of origin, including via Chapter Notes stating that certificates of origin are necessary for clothing and clothing accessories imported from Hong Kong; and
- changes to the Customs (Import Entry) Rules 1997 to require importers of clothing and clothing accessories from Hong Kong to indicate that a Hong Kong certificate of origin is held[13].

It has been proposed that a CEP Bill be included in the 2010 legislative programme as a category 2 bill.

13 These changes can be made under section 288 of the Customs and Excise Act 1996.

6 ECONOMIC, SOCIAL, CULTURAL AND ENVIRONMENTAL COSTS AND EFFECTS OF THE TREATY ACTIONS

6.1 Economic Effects

6.1.1 Summary

Overall, the CEP together with the Labour MOU, the Environment Agreement, and the Investment EoL, is expected to have a positive impact on the New Zealand economy by:

- providing increased certainty for exporters of goods, services, including those targeting government contracts, about the level of openness which they are guaranteed to enjoy in the future;
- providing mechanisms for promotion of greater transparency, cooperation, and consultation; and
- strategically positioning New Zealand in the Asia-Pacific region, highlighting the importance of the bilateral trading relationship and reinforcing the potential of Hong Kong as a platform for trading into China, complementing New Zealand's Free Trade Agreement with China.

All goods imported by Hong Kong currently enter duty-free. This means that the usual FTA/CEP gains derived from tariff reductions do not apply for New Zealand. The CEP will, however, ensure that duty-free access is locked in place for New Zealand exports. This will provide New Zealand exporters with added certainty that New Zealand's export competitors (other than Mainland China) do not currently enjoy.

The value of FTAs/CEPs is not just limited to tariff reductions, however. The CEP will deliver a range of other economic benefits to New Zealand exporters, including:

- by cementing market access for the export of certain services and access to government tenders;
- offering improved mechanisms for cooperation and consultation across a range of areas (including customs, SPS, TBT, intellectual property and competition policy); and
- by raising the profile of the trading relationship between New Zealand and Hong Kong.

The economic benefits of this agreement are in areas which are typically difficult to model robustly, given data constraints. Economic modelling has therefore not been conducted. Modest economic gains are, however, expected to accrue to the New Zealand economy over time as a result of the CEP.

In addition to economic benefits, there are important strategic benefits of concluding FTAs/CEPs, such as increased regional connectivity. Hong Kong is a valuable export destination – both in its own right (as New Zealand's ninth largest export destination in the year ended June 2009) – but also in terms of the potential it offers as a platform into Mainland China (New Zealand's fourth largest export destination in the year ended June 2009). New Zealand exporters wishing to realise opportunities under New Zealand's FTA with China will be better positioned if they wish to use Hong Kong as the platform for realising these opportunities. FTAs/CEPs also have the ability to highlight the importance of the bilateral relationship. In addition to the CEP, in 2009 New Zealand also concluded an *Arrangement on Cooperation on Wine-related Business and a Statement of Intent Regarding an Arrangement on Cooperation between Audio-visual (Film and Digital Entertainment) Industries*.

6.1.2 Increased Certainty for New Zealand Business

While all New Zealand exports currently enter Hong Kong duty-free, Hong Kong's WTO commitments allow Hong Kong the option to increase the duty on some of its products (around 14% of lines that New Zealand trades over are "unbound" or able to be increased to any rate at the discretion of the Hong Kong authorities). The CEP removes this option. This provides greater certainty for New Zealand exporters operating in Hong Kong.

To provide an example of the potential benefit of locking in current tariff rates at zero a simple modelling exercise has been conducted. The scenario tested modelled the effects of Hong Kong increasing its tariffs by 10 percent in key areas, consistent with WTO rules (i.e. in "unbound" areas only). The results, both with and without the CEP, are shown in Table 1 below.

Without the CEP New Zealand exports to Hong Kong in the affected areas would fall by between 6 and 14 percent, with clothing and textiles exports affected the most. If, on the other hand, Hong Kong unilaterally increased its tariffs after the CEP had entered into force, exports from New Zealand would increase significantly given the competitive advantage which New Zealand exporters would now have in the Hong Kong market (i.e. we would gain at the expense of competitors, who would now face higher tariffs). Exports of 'other transport equipment' would increase by 93 percent; rubber and plastic goods exports would increase by 58 percent; and textiles and clothing exports would increase by 45 percent and 61 percent, respectively. This modelling provides support for the potential 'lock-in' benefits to New Zealand of the CEP.

TABLE 1 CHANGE IN HONG KONG, CHINA'S IMPORTS FROM NEW ZEALAND FOLLOWING A 10 PERCENT TARIFF INCREASE

Product	Without NZ/HKC CEP	With NZ/HKC CEP
Rubber and Plastic Goods	-6%	58%
Other Transport Equipment	-11%	93%
Textiles	-14%	45%
Clothing	-14%	61%
Other Manufactures	-6%	65%

Source: Global Trade Analysis Project (GTAP) Database Version 7 and MFAT calculations.

