



THE NEW ZEALAND – MALAYSIA FREE TRADE AGREEMENT



This Ministry of Foreign Affairs and Trade publication provides an overview and a practical business guide to the Malaysia – New Zealand Free Trade Agreement. A full copy of the Agreement and associated documents can be obtained at **www.mfat.govt.nz**.

Designed by typeface, Wellington

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THE NEW ZEALAND – MALAYSIA FREE TRADE AGREEMENT

CONCLUDING A FREE TRADE AGREEMENT (FTA) WITH MALAYSIA IS A SIGNIFICANT ACHIEVEMENT FOR NEW ZEALAND.

Malaysia is our eighth most important export destination – we now export almost one billion dollars worth of goods there. Over the last four years, goods exports to Malaysia have grown by over 80 percent – more than double the rate of New Zealand’s global export growth over the same period.

It is not just merchandise goods trade which is flourishing. Services exports to Malaysia have also grown in a range of high-value sectors, such as private education, engineering and information and computer technology services. New Zealand investment in Malaysia has also grown by an annual rate of 77 percent since 2003 to almost half a billion dollars last year.

The Malaysia FTA usefully supplements the existing twelve-country Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), which I signed earlier this year in Thailand. It eliminates tariffs on 99.5 percent

of New Zealand’s current exports within seven years (by 2016) of entry-into-force – five years earlier than provided for under the AANZFTA. On full implementation, the Malaysia FTA will provide duty-savings for New Zealand exporters of over \$10 million per annum.

The FTA provides greater transparency, enhanced certainty for investors and improved market access for many services providers in a range of value-add sectors. Particularly significant, however, is that through Most Favoured Nation (MFN) treatment, this FTA ‘future proofs’ New Zealand’s investment and services interests in key areas.

In practical terms this means not only does New Zealand have a ‘first-mover’ advantage in Malaysia in these areas, but our interests in relation to key competitors are automatically protected when Malaysia concludes future FTAs.



Environment and Labour Agreements have also been concluded and these build on the expanding network of such agreements we have secured in the region with our ASEAN partners. These treaty-level instruments provide for more effective discussion and cooperation on labour and environment matters in line with New Zealand's sustainable development objectives.

In strategic terms, the FTA deepens our ties and strengthens our relationship with a key partner in the vibrant South East Asian market, underlining New Zealand's commitment to this rapidly integrating region. This FTA is another contribution towards the goal of a possible FTA of the Asia Pacific region.

Importantly, this FTA indicates that New Zealand and Malaysia are committed to keeping our markets open for business during challenging economic times.

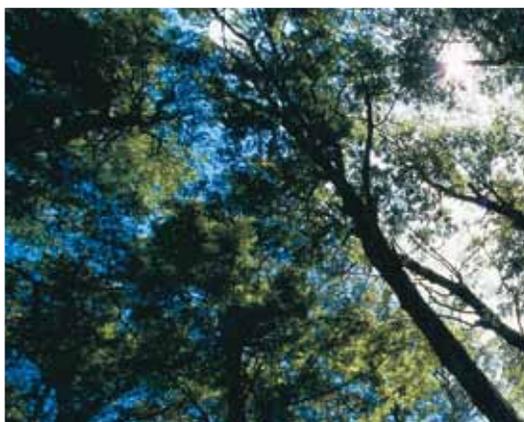
Finally, this FTA deepens a relationship that is built on strong people-to-people, official and business links. Malaysia is one of the Southeast Asian countries best known to New Zealanders and it is my hope that this FTA will provide further impetus for our respective businesses to take this relationship even further.

A handwritten signature in black ink, appearing to be 'J. G. ...' with a stylized flourish at the end.

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1 WHAT IS THE MALAYSIAN FREE TRADE AGREEMENT?

The New Zealand – Malaysia Free Trade Agreement (Malaysian FTA) will liberalise and facilitate trade in goods, services and investment between New Zealand and Malaysia, New Zealand's eighth most important export destination. It contains measures to improve business flows and promote cooperation in a broad range of economic areas of mutual interest, and is supported by Agreements on trade and the environment and trade and labour matters. Importantly, it goes well beyond the commitments made in the Agreement establishing the ASEAN – Australia – New Zealand Free Trade Area (AANZFTA).

The Malaysian FTA and its associated instruments are expected to deliver benefits to New Zealand firms. The main benefits are likely to result from:

- > enhanced access to the Malaysian market for New Zealand goods and services exporters through reductions in direct and indirect trade barriers;
- > improved firm competitiveness as a result of preferential tariff treatment and exposure to international competition;
- > greater certainty (and thus reduced risk) for New Zealand businesses about the future trading and investment environment in Malaysia; and,
- > potential longer term gains from enhanced regional integration.

This Guide explains how the benefits above can be secured by New Zealand exporters and investors. The key features of the Malaysian FTA, which are set out in more detail in this Guide, include:

Liberalised trade in goods

- > The eventual removal of tariffs on 99.5 percent of New Zealand's current exports to Malaysia by value.
- > Commercially meaningful annual duty savings of over \$10 million based on current trade.
- > A 'first mover' advantage over competitors from countries that do not enjoy similar treatment from Malaysia.

Rules to govern trade

- > Rules that ensure New Zealand exporters can take advantage of the preferential treatment provided by the Malaysian FTA, with the minimum of compliance costs.





- > The most trade facilitating Rules of Origin (ROO) of any recent New Zealand FTA, which are an improvement on the ROO negotiated under the AANZFTA.
- > Trade will also be made easier through least-cost customs procedures which will provide strong trade facilitation benefits for New Zealand exporters. This includes self- declaration of origin, maximum 48 hour customs clearance and provisions for customs cooperation designed to limit border problems and effectively resolve any problems which might arise.