6.1.3 Relationship between Trade and Macro-economic Performance

There is an important positive relationship between productivity and economic growth and being open and connected to the rest of the world. It is the flows of trade, people, capital and ideas between New Zealand and the rest of the world that help generate productivity and economic growth, particularly for a small economy with limited resources like New Zealand.

6.1.3.1 Static and Dynamic Effects

There are two key economic effects associated with trade liberalisation – static and dynamic. Static effects refer to the one-off benefits obtained through the more efficient allocation of resources as resources move out of previously protected sectors to sectors of greater comparative advantage following trade liberalisation. Dynamic effects or "dynamic productivity" effects relate to the productivity linkages, pro-competitive effects, and investment dynamics of trade liberalisation. Current international trade literature suggests that economic models typically under-predict the gains associated with trade liberalisation if effects related to dynamic effects are not taken into account.

The static gains of the CEP are likely to be minimal. Around 58 percent of New Zealand's tariff lines are already duty-free. In 2009 New Zealand's average applied tariff across all goods was 2.5 percent, with higher tariffs of 10 percent applying to certain clothing and footwear products and carpets. Reducing the barriers on imports from Hong Kong is therefore only likely to deliver modest efficiency gains across the wider New Zealand economy.

New Zealand has progressively reduced its tariffs over the past two decades. As such, much of the adjustment required by New Zealand firms to operate in a low-tariff environment has already taken place.

In the case of Hong Kong which allows all goods to enter duty-free, the static gains of the CEP will be derived from:

- the reduction or elimination of non-tariff barriers (assisted, for example, through new mechanisms for traders to address any issues or obstacles in areas such as customs procedures and intellectual property); and
- greater bilateral consultation and transparency in a range of areas including e-commerce and competition policy.

Gains from reduced non-tariff barriers are much more difficult to estimate in a robust way than gains from tariff reductions and as such no modelling of this kind was undertaken for the CEP. The CEP is expected to provide concrete benefits to New Zealand firms, however, through the various mechanisms and processes which are designed to reduce compliance costs for business.

There are a number of other aspects of the CEP that might help generate "dynamic productivity" gains for the New Zealand economy. Trade reform sees an increase in import competition, thereby encouraging domestic producers to pursue productivity gains, either through the use of better technology and business practices, or through innovation and/or quicker adoption of new ideas. Improved domestic efficiency and liberalisation of other countries' trade barriers will improve the competitive position of exporters, and greater exports may also be associated with productivity gains. The experience and knowledge gained through greater/deeper participation in export markets can also translate into productivity gains. Exporting may also allow producers to expand output and exploit economies of scale, thereby lowering average production costs.

A more efficient economy is likely to open the way for new foreign investment opportunities leading to transfer of technical know-how (through market-based cooperation or spill-over) and capital accumulation which can, in turn, stimulate productivity growth and lead to higher economic growth.

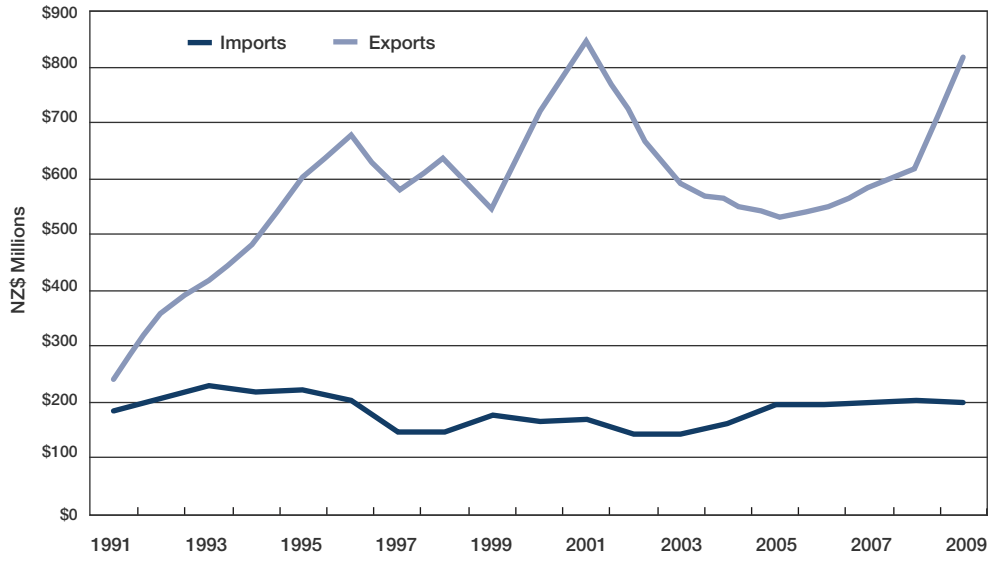
Although it has not been possible to quantify the precise economic effects of these provisions, on the basis of the GTAP modelling that was undertaken (see section 6.1.2, Table 1) and given the increased levels of certainty that the CEP provides for, officials assess that New Zealand companies are more likely to benefit than to lose from the application of improvements to the framework governing the trade and economic relationship with Hong Kong via the signing of the CEP. Modest dynamic productivity gains are expected to accrue to the New Zealand economy over time.