Liberalised trade in services

- > Improved commitments over and above AANZFTA outcomes in key sectors such as education, tourism and environmental services.
- > Provisions ensuring that New Zealand's service exporters in key sectors will not be left at a disadvantage should Malaysia extend more favourable treatment to other trading partners in its future FTAs.

Movement of business people

- > Provisions to better facilitate the movement of business people, investors and traders into Malaysia.

Enhanced protection for investment

- > New Zealand investors will operate in a more certain investment environment.
- > Dispute resolution procedures will enhance the protection of New Zealand investors.
- > New Zealand investors and their investments in Malaysia cannot be left at a disadvantage relative to investors from other countries as Malaysia must extend any more favourable treatment it grants future FTA partners to New Zealand.

Measures to improve business flows

- > Measures relating to customs procedures and cooperation, sanitary and phytosanitary measures, standards, technical regulations and conformity assessment procedures, intellectual property and competition policy.
- > These are all designed to improve the ease of doing business in Malaysia for New Zealand exporters and investors.
- > Establishment of an overarching framework to allow for enhanced cooperation to complement the existing economic partnership between New Zealand and Malaysia and to create new trade and investment opportunities in areas of mutual interest including education, forestry, health, biotechnology, agritechology and manufacturing industry cooperation.

Dispute settlement

- > A robust consultation and dispute settlement mechanism to resolve any disputes that arise concerning the operation, implementation or application of the Agreement.

Associated Documents: Environment and Labour

- > The Environment and Labour Agreements concluded in conjunction with the Malaysian FTA provide formalised legal frameworks for more effective discussion and cooperation on trade and labour and trade and the environment matters in line with New Zealand's broader sustainable development objectives. These treaties will supplement similar instruments New Zealand already has with other ASEAN partners both alongside bilateral FTAs and the AANZFTA.

2 THE PATH TO THE MALAYSIAN FREE TRADE AGREEMENT

In late March 2005, leaders from Malaysia and New Zealand agreed to launch negotiations for a bilateral FTA between the two countries. Leaders agreed that the FTA would be comprehensive, covering trade in goods, services and investment, as well as enhancing bilateral economic cooperation. Negotiations began soon after and were substantively concluded in Kuala Lumpur on 30 May 2009 after ten rounds. The Malaysian FTA was signed in October 2009.

The bilateral FTA builds on and extends the commitments made by New Zealand and Malaysia under the AANZFTA Agreement signed in February 2009.

The Malaysian FTA adds to New Zealand’s suite of FTAs in the Asia-Pacific region and contributes to New Zealand’s long-standing wider goal of trade liberalisation. This is particularly important at a time when many countries are holding back on further trade liberalisation commitments as a result of the global economic slowdown.

The bilateral FTA supports both countries’ ongoing efforts for wider liberalisation and economic integration under the World Trade Organization (WTO), the Asia Pacific Economic Cooperation Forum (APEC) process and the East Asia Summit (EAS) process.



3

THE STRATEGIC IMPORTANCE OF THE MALAYSIAN FREE TRADE AGREEMENT

A strategic trade-related priority for the New Zealand Government is to lift New Zealand's long-term growth, build more internationally competitive firms by removing barriers to trade and innovation and help New Zealand firms access the markets, ideas, finance and skills they need to grow and succeed. To this end, a core objective of New Zealand's trade policy is to agree FTAs with key trading partners, such as Malaysia, that broaden and deepen the opportunities available to exporters by removing and reducing barriers to trade and investment, as well as to establish frameworks through which trade and investment linkages can evolve and expand.



The Malaysian economy is New Zealand's eighth largest export destination, accounting for almost a billion dollars of exports in 2008. Its large and rapidly growing population of more than 28 million people presents ample opportunities for additional trade, investment and other economic linkages.

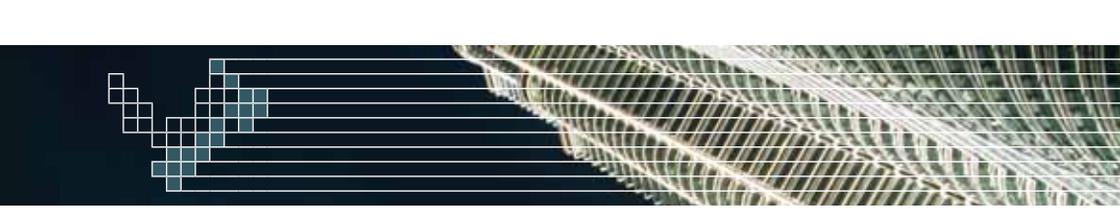
Evidence of the evolving bilateral relationship is plentiful:

- > Bilateral trade has increased rapidly in recent years. New Zealand merchandise exports to Malaysia have increased 80 percent since 2004, which is more than double the rate of New Zealand's export growth to the rest of the world.
- > New Zealand's services trade with Malaysia has also expanded, particularly in the education sector. The number of Malaysian international students in New Zealand has increased by over 70 percent since 2003, compared with a 27 percent decrease in the total number of international students visiting New Zealand over the same period.
- > Investment linkages between Malaysia and New Zealand have grown rapidly in recent years. New Zealand's total investment in Malaysia has increased from \$26 million in the year to March 2003 to \$451 million in the year to March 2008. This represents annual average growth of 77 percent, compared to 8.5 percent growth in New Zealand's overseas investment to all markets.