6.1.4 Relative Significance of New Zealand – Hong Kong Bilateral Trade

Hong Kong was New Zealand's ninth largest export destination in the year ended June 2009, with exports of $823 million. Hong Kong received 1.9 percent of New Zealand's total goods exports in the year to June 2009. New Zealand's top ten exports to Hong Kong are shown in Table 2.

Hong Kong was New Zealand's thirty-first largest source of imports in the year to June 2009. New Zealand imported $199 million of goods from Hong Kong in the year to June 2009, accounting for 0.4 percent of New Zealand's total goods imports. New Zealand's top ten imports from Hong Kong are shown in Table 3. The bilateral goods trade pattern over time can be seen in Figure 1 below:

FIGURE 1 VALUE OF TRADE WITH HONG KONG



Source: MFAT

TABLE 2 TOP TEN NEW ZEALAND EXPORTS TO HONG KONG (AVERAGE 2008/09 JUNE YEARS)

Product	Export value (average 2008/2009) (NZ$ millions)	% of total exports
Fish and fish products	$213.2	30%
Animal products	$116.7	16%
Dairy products	$60.9	8%
Fruit, vegetables and plants	$50.4	7%
Leather, rubber and footwear	$36.9	5%
Minerals and metals	$35.5	5%
Chemicals	$32.4	5%
Wood, pulp, paper and furniture	$31.8	4%
Other agricultural products	$30.5	4%
Electrical machinery	$29.6	4%
Subtotal top ten exports	$638.0	89%
Total exports	$719.2	

Source: *World Trade Atlas and WTO Agriculture and NAMA sector codes. Exports are valued fob (free on board – the value at New Zealand ports before export).*

TABLE 3 TOP TEN NEW ZEALAND IMPORTS FROM HONG KONG (AVERAGE 2008/09 JUNE YEARS)

Product	Import value (average 2008/09) (NZ$ millions)	% of total exports
Electrical machinery	$57.1	28%
Non-electrical machinery	$36.9	18%
Miscellaneous manufactures	$24.3	12%
Clothing	$22.6	11%
Minerals and metals	$15.0	8%
Wood, pulp, paper and furniture	$12.9	6%
Chemicals	$12.9	6%
Textiles	$7.9	4%
Leather, rubber and footwear	$4.7	2%
Cereals and preparations	$3.4	2%
Subtotal top ten exports	$197.6	98%
Total imports	$201.6	

Source: *World Trade Atlas and WTO Agriculture and NAMA sector codes. Imports are valued cif (cost, including insurance and freight to New Zealand).*

6.1.5 Potential Impacts on New Zealand of Tariff Liberalisation under the CEP

New Zealand has committed to remove all tariffs on imports from Hong Kong by 2016. Over 53 percent of New Zealand's current imports from Hong Kong already enter the New Zealand market free of duty. The remaining 47 percent will be liberalised in a phased fashion. The broad structure of New Zealand's CEP commitments to Hong Kong is presented in Table 4.

Extended timeframes for tariff elimination have been provided for a number of import sensitive sectors and, in particular, clothing, textiles and footwear products. Details are shown in Table 5. These extended timeframes will reduce the potential adjustment costs on these sectors as they compete with greater imports from Hong Kong. These adjustment costs are likely to be minimal given firms in protected sectors will already be positioning themselves to transition to a tariff-free environment given previous FTA commitments (most notably the New Zealand – China FTA).

TABLE 4 SUMMARY OF NEW ZEALAND'S TARIFF REDUCTION COMMITMENTS

Average, 2008-2009 June years			
	Percentage of Tariff Lines Duty-free	Percentage of NZ Imports from Hong Kong duty-free	Key Products Duty-free / Becoming Duty-free
Already Duty-free	58.0%	53.1%	Machinery parts, telephone equipment, books, computers, watches
2010	63.7%	54.0%	Electric transformers, shavers and hair clippers, spectacles
2011	63.7%	54.0%	No further reductions
2012	90.8%	85.6%	Whiteware, steel, plastics, furniture, Jewellery, microphones, toy models, lamps
2013	92.0%	85.7%	Some fabrics and twine products
2014	98.4%	88.5%	Some textiles and clothing
2015	98.4%	88.5%	No further reductions
2016	100.0%	100.0%	Textiles, clothing and footwear products

Source: MFAT. Valued cif (cost, including insurance and freight to New Zealand). Excludes "parts" and confidential tariff lines, which account for 0.4% of New Zealand's total imports from Hong Kong.

TABLE 5 TARIFF OUTCOMES IN KEY AREAS OF NEW ZEALAND'S DOMESTIC SENSITIVITY

			Percentage of imports from Hong Kong on which tariffs will be eliminated							
	Imports from Hong Kong avg. 2008/09 June years(NZ$)	Est. duties paid in 2008/09 June years (NZ$)	% Duty Free in 2009	% Duty Free in 2010	% Duty Free in 2011	% Duty Free in 2012	% Duty Free in 2013	% Duty Free in 2014	% Duty Free in 2015	% Duty Free in 2016
Textiles and clothing	$24,246,888	$2,329,998	1.1%	1.3%	1.3%	1.3%	1.8%	20.8%	20.8%	100%
Footwear	$3,104,324	$302,739	1.1%	1.1%	1.1%	1.1%	1.1%	7.9%	7.9%	100%
Metal products	$9,770,598	$416,928	14.7%	14.8%	14.8%	100%	100%	100%	100%	100%
Furniture	$2,598,360	$142,641	1.0%	1.4%	1.4%	88.4%	88.4%	88.4%	88.4%	100%
Plastics and rubber	$6,031,636	$276,902	10.2%	11.5%	11.5%	94.4%	94.4%	97.7%	97.7%	100%

Source: MFAT. Estimated using New Zealand's June 2009 MFN tariff and average 2008 and 2009 June years vfd (value for duty – the value of imports before insurance and freight costs are added) trade data.

The phase-out of duties is also expected to benefit New Zealand producers who use imported components or capital equipment from Hong Kong in the production of their goods. Cheaper imports of mechanical and electrical machinery equipment ($98 million of imports from Hong Kong in 2009),[14] simply transformed manufactures ($8 million), and unprocessed primary products ($1 million), will lower the costs of production for New Zealand producers and manufacturers of highly processed goods. This is expected to improve the competitiveness of many New Zealand firms.

Consumers will also benefit from the CEP. Over time, imported consumer items from Hong Kong will no longer attract a tariff, thus reducing the cost to New Zealand buyers, delivering welfare gains to households.

6.1.6 Potential Impacts on the New Zealand Economy of the Outcome in Services

As noted in section 4.12, the services commitments which New Zealand has made to Hong Kong have been committed already to other FTA partners or, in the case of several in relation to maritime transport services, have been offered in New Zealand's WTO Doha offer. Furthermore, all are within existing policy settings. In practice, therefore, the services sectors are already open to foreign competition.

It is difficult to measure the specific economic effect of the new commitments agreed by Hong Kong in the services negotiations, due to the difficulty in collecting services data on a sectoral basis upon which to base modelling. Nonetheless, as noted in section 3.1.11, Hong Kong has made WTO "plus" commitments in a broad range of sectors (including education, New Zealand's single most important services export after tourism). In addition to the strong future-proofing provided by the agreement, these commitments and the WTO-plus, commitments on the movement of business persons should over time encourage greater exports of services to Hong Kong.

6.2 Social Effects

The CEP and the associated instruments, including the Labour MOU, the Environment Agreement, and the Investment EoL, are not expected to have any discernible detrimental impact on New Zealand socially and should have an overall net-benefit. The following section examines potential effects on domestic employment, social regulation and immigration.

6.2.1 Employment

FTAs/CEPs may have both positive and negative employment effects. Positive employment effects can be expected in areas of the economy where activity increases as a result of greater demand for exports and cheaper imports. The negative effects can be expected to be found in industries previously protected by tariffs or other barriers to trade, which may find it difficult to compete with cheaper imports under an FTA.

14 Level of processing statistics supplied by Statistics New Zealand.

The CEP protects New Zealand's domestic interests in sensitive sectors such as clothing, footwear, carpet and furniture through longer transitions, or longer phase-out periods for tariffs on these sensitive items. The tariff reductions agreed for Hong Kong are not expected to have any significant impact on domestic manufacturing or employment, given the low volumes of imports to New Zealand from Hong Kong and given that the phase-out periods are identical to those in the New Zealand – China FTA. Similarly, the special facility for part-processing of products falling under chapters 61 and 62 is not expected to have any material impact, since like products manufactured in China under the same Product Specific Rules would enter on the same terms.

6.2.2 Social Regulation

New Zealand's social regulation frameworks will not be affected by the CEP. In the area of trade in services, the CEP excludes services supplied in the exercise of government authority. New Zealand has not made any commitments in respect of publicly provided services, such as public health, education, housing and social welfare. In terms of labour standards, the Labour MOU affirms each country's respective commitment to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). The rights of each party to set their own policies and priorities are respected.