The Malaysian FTA recognises the growing importance of the linkages between the New Zealand and Malaysian economies and aims to deepen them further through:

- > Binding in existing commitments and pushing through to faster tariff elimination of Malaysia's tariffs on New Zealand exports than agreed under AANZFTA, providing New Zealand exporters an important 'first mover' advantage over competitors that do not enjoy preferential treatment under a bilateral FTA.
- > Lowering the transaction costs of trade including self-declaration of origin and 48 hour customs clearance for New Zealand exports.
- > Ensuring that New Zealand goods and services exporters and investors are treated at least as well as – and in many areas better than – Malaysia's other FTA partners.
- > Providing New Zealand investors and investments with greater certainty and security, including through the recourse to bilateral binding investor-state arbitration procedures.
- > Securing greater certainty and transparency for New Zealand businesses operating in Malaysia through enhanced regulatory cooperation around non-tariff-related issues such as sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT) as well as intellectual property and competition policy to facilitate trade.
- > Boosting bilateral dialogue and cooperation on environmental and labour issues.
- > Giving New Zealand businesses and business interests a greater profile in the Malaysian market.
- > Enhancing New Zealand's bilateral relationship with Malaysia – an influential player in the Asian economic integration processes in which New Zealand also seeks to participate.
- > Sending a positive signal to New Zealand's trading partners that it is committed to a liberal global trading environment at a time when the threat of rising protectionism is a concern.

Taken together, the Malaysian FTA is expected to contribute to New Zealand's economic performance by promoting the flow of goods, services, capital, people, knowledge and technology as well as supporting New Zealand's wider strategic interests in sustainable economic development, regional economic integration and trade liberalisation.



4

HOW THE MALAYSIAN FREE TRADE AGREEMENT FITS INTO THE WIDER TRADE AGENDA

New Zealand pursues trade negotiations through multilateral, regional and bilateral routes. All routes lead to the same ultimate destination – an easier trading and investment environment for New Zealand businesses. The bilateral Malaysian FTA operates alongside continued multilateral and regional efforts to contribute to this objective.

Trade negotiations carried out under the World Trade Organisation (WTO) framework, involving all WTO members, remain the top trade priority for New Zealand. These multilateral (global) trade negotiations offer the largest potential gains for a country like New Zealand as they deal with matters such as agricultural subsidies that are less easily addressed through regional or bilateral agreements. However, progress in multilateral negotiations can be slow due to the sheer number of countries and interests involved.

Regional and bilateral FTAs have the potential to open up new opportunities for New Zealand businesses in a shorter timeframe than through the WTO without in any way detracting from WTO efforts. We can partner with countries who have similar trade liberalisation objectives and create momentum to support our broader global economic integration objectives. That is, FTAs can be a useful 'building block' to highlight and reinforce the benefits of trade reform.

There has been an explosion in the number of FTAs being negotiated throughout the global economy, and particularly the Asia-Pacific region. In order to remain closely linked to the Asia-Pacific region and avoid our trade being excluded from other FTAs, it is therefore essential that New Zealand is part of this activity.

New Zealand has now entered into FTAs with the following countries:

- > Australia (the Australia-New Zealand Closer Economic Relations) in 1983.
- > Singapore (the New Zealand-Singapore Closer Economic Partnership) in 2001.
- > Thailand (the New Zealand-Thailand Closer Economic Partnership) in 2005.
- > Chile, Singapore and Brunei (the Trans-Pacific Strategic Economic Partnership) in 2006.
- > China (the New Zealand-China FTA) in 2008.
- > ASEAN (the ASEAN-Australia-New Zealand FTA) in 2009.

New Zealand is in the process of negotiating with the Gulf Cooperation Council, Hong Kong and South Korea. A study into the benefits of an FTA with India has been completed and is being discussed by officials. Work on a study which may, in time, help launch FTA negotiations with Japan is also underway, and New Zealand – in conjunction with Brunei, Chile and Singapore – has recently announced the intention to begin negotiations which could see the United States and potentially other partners join the Trans-Pacific SEP.

5 LIBERALISING TRADE IN GOODS

The Malaysian FTA aims to reduce barriers to bilateral trade in goods. New Zealand exporters will gain from the elimination of tariffs on almost all of New Zealand's current exports to Malaysia. Consumers and firms importing Malaysian final and intermediate goods will also benefit through lower import prices as New Zealand eliminates its tariffs on imports of Malaysian goods.

Full details of the changes to tariffs and the timetables for these changes are set out in the schedule to the Malaysian FTA. The tariff schedule and a 'tariff finder' tool are located on the www.mfat.govt.nz website.

A step-by-step practical guide for businesses exporting goods under the Malaysian FTA is set out in Appendix 1 of this Guide.

OPENING UP MALAYSIA'S MARKETS

The goods market access provisions of the Malaysian FTA will provide New Zealand exporters with commercially meaningful duty saving benefits, over and above those provided for under the AANZFTA. In many areas, this also gives New Zealand exporters a 'first mover' advantage over competitors from other countries in the Malaysian market.

The Malaysian FTA will deliver significant benefits to exporters. A summary of the key outcomes is shown in Table 1.





TABLE 1: SUMMARY OF OUTCOMES: KEY PRODUCTS

YEAR	KEY EXPORT PRODUCTS LIBERALISED	PROPORTION OF TRADE COVERED
2010	Butter, cheese, milk powder, honey, wool, kiwifruit, apples and some manufactured products	95.1%
2011-2012	Electrical parts, fibreboard, chocolate and some manufactured products	98.3%
2013-2016	Paper products, plastics, paints, whiteware, and certain iron and steel products	99.5%

Source: MFAT

These market access outcomes are an improvement on those agreed in AANZFTA, as shown in the table below.

TABLE 2: COMPARISON OF MALAYSIAN FTA AND AANZFTA OUTCOMES

PERCENTAGE OF NEW ZEALAND EXPORTS TO MALAYSIA SUBJECT TO TARIFF ELIMINATION		
	Under Malaysian FTA	Under AANZFTA
2010	95.1%	94.8%
2011	96.9%	96.6%
2012	98.3%	97.8%
2013	98.6 %	98.0%
2014	98.6%	98.0%
2015	98.6%	98.0%
2016	99.5%	98.2%
2017		98.2%
2018		98.2%
2019		98.2%
2020		99.4%
Not Subject to Tariff Elimination	0.5%	0.6%

KEY SECTORAL OUTCOMES

Kiwifruit

Despite Malaysia's current applied 15 percent tariff on kiwifruit imports, over the past three years New Zealand exports of kiwifruit to Malaysia have grown by 123 percent. The Malaysian FTA provides for duty-free access for New Zealand kiwifruit upon entry into force of the Agreement. This is an improvement over the 2012 elimination date in AANZFTA.

Meat, Wool, Dairy, Fish and Forestry products

The Malaysian FTA confirms the outcome secured in the AANZFTA of 'binding in' existing duty free access for New Zealand meat, wool, dairy, fish and forestry product exports. This means Malaysia cannot legally change this duty free level of access for New Zealand exporters, while it can change it for others. This gives New Zealand exporters added certainty that many of our competitors do not enjoy. The agreement to not introduce a special safeguard mechanism for agricultural products is another positive outcome.

Liquid Milk

New Zealand has secured commercially significant liquid milk tariff rate quotas access, to the sum of 2.1 million litres, quota volume growth rates of three to five percent and in-quota tariff elimination on entry into force of the Agreement. This is a significant improvement on New Zealand's existing liquid milk access. Through the AANZFTA, the existing New Zealand-specific liquid milk tariff rate quota currently allows for 550,000 litres, a growth rate of one percent in volume and a 20 percent in-quota tariff rate that is not eliminated until 2013.

Manufactured Goods

The Malaysian FTA improves on the AANZFTA outcome for a number of manufactured product exports. Examples of manufactured products subject to earlier elimination than was possible under AANZFTA include:

- > a number of tariffs on steel (currently facing a 50 percent tariff) of current export interest to New Zealand are eliminated by 2016 at the latest (reduced to 10 percent in 2020 in the AANZFTA);
- > tariffs on paints and varnishes (currently facing a 25 percent tariff) are eliminated in 2016 (not until 2020 in the AANZFTA); and,
- > a number of tariffs on plastic products (currently facing tariffs as high as 30 percent) are eliminated in 2012 (as opposed to 2020 in the AANZFTA).



TABLE 3: NEW ZEALAND'S TRADE WITH MALAYSIA

TOP TEN NEW ZEALAND EXPORTS TO MALAYSIA (2008)

PRODUCT	EXPORT VALUE (2008) (NZ\$ MILLIONS)	% OF TOTAL EXPORTS
Dairy products	\$511.1	54%
Petroleum	\$94.4	10%
Cereals and Preparations	\$63.8	7%
Minerals and metals	\$56.0	6%
Wood, pulp, paper and furniture	\$52.5	6%
Meat	\$46.2	5%
Fruit and Vegetables	\$32.7	3%
Other agricultural products	\$20.2	2%
Non-electrical Machinery	\$18.9	2%
Chemicals	\$14.8	2%
Subtotal top ten exports	\$910.5	96%
Total exports	\$948.9	

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).

TOP TEN NEW ZEALAND IMPORTS FROM MALAYSIA (2008)

PRODUCT	IMPORT VALUE (2008) (NZ\$ MILLIONS)	% OF TOTAL IMPORTS
Petroleum	\$505.7	25%
Non-electrical Machinery	\$503.7	25%
Electrical Machinery	\$298.4	15%
Oilseeds, Fats & Oils	\$254.3	13%
Minerals and metals	\$117.0	6%
Chemicals	\$104.2	5%
Wood, pulp, paper and furniture	\$60.5	3%
Miscellaneous manufactures	\$28.3	1%
Leather, rubber, footwear, and travel goods	\$27.8	1%
Coffee, Tea	\$14.3	1%
Subtotal top ten imports	\$1,914.1	96%
Total imports	\$1,986.4	

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

NEW ZEALAND’S MARKET LIBERALISATION

The Malaysian FTA provides Malaysia with improved access to the New Zealand market. This benefits consumers importing final goods and firms importing intermediate inputs from Malaysia. The improved access may have implications for domestic producers as a result of increased exposure to Malaysian suppliers. In order to help mitigate as far as possible the potential for any negative adjustment effects in New Zealand, the Malaysian FTA includes longer phase-out periods for those tariffs protecting sensitive sectors in New Zealand. Products in these sensitive sectors include margarine, some clothing, footwear, carpets, some textiles and some manufactured products such as some steel, plasterboard and most wooden furniture.

It is also important to note that the AANZFTA already provides for the reduction of tariffs in these sensitive areas, albeit over a longer period of time, so the additional adjustment costs from the Malaysian FTA are unlikely to be significant.

SUMMARY OF NEW ZEALAND’S TARIFF REDUCTION COMMITMENTS

Average, 2007-2008

	PERCENTAGE OF NZ IMPORTS FROM MALAYSIA SUBJECT TO TARIFF ELIMINATION	PERCENTAGE OF TARIFF LINES ELIMINATED	KEY PRODUCTS BECOMING DUTY FREE
Already Duty Free	72.1%	57.8%	Vegetable fats and oils, computer processors, mineral fuels, cocoa and cocoa preparations
2010	90.8%	84.6%	Some plastics, rubber (excluding new car tyres), wood, glass fibres, food products
2011	90.8%	84.6%	No further reductions
2012	94.6%	90.2%	Some plastics, wood, yarn, certain fabrics, some iron or steel products, glass wool insulation, refrigerators, tug boats, mattresses, upholstered seats with wooden frames
2013	94.8%	90.5%	Some metal furniture, bicycles
2014	95.0%	90.6%	Some iron and steel bars and a soap product
2015	98.5%	99.3%	Footwear, fabrics, carpets, clothing and new car tyres
2016	100.0%	100.0%	Some iron and steel, wooden furniture, plywood and margarine products

Source: MFAT. Based on value for duty (vfd) – the value of imports before insurance and overseas freight costs are added.