6.2.3 Immigration

The CEP includes specific commitments in relation to the movement of business people. These commitments do not require any changes to existing immigration policy. The CEP is intended to raise New Zealand's profile as a trade and investment destination and therefore it is possible that there may be increased interest in New Zealand as an option for people (including skilled migrants) emigrating from Hong Kong. Hong Kong is not a large market for permanent residents. We have not seen any discernible increase in permanent residents as a result of previous FTAs. Any increase is not likely to have an effect on visa processing.

6.3 Cultural Effects

The CEP and its associated Agreements are not expected to have any negative cultural effects. The CEP includes safeguards to ensure that New Zealand preserves the ability to pursue certain cultural policy objectives, such as supporting the creative arts and taking measures in relation to Māori, including in fulfilment of Treaty of Waitangi obligations.

6.4 Environmental Effects

New Zealand seeks to ensure that FTA outcomes contribute to sustainable development and environmental objectives, consistent with the 2001 Policy Framework. The CEP and its associated Environment Agreement contain a range of provisions that recognise the important role that trade liberalisation can play in supporting environmental improvements and the role that improved environmental performance can play in underpinning integrated economic development. Key environmental aspects of the CEP and Environment Agreement are:

- The liberalisation of trade in environmental services. Hong Kong has agreed to new commitments in all environmental services including Sewage Services; Refuse Disposal Services; Sanitation and Similar Services; Cleaning Services of Exhaust Gases; and Noise Abatement Services. New Zealand has also provided a reciprocal level of commitments.
- The establishment of mechanisms to facilitate cooperation and communication with the aim of building capacity and capability for improved environmental performance and to address trade and environment matters of mutual interest.

FTAs have the potential to affect the environment in positive and negative ways. There are four means by which the environment can be affected: through changes in environmental regulation; changes in the types of goods and services that are traded; changes in the distribution and intensity of production and consumption; and changes in the scale of production. These are discussed below.

6.4.1 Regulatory Effects

The CEP will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided that they are applied to meet a legitimate objective and are not implemented in a discriminatory fashion. The general exceptions are consistent with those provided for in multilateral treaties including the GATT and GATS. New Zealand's existing legislation is designed to address any potential adverse environmental outcomes of economic activity.[15] Voluntary initiatives (such as the Clean Streams Accord) sit alongside and support this legislative framework, and New Zealand also encourages multinational firms to adopt environmental management systems through its support of the OECD's Guidelines on Multinational Enterprises.

6.4.2 Product Effects

Trade liberalisation under the CEP could lead to a change in the mix of products that New Zealand exports and imports. In the case of changes in the composition of New Zealand's imports that might arise from the CEP's trade liberalisation provisions, it is possible that there may be an increased bio-security risk. However, New Zealand's existing framework of environmental and bio-security laws, regulations, policies and practices are specifically designed to manage such risks.

6.4.3 Structural Effects

Structural effects relate to the ways in which trade liberalisation can affect the production processes of goods and services. The CEP is unlikely to result in structural effects of sufficient magnitude to create any significant new negative environmental effects. Structural reforms during the past three decades and New Zealand's domestic environmental policy and regulatory regime will help to mitigate the environmental risks from any structural effects.

15 Relevant existing legislation includes: the Resource Management Act 1991; the Hazardous Substances and New Organisms Act 1996; the Ozone Layer Protection Act 1996; the Soil Conservation and Rivers Control Act 1941; the Energy Efficiency and Conservation Act 2000; the Climate Change Response Act 2002; the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; the Biosecurity Act 1993; the Conservation Act 1987; the Crown Minerals Act 1991; the Fisheries Act 1949 (amended 1993); the Forests Act 1949 (amended 1993); and the Wildlife Act 1953

6.4.4 Scale Effects

When economies expand as a result of trade liberalisation, there may be a risk of increasing pollution levels and natural resource depletion. This risk stems largely from the potential product and structural effects outlined above. However, this risk 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 in fact be possible to produce more goods and services using the same amount of aggregate resources. Over time, technological improvements, which can be hastened by trade liberalisation and broader economic integration, may contribute to a more efficient use of natural resources.

Given New Zealand's existing environmental and resource management policy and regulatory frameworks, and the provisions in the CEP to promote the liberalisation of trade in environmental goods and services, and to promote capacity building on environmental issues, it is unlikely that scale effects resulting from the CEP would result in any significant increase in levels of environmental degradation.

The CEP, the Environment Agreement, and the Investment EoL, are not expected to have any negative effects on the environment in New Zealand that cannot be managed using existing policy frameworks. Its provisions may encourage improved productivity in the use of natural resources.

7 COSTS TO NEW ZEALAND OF COMPLIANCE WITH THE TREATIES

7.1 Tariff Revenue

In 2008-09 the estimated tariff revenue collected on imports from Hong Kong was $4 million.[16] As tariffs are phased out over time under the CEP, the New Zealand Customs Service will progressively collect less and, by 2016, no revenue from duty payments on imports from Hong Kong will be collected.