6

HOW TO QUALIFY FOR THE TARIFF PREFERENCES UNDER THE MALAYSIAN FREE TRADE AGREEMENT

The Malaysian FTA outcomes allow New Zealand exports to qualify for lower tariffs than those applying to the exports of competitors from countries which do not enjoy similar preferential access. Similarly, imports from Malaysia can enter New Zealand on more preferable terms than imports from countries with which New Zealand does not have an FTA. Certain steps must be followed in order to qualify for these preferential tariffs.

Appendix 1 of this Guide provides a step-by-step guide for businesses wanting to export or import under the Malaysian FTA.



RULES OF ORIGIN

The Rules of Origin (ROO) are an essential feature of the Malaysian FTA. The ROO are used by customs authorities to determine which goods qualify for preferential tariff treatment (i.e. they determine which products count as “New Zealand” and “Malaysian”) and prevent goods from countries outside of the Malaysian FTA from gaining preferential access “through the back door”.

The Malaysian FTA ROO allow for the most trade facilitating access to preferential treatment of any recent New Zealand FTA and represents an improvement on the ROO negotiated under the AANZFTA. The ROO outcome ensures that New Zealand exporters will be able to take advantage of preferential market access outcomes negotiated through the Malaysian FTA. At the same time, the robust ROO give New Zealand the confidence that imports claiming Malaysian origin are legitimate Malaysian products.

A ‘Change in Tariff Classification’ (CTC) approach is applied across all product lines, although for some products alternative rules are also available if an exporter prefers this approach. Under the CTC approach, a good will qualify as originating if all third party inputs used in the production of that good have undergone a specified change of tariff classification. This ensures consistency for exporters across New Zealand’s current FTAs and provides greater certainty of preferential access to New Zealand exporters.

New Zealand has also ensured that the compliance costs involved in seeking preferential treatment under the Malaysian FTA are minimised. This has been achieved through the agreement to 'self-declaration of origin' (on the commercial invoice) for New Zealand exports to Malaysia. This means that there will be no formal requirement for New Zealand exporters to obtain a certificate of origin for goods in order to gain the benefits of the Malaysian FTA tariff preference. This will deliver strong trade facilitation benefits to New Zealand traders.

OTHER REQUIREMENTS

For any good to qualify for preference under the Malaysian FTA, it must be consigned between New Zealand and Malaysia. If transport involves transit through one or more non-Parties, the goods must not enter trade or commerce there, or undergo anything more than simple logistical processes, such as unloading and reloading, repacking, or any operation required to keep them in good condition.

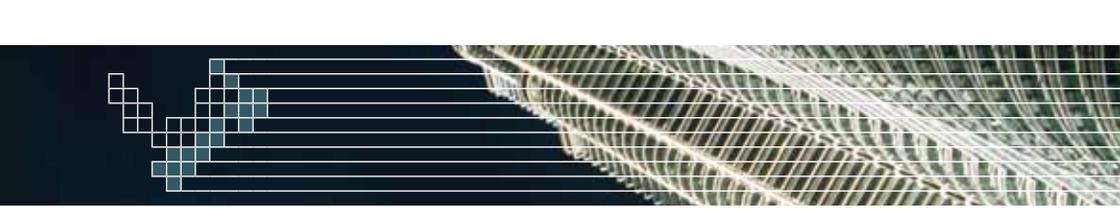
HS CODES

Both the preferential tariff rate applicable and the CTC based ROO for each product ultimately depends upon the tariff classification of the product. The international tariff classification system, administered by Customs Services around the world, is called the Harmonised Commodity Description and Coding System (HS). It uses a common customs classification made up of 6 digits. Most countries then add a further 2 digits, which are unique to that country. The result is an 8-digit number referred to as the HS code.

- > The first two digits (HS 2-digit level) relate to chapter headings.
- > The next two digits (HS 4-digit level) relate to headings.
- > The next two digits (HS 6-digit level) relate to subheadings.
- > The last two digits (HS 8-digit level) are unique to each country.

For example, the HS code for kiwifruit is 08105000, which can be broken down into:

- > 08: Chapter: Edible Fruit and Nuts
- > 0810: Heading: Other Fruit, Fresh
- > 081050: Subheading: Kiwifruit
- > 08105000 Further identifier



7 MEASURES TO PROTECT BUSINESSES FROM UNFAIR TRADE AND IMPORT SURGES

The Malaysian FTA is designed to encourage bilateral trade and promote efficiency gains, without resulting in unfair harm to domestic producers. New Zealand has however retained the ability under the FTA to take trade remedy actions under existing WTO rules pursuant to the *Anti-Dumping Agreement, Agreement on Subsidies and Countervailing Measures and the Safeguards Agreement*.

The Safeguard Mechanism

The Malaysian FTA establishes a bilateral transitional safeguard mechanism which is available to both New Zealand and Malaysia. The purpose of this mechanism is to allow a domestic industry some time to adjust to increased import competition from the implementation of the tariff phase-outs under the Malaysian FTA.

Through this mechanism New Zealand or Malaysia can temporarily suspend tariff reductions or increase the tariff rate if there have been increased imports of a product as a result of the tariff reductions under the FTA and such increased imports have caused or threatened to cause serious injury to a domestic industry.

To apply a safeguard measure New Zealand would have to:

- > undertake an investigation
- > publish the findings
- > only suspend tariff reductions or increase the tariff to the minimum extent necessary to prevent or remedy the injury being caused and to facilitate adjustment to import competition.

To apply a safeguard New Zealand would also have to progressively liberalise a measure in place for more than one year and provide Malaysia compensation in the form of substantially equivalent concessions. If New Zealand was unable to agree on compensation with Malaysia, Malaysia has the right to suspend equivalent tariff concessions on New Zealand's exports.

If Malaysia proposed to apply a safeguard measure on imports from New Zealand then it would be subject to the same requirements.

While it is unlikely that a New Zealand industry would seek to use this mechanism, it is available if required. In New Zealand, the Ministry of Economic Development is responsible for conducting any safeguard investigations pursuant to the Malaysian FTA.