7.2 Costs to Government Agencies of Implementing and Complying with the Treaties

The implementation of the CEP, Labour MOU, Environment Agreement, and Investment EoL will have fiscal implications. The costs are expected to be incurred across different departments and over a number of years. Activities undertaken by government departments in support of these agreements are expected to be funded within existing departmental baselines. Where this is not possible, Cabinet approval for additional funding may be sought by the relevant department. The inter-agency Trade Negotiations Fund (TNF) has a funding pool available to provide departments with funding for "bedding-in" activities associated with the CEP, for a period of 18 months from the date of entry into force of the agreement. The Investment Protocol negotiations will also be funded by the TNF.

7.2.1 FTA Implementation Costs

The CEP establishes a Joint Commission to consider the implementation of the Agreement. In addition to the Joint Commission, the CEP provides for the establishment of three specialist committees in the areas of:

- trade in goods (including Rules of Origin, Customs Procedures and Cooperation, and Trade Remedies);
- technical barriers to trade (TBT); and
- trade in services.

While the specific objectives of these committees differ, their general objective is to facilitate the ongoing interaction of relevant officials to discuss the implementation and operation of the CEP and, in the case of the TBT Committee, identify areas for enhanced cooperation. Some of the chapters without committees provide for the establishment of contact points to facilitate communications in specific areas. There is also provision for contact points in the Transparency Chapter to facilitate communications between the Parties on any matter covered by the CEP.

The establishment and operation of the Joint Commission, specialist committees, and exchanges between contact points are expected to be undertaken within the baselines of the relevant agencies, with the inter-agency Trade Negotiations Fund providing funding to activities that would embed the CEP during the first 18 months following its entry-into-force.

16 Estimated using New Zealand's 2009 MFN tariff and average 2008 and 2009 June years value for duty ((vfd) i.e. the value of imports before insurance and freight costs are added) trade data.

A number of chapters of the CEP, as well as the Labour MOU and Environment Agreement, establish mechanisms that allow for future cooperation between New Zealand and Hong Kong 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 from within baselines. Any proposal for cooperation activities will however need to be assessed against other departmental priorities funded out of existing baselines.

7.2.2 Promotion and Outreach Costs

One-off costs associated with the CEP are estimated to amount to $150,000 for promotion and outreach activities (including processes and documentation required to support the legislative process). Funding for these activities has been secured from the inter-agency Trade Negotiations Fund.

7.3 Costs to Businesses of Complying with the Treaties

As outlined in Section 3.1, the predominant effect of the CEP should be to reduce transaction costs for New Zealand business in trading with Hong Kong through trade facilitating outcomes across the agreement, including in areas such as customs procedures, SPS and TBT measures, and domestic regulation of services.

The resulting cost reductions are expected to develop and increase over time, resulting from the platform that the CEP creates for trade facilitation and enhanced cooperation and consultation in areas such as customs, SPS and TBT.

8 COMPLETED OR PROPOSED CONSULTATION WITH THE COMMUNITY AND PARTIES INTERESTED IN THE TREATY ACTIONS

8.1 Inter-departmental Consultation Process

The negotiation of the CEP and associated instruments was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade (MFAT) and comprising officials from the Ministry of Economic Development (MED), the New Zealand Customs Service, the New Zealand Food Safety Authority, the Ministry of Agriculture and Forestry, the Ministry for the Environment, the Department of Labour, The Treasury, the Ministry of Education, and the New Zealand Qualifications Authority.

Te Puni Kōkiri, the Ministry for Culture and Heritage and the Ministry of Transport were consulted on areas of specific interest, and the Department of the Prime Minister and Cabinet and New Zealand Trade and Enterprise (NZTE) were also consulted throughout the negotiating process.

Relevant departments were also consulted during the negotiations in the preparation of New Zealand's services commitments. In particular, the preparation of New Zealand's "negative list" involved as part of a broader process consultation with all 35 core public service departments listed in the First Schedule to the State Sector Act 1988.[17] This built upon an earlier inter-agency exercise in 2004/05 which developed a negative list for the P4.

8.2 Public Consultation Process

An extensive consultation process was undertaken in the lead up to and throughout the 2001-2002 CEP negotiations. These consultations revealed a number of concerns including:

- the risk that third-party economies might be able to unfairly benefit;
- uncertainty from some about the direct economic benefits of a CEP, despite broad recognition of the strategic value of a CEP with Hong Kong;
- some general questions about New Zealand's approach to negotiating FTAs; and
- some concern about aspects of the existing Agreement for the Promotion and Protection of Investments between New Zealand and Hong Kong.

The decision to suspend the initial negotiations was partly based on the concern that third-party economies might be able to unfairly benefit from the CEP. The context in which negotiations were resumed was very different from that in 2001. Since 2001, New Zealand has concluded a number of other FTAs, in particular the New Zealand – China FTA. Most significantly, the conclusion of this FTA with China provided the shape of a possible solution to the earlier difficulties over ROO.