Other measures

The Malaysian FTA also includes additional rules relating to the conduct of dumping investigations undertaken under WTO rules in the areas of notifications, responding to requests for consultations and the time period to be used to determine whether dumped import volumes are negligible. These are also AANZFTA-plus provisions that benefit New Zealand traders through enforcing transparency and conformity with best investigative practice.

8

MEASURES TO IMPROVE BUSINESS FLOWS

The Malaysian FTA contains a range of mechanisms that are all designed to reduce barriers to doing business in Malaysia, as well as to improve dialogue and cooperation between New Zealand and Malaysia.

CUSTOMS PROCEDURES

The customs procedures and cooperation outcomes of the Malaysian FTA will assist the speedy clearance of goods, the predictable application of rules and procedures and the timely availability of advance rulings. This will reduce the administrative barriers faced by many small and medium sized New Zealand exporters.

The Malaysian FTA secures an AANZFTA-plus commitment that New Zealand exports will be cleared through Malaysian customs within 48 hours of submission of all relevant customs import documents. Malaysia has never before agreed to such a provision, which gives New Zealand exporters a potential edge over their competitors in the Malaysian market in terms of the timeliness and associated certainty of delivery.

The chapter also enshrines a shared endeavour to issue advance rulings within 40 days but in any case within 90 days of the receipt of all necessary information¹ (In the case of Malaysia, this provision will apply immediately to classification, but origin rulings will be issued only to the extent provided for in its domestic legislation). Again this is an improvement on AANZFTA, where there is no set timeframe, offering a further benefit to New Zealand exporters by way of enhanced certainty and transparency around customs procedures.

Other key customs procedures-related outcomes include the establishment of mechanisms that allow for the further development of trade facilitating customs procedures through customs-to-customs cooperation over time. This may deliver a number of future benefits, such as pre-empting customs-related problems and addressing and resolving any problems and issues which might arise between the two customs administrations as a matter of priority.



¹ The Malaysian FTA provides that Malaysia will issue rulings on origin once its legislative framework permits.



Businesses who have any questions or are experiencing any problems in the area of customs procedures should contact the New Zealand Customs Services for assistance and further information. Contact details are available at the end of this Guide.

SANITARY AND PHYTOSANITARY MEASURES

Sanitary and phytosanitary (SPS) measures are used to protect human, animal or plant life or health by preventing the introduction of pests and disease, and to help ensure food is safe for consumption. The SPS outcomes of the Malaysian FTA provide a framework to improve transparency, communication and consultation on SPS issues within New Zealand's existing biosecurity regime.

Under the Malaysian FTA, enhanced cooperation may occur on the development of SPS measures, including risk analysis, the principles of regionalisation and equivalence, and technical assistance. In addition, the outcomes allow New Zealand and Malaysia to seek trade facilitating outcomes to future SPS issues as they arise.

Decisions on matters affecting New Zealand biosecurity and food safety will continue to be made and enforced in accordance with our existing regulatory regime, and international obligations.

Businesses experiencing any SPS related problems when exporting to Malaysia should contact the Ministry of Agriculture and Forestry. Contact details are available at the end of this Guide.

TECHNICAL BARRIERS TO TRADE

The costs of complying with standards, regulations and conformity assessment procedures can sometimes constitute significant barriers to trade in goods. Without formal arrangements or mechanisms, 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 these technical barriers to trade can have on trade flows.

The Malaysian FTA technical barriers to trade outcome will help reduce the transaction costs faced by New Zealand exporters to Malaysia. It establishes a framework that enables New Zealand and Malaysia to work together to address issues around standards, technical regulations and conformity assessments procedures. In particular, the outcome in this area usefully incorporates provisions for greater transparency, information sharing and cooperation.

Businesses facing difficulties in the area of standards, regulations and conformity assessment procedures when exporting to Malaysia should contact the Ministry of Economic Development. Contact details are available at the end of this Guide.

INTELLECTUAL PROPERTY

Intellectual property (IP) covers rights and obligations in areas such as copyright, trademarks and patents.

The outcome on IP under the Malaysian FTA provides New Zealand investors and exporters with greater certainty and reduced risk regarding intellectual property issues and will facilitate trade and investment flows.

In particular, the WTO Trade Related Intellectual Property Rights (TRIPS) Agreement is incorporated into the FTA. This will give New Zealand greater flexibility to raise issues about Malaysia's IP rights-related policies and regulations and their consistency with TRIPS, including through the bilateral dispute settlement mechanism of the FTA, rather than through the WTO dispute resolution system.

New Zealand has also secured a number of IP-related commitments from Malaysia which build on the AANZFTA outcome. These additional commitments include the provision for government-to-government consultation (within 60 days of request) on any matter covered by the IP chapter in the Malaysian FTA, as well as commitments relating to cooperation on enforcement issues and the exchange of information.

Another important AANZFTA-plus commitment is the requirement for Parties to provide legal means to ensure that products sold within its territory are not labelled in a false or misleading manner.

New Zealand has retained the flexibility to deal with issues relating to the protection of traditional knowledge, subject to international obligations. The Agreement also provides for information sharing and cooperation between both countries on initiatives to better protect traditional knowledge.

Businesses which experience difficulties in the IP area when exporting to Malaysia should contact the Ministry of Economic Development for further information and assistance. Contact details are available at the end of this Guide.

COMPETITION

Competition provisions are important components of a trade and economic relationship under a high quality FTA as they can help to ensure that the benefits of an agreement are not undermined by anti-competitive practices. The competition provisions of the Malaysian FTA recognise the importance of promoting and maintaining competition that enhances economic efficiency and consumer welfare.

The Malaysian FTA includes a number of AANZFTA-plus competition provisions including:

- > Commitments that laws aimed at addressing anti-competitive practices will be consistent with competition principles.
- > Where competition laws are in force, all commercial activities, subject to certain exceptions, should be consistent with those laws.
- > A party may request discussions with the other party on anti-competitive practices, or the development of any new measures related to controlling anti-competitive practices that may affect their economic development.

Cooperation on competition policy issues will benefit New Zealand business in the Malaysian market over the medium to long term. The development of competition policies and law complement and support open trade policies and offer an additional means through which to provide companies a fair, stable and predictable environment in which to operate.

Businesses facing problems in the competition policy area when exporting to Malaysia should contact the Ministry of Economic Development for further information and assistance. Contact details are available at the end of this Guide.



9

LIBERALISING TRADE IN SERVICES

The Malaysian FTA aims to reduce barriers to trade in services, which will assist in the expansion of services trade between New Zealand and Malaysia.

The key advantages of the Malaysian FTA services outcome include new market access commitments from Malaysia that build on existing commitments under the WTO's *General Agreement on Trade in Services* (GATS) and those made in AANZFTA, Most Favoured Nation (MFN) treatment for key sectors of commercial interest, and the inclusion of a range of disciplines governing the trade in services that will provide New Zealand services exporters with greater certainty.

The four modes of supply

Trade in services includes services supplied using any of the following modes:

- » **Mode 1: Cross Border Trade**
The service is supplied by a provider physically located in one country, to a customer in another country (for example, over the internet).
- » **Mode 2: Consumption Abroad**
A customer travels to another country to consume a service (for example, a student travels abroad to study).
- » **Mode 3: Commercial Presence**
A foreign service supplier establishes a legal presence in another country to provide a service (for example, a company opens an office or enters into a joint venture in another country).
- » **Mode 4: Movement of Natural Persons**
A person travels temporarily to another country in order to supply a service directly.

COMMITMENTS

Malaysian commitments

In terms of specific commitments, Malaysia has made services commitments that expand on their GATS and AANZFTA commitments in the following sectors:

- > Primary, Secondary, Higher and 'other' (such as language training and tuition) Education (see below).
- > Environmental Services – Malaysia has made new commitments in four environmental services sectors: wastewater management, cleaning services of exhaust gases, nature and landscape protection and noise abatement services. Malaysia has not previously made commitments in this sector in the WTO, AANZFTA or indeed in any of its previous FTAs.
- > Tourism services – Malaysia has improved on its already comprehensive tourism commitments by committing the remaining sector of tourist guide services.
- > Veterinary Services – Malaysia has extended its existing AANZFTA commitment in this sector (which covers only equine veterinary services) to cover the entire sector.
- > Management Consulting Services – Malaysia has extended its existing AANZFTA commitment in this sector to also include human resources management consulting and public relations services.
- > Maritime services – Malaysia has improved its existing AANZFTA commitment on maritime services to increase the equity limit New Zealand services suppliers are entitled to in joint ventures from 30 percent and 49 percent, and has made a new commitment in cargo handling.

The Malaysian FTA also includes a reciprocal MFN provision. This provision requires Malaysia, or New Zealand, to automatically provide each other better treatment or access if they grant this to a third country in a future FTA in specific sectors. This ensures New Zealand (and Malaysian) firms in these sectors will not be disadvantaged vis-a-vis their competitors from other countries in the Malaysian (or New Zealand) market.

The MFN provision applies to the following services sectors:

- > Private Education (Primary, Secondary, Higher and 'Other' Education);²
- > Environmental Services (sewage, cleaning services of exhaust gases, noise abatement and nature and landscape protection);
- > Engineering and integrated engineering;
- > Computer and Related Services; and,
- > Services Incidental to Mining.

New Zealand commitments

New Zealand has made GATS-plus commitments covering Modes 1-3 that exceed its AANZFTA commitments in the following sectors:

- > Services Incidental to Animal Husbandry (revised restriction regarding access to the National Dairy Herd Testing database);
- > Services Incidental to Mining;
- > Mailing List Compilation Services;
- > Commission Agent Services (reduction in the scope of the restriction relating to agriculture and food related services);

² Malaysia has reserved the right to adopt or maintain any measure that accords differential treatment with respect to: Religious Institutions (which are institutions which teach predominantly religious studies); and, Military Institutions.

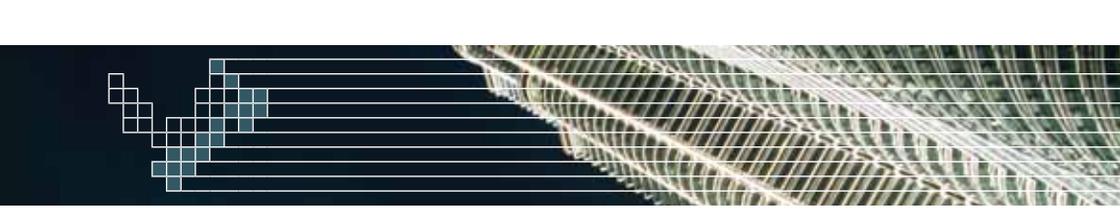
- > Wholesale Trade Services (reduction in the scope of the restriction relating to agriculture and food related services);
- > Non-Life Insurance Services (reduction in the scope of the restriction relating to agriculture and food related services);
- > Insurance Intermediation (reduction in the scope of the restriction relating to agriculture and food related services);
- > Maritime Transport Services (reduction in the scope of the restriction relating to agriculture and food related services);
- > Air Transport Services (reduction in the scope of the restriction relating to agriculture and food related services); and,
- > Washing Cleaning and Dying Services.

None of these commitments go beyond New Zealand's current regulatory environment or policy settings in any respect.

EDUCATION

Securing improvements in access for the education services sector was New Zealand's highest priority for the services negotiations for the Malaysian FTA. Education is New Zealand's single most important services export sector after tourism (which faces very low barriers in general).