17 The 35 core public service departments are as follows: Ministry of Agriculture and Forestry; Archives New Zealand; Department of Building and Housing; Department of Conservation; Department of Corrections; Crown Law Office; Ministry for Culture and Heritage; Ministry of Defence; Ministry of Economic Development; Ministry of Education; Education Review Office; Ministry for the Environment; Ministry of Fisheries; Ministry of Foreign Affairs and Trade; Government Communications Security Bureau; Ministry of Health; Inland Revenue Department; Department of Internal Affairs; Ministry of Justice; Department of Labour; Land Information New Zealand; Ministry of Māori Development; Ministry of Pacific Island Affairs; National Library of New Zealand; New Zealand Customs Service; New Zealand Food Safety Authority; Department of the Prime Minister and Cabinet; Ministry of Research, Science and Technology; Serious Fraud Office; Ministry of Social Development; State Services Commission; Statistics New Zealand; Ministry of Transport; The Treasury; and Ministry of Women's Affairs.

From February 2009, the Ministry of Foreign Affairs and Trade (MFAT), together with other government agencies, organised and conducted a consultation programme to raise public awareness of the resumption of the negotiations and to seek stakeholder views. This programme used printed, emailed, and website information, supported by specific discussions with key stakeholders, including the exporters and industry sectors likely to be interested in or affected by the outcomes of the CEP.

8.2.1 Communication Programme

The communication programme supporting the consultations included:

- a call for submissions in February 2009;
- regular updating of the MFAT website with information on the negotiations, as well as contact details to encourage direct feedback from stakeholders;
- regular updates in the bi-monthly MFAT news bulletin, *Business Link* (distributed to over 900 subscribers and published on the MFAT website);
- updates in MFAT's 'International Treaties List' (produced every six months by MFAT and published on the MFAT website); and
- a survey sent out to all members of the Hong Kong New Zealand Business Association.

8.2.2 Consultation Programme

The above communications provided the basis for a consultation programme involving:

- presentations to Chambers of Commerce (Auckland, Wellington, and Christchurch);
- an online survey of 236 New Zealand export companies, of which 54 percent (128 out of 236) identified Hong Kong as a current export market;
- meetings with New Zealand business and financial sector representatives currently based in Hong Kong; and
- meetings with, or otherwise directly contacting, interested companies, industry groups and sectoral organisations, to discuss elements of the negotiations. These groups included:

Blackburn Croft, Business New Zealand, Cambridge Clothing Ltd., the Council of Trade Unions, Education New Zealand, Eskay Ltd., Fashion Uniforms Ltd., the Federation of Māori Authorities, Fletcher Challenge Group, Fonterra, Four Winds Communications, Frenzi Holding Ltd., Hills Hats Ltd., Heavy Engineering Research Association, the Hong Kong/New Zealand Business Association, Hubbards Food Ltd., Jaedon Enterprises Ltd., the Kiwi Sock Company, Learning Media Ltd., Meat and Wool New Zealand, the New Zealand Chamber of Commerce in Hong Kong, NZ Gloves, the New Zealand Law Society, the New Zealand Manufacturers and Exporters Association, the New Zealand Registered Architects Board, the New Zealand Sock Company Ltd., Otago Knitwear Ltd., Robyn Mathieson Design Ltd., SafeKiwi Ltd., Swazi Apparel Ltd., Tapestry Knitwear Ltd., TemperZone Ltd., Textiles NZ, Victoria University, Yakka Apparel Solutions Ltd.

8.2.3 Submissions

During the 2001-2002 negotiation, 38 formal submissions were received, and 11 letters/written comments. The 2009 consultation process elicited one further written submission from Meat & Wool New Zealand.

8.2.4 Issues Covered in the Consultation Process

Views were sought from stakeholders on the full range of issues in the negotiations. The following is a summary of the points expressed by those who responded to the consultation process:

- In the 2001-2002 consultation period, the key concern from business was that concluding a CEP that offered Hong Kong exporters preferential access could create a risk of product entering New Zealand from third-party economies and unfairly benefiting from the agreement.
- Some of the submissions in 2001 raised concerns about the existing investment agreement (IPPA) with Hong Kong. An Investment EoL requiring Hong Kong and New Zealand to negotiate an Investment Protocol within two years of the CEP's entry into force was concluded alongside the CEP.
- When negotiations were resumed in 2009, consultations indicated strong overall support for a CEP with Hong Kong.
- A large number of stakeholders consulted at the outset of the 2001-2002 negotiations and more recently viewed the CEP as of strategic importance and also of importance in terms of New Zealand's wider programme of economic integration with Asia.
- There was some support for the legal-certainty that a binding to zero of Hong Kong's tariffs would offer.
- Some stakeholders were broadly in favour of the CEP, but did not see it as a particularly high priority in commercial terms, given that Hong Kong is a duty-free port.
- Many organisations emphasised the ease of dealing in the Hong Kong market and found it difficult to identify any difficulties or barriers to trade.
- Some food industry contacts expressed an interest in robust SPS, TBT, and Customs Procedures and Cooperation Chapter outcomes.
- Education industry contacts stressed the importance of a robust outcome in education, including a Most Favoured Nation outcome.