New Zealand has secured commitments from Malaysia across more education sectors and secured higher foreign equity limits than Malaysia has provided anyone else in the context of a bilateral FTA. Furthermore, some of Malaysia's foreign equity commitments represent new market access that will require Malaysia to alter its current policy settings for New Zealand suppliers.



Malaysia has also agreed to provide MFN treatment in private education (primary, secondary, higher and other education). For education providers, this means that they will enjoy the best treatment that Malaysia grants any of their competitors from other countries.

MOVEMENT OF BUSINESS PERSONS (TEMPORARY ENTRY)

The Malaysian FTA movement of business (natural) persons outcome will better facilitate the movement of New Zealand business people, investors and traders into Malaysia, and ensure that they are able to make the most of the Malaysian FTA's trade and investment opportunities.

The key Malaysian commitments on the movement of business persons include the following AANZFTA-plus elements:

- > The definition of 'business visitor' is not restricted to specified sectors of services sellers, but includes all legitimate business visitors (i.e. business people seeking to trade in goods, services and investors).
- > Information about policies affecting the movement of natural persons are to be published more quickly than the AANZFTA requires.
- > Both countries have agreed on timeframes for providing information back to applicants who have sought temporary entry access. There are no timeframes in the AANZFTA.
- > Senior New Zealand intra corporate transferees can work in Malaysia without labour market testing in the sectors covered by Malaysia's services commitments.

- > The length of time that New Zealand business people or services suppliers in financial services can be in Malaysia has increased from five to ten years.

New Zealand's movement of business persons commitments are the same as in the AANZFTA, and provide for the entry of Malaysian business visitors and installers/servicers for up to three months in any calendar year. Executives, managers and specialists, as intra-corporate transferees, are permitted to enter for up to three years. Malaysian Independent Professional Service Suppliers, in specified service sectors, are permitted entry for up to one year, subject to qualifications requirements and labour market tests. These commitments are within New Zealand's existing immigration policy parameters.

The Services Chapter in the Malaysian FTA does not apply to subsidies or government procurement, or services supplied in the exercise of governmental authority. The latter are services supplied neither on a commercial basis nor in competition with one or more service suppliers.

The Malaysian FTA also establishes obligations to ensure that measures affecting trade in services are transparent, administered in a reasonable, objective and impartial manner and that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not become unnecessary barriers to trade in services. Such provisions are consistent with New Zealand's current regulatory settings and practices.

10 INVESTMENT

The investment relationship between Malaysia and New Zealand has been growing rapidly in recent years. New Zealand's total stock of investment in Malaysia has increased from \$26 million in the year to March 2003 to nearly half a billion dollars (\$451 million) in the year to March 2008. The growth between March years 2007 and 2008 alone was over 280 percent. Malaysia's stock of investment in New Zealand in 2007 (the latest year for which data is available) was over half a billion dollars (\$537 million), compared to \$124 million in 2003. The Malaysian FTA provides a credible legal framework for current and future investments.

The investment chapter reinforces, and builds upon the core obligations and disciplines agreed within the AANZFTA. Like the AANZFTA, the Malaysian FTA includes a provision on 'National Treatment', in which both countries undertake to treat investors of the other country the same as their own investors. The key advantage of the Malaysia investment outcome over AANZFTA is the provision of comprehensive, reciprocal Most Favoured Nation (MFN) treatment for New Zealand investors. Investment MFN will ensure that New Zealand investors and their investments in Malaysia cannot be left at a disadvantage relative to investors from other countries as Malaysia must extend any more favourable treatment it grants future FTA partners to New Zealand.

The core national treatment and MFN obligations become operational once New Zealand and Malaysia have brought into effect a set of schedules of non-conforming measures. These schedules will be agreed however within six months of entry into force of the Malaysian FTA.





The Malaysian FTA also includes core and robust investment protection provisions that create a more certain and predictable investment climate for New Zealand investors and their investments. Importantly, the Malaysian FTA protections apply to both citizens and permanent residents of the two countries. Key advantages extended to New Zealand investors and their investments in this regard include:

- > provisions to enable the free transfer of all payments relating to an investment, including the capital necessary for establishing the investment, and the returns generated from that investment; and,
- > commitments which provide protection from arbitrary expropriation. This limits the ability of either party to expropriate or nationalise investments of investors of the other Party. Importantly, these provisions also ensure that any compensation paid must be equivalent to the fair market value of an expropriated investment.

The Malaysian FTA also provides for the compulsory settlement of disputes between foreign investors and the country in which the investment is made, as in New Zealand's other recent FTAs. Compulsory Investor-State Dispute Settlement (CISDS) enhances the protection for New Zealand investments in Malaysia by giving investors recourse to international procedures beyond the domestic legal system. These procedures can be accessed only if a dispute cannot be settled through consultation and negotiation.

There are also safeguards to preserve the government's legitimate regulatory prerogatives and to minimise the government's exposure to inappropriate expropriation claims.

11 DISPUTE SETTLEMENT

The Malaysian FTA includes a robust and transparent government-to-government dispute settlement mechanism to resolve disputes that arise over the interpretation or implementation of the FTA.

The Malaysian FTA includes a consultation and dispute settlement mechanism for the avoidance or settlement of disputes that may arise out of the Agreement. This mechanism is similar to New Zealand’s previous FTA precedents and WTO procedures. The 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. This ensures that New Zealand is able to pursue a matter to arbitration should Malaysia not act in accordance with its obligations under the Agreement. If consultations are not able to resolve a dispute, either country may request the establishment of an arbitral tribunal to make findings and rulings on the measure at issue.



12 PROTECTIONS UNDER THE MALAYSIAN FREE TRADE AGREEMENT

The Malaysian FTA allows for general exceptions to the FTA that provide the New Zealand government with flexibility to introduce measures which would otherwise be inconsistent with the Agreement in a range of sensitive areas, including measures necessary to accord more favourable treatment to Maori and supporting creative arts of national value.



GENERAL