8.2.5 Specific Consultation on New Zealand's Tariff Reductions and Rules of Origin

In April 2009, MFAT and the Ministry of Economic Development (MED) conducted face-to-face calls on a selection of 20 companies and industry groups in Wellington, Auckland, Christchurch and Dunedin to seek their views on tariff reductions with respect to potential FTAs including Hong Kong. With respect to Hong Kong, most companies were ambivalent; New Zealand exports already enter Hong Kong duty-free but none of the companies said they needed tariffs to protect specifically against competition from Hong Kong exporters.

In July 2009, MED conducted consultations with Textiles NZ and a range of New Zealand clothing manufacturers to seek the industry's views concerning possible allowance of 'Hong Kong origin' status for clothing products[18], which have been partially manufactured in Mainland China and partially manufactured in Hong Kong. The participants were informed about New Zealand's intention to replicate, as far as possible, the New Zealand – China FTA's ROO for these products. The consultation was conducted by systematic telephone interviews.

The feedback gathered from these consultations indicated that there were not any particular concerns over Hong Kong manufacturers undertaking partial processing of clothing products in Mainland China, provided that Product Specific Rules (PSRs) for these products replicated, as far as possible, those negotiated under the New Zealand – China FTA and robust verification systems were established. A small minority of the participants indicated that they did not support FTAs in general, although access to potentially more cost effective raw materials (specific to the clothing industry) that could result from tariff reductions was identified as an opportunity. One participant expressed the view that the margin of value of Hong Kong clothing products over Chinese products is disappearing and, given the volume of Chinese imports, any influx of Hong Kong products (as a result of the CEP) was therefore unlikely to have any discernible impact on the local industry.

18 HS chapters 61 and 62

9 SUBSEQUENT PROTOCOLS AND/OR AMENDMENTS TO THE TREATIES AND THEIR LIKELY EFFECTS

The CEP provides that it may be amended by agreement in writing by the Parties and that any amendments would come into force on the date or dates agreed by the Parties (Chapter 20, Article 2).

Specific provisions in the CEP envisage the possibility of review of existing commitments, or the conclusion of further agreements or arrangements between the Parties. These include:

- Implementing Arrangements provided for in the SPS Chapter (Chapter 7, Article 6);
- trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures (TBT Chapter 8, Article 11);
- review of relevant Services commitments, as appropriate, following the conclusion of air transport services, subsidies, and domestic regulation negotiations in the WTO (Chapter 13, Articles 2, 9, and 11); and
- the Education Cooperation Arrangement envisaged under Annex III to the Services Chapter (Chapter 13).

In addition, the Investment EoL requires the Parties to negotiate an Investment Protocol to the CEP within two years of the CEP's entry into force, and a non-binding exchange of letters commits the Parties to review some specific movement of business person commitments one year after the CEP enters into force. A separate non-binding letter confirms that New Zealand will review the overseas screening regime threshold in the context of and upon conclusion of the negotiation of an Investment Protocol.

While the Labour MOU, the Environment Agreement and the Investment EoL have no specific provisions covering amendment, consistent with international treaty practice, the Parties could agree to amend these agreements if they wished.

New Zealand would consider proposed amendments on a case-by-case basis and any decision to accept an amendment to the CEP, the Labour MOU, the Environment Agreement, or the Investment EoL would be subject to the normal domestic approvals and procedures.

10 WITHDRAWAL OR DENUNCIATION

The Agreement may be terminated by either Party giving 180 days written notice to the other Party (Chapter 20, Article 4).

Both the Labour MOU and the Environment Agreement can be terminated by either Party giving six months written notice to the other Party. Termination of the agreements would not affect the validity of any arrangements already made under them at that point (Article 6 of both agreements). The Investment EoL does not specifically allow for withdrawal or denunciation. New Zealand could withdraw from the Investment EOL in accordance with the *Vienna Convention on the Law of Treaties*. Any decision by New Zealand to withdraw from or terminate the CEP, Labour MOU, Environment Agreement, or Investment EoL would be subject to the usual domestic approvals and procedures.

AGENCY DISCLOSURE STATEMENT

This extended National Interest Analysis (NIA) has been prepared by the Ministry of Foreign Affairs and Trade. The extended NIA identifies those obligations in the *New Zealand-Hong Kong, China Closer Economic Partnership Agreement* and associated instruments which require legislative implementation. Although the Government has identified certain types of regulatory effects that would require a particularly strong case before regulation would be considered, implementation of the obligations arising under the CEP are not expected to give rise to effects of this type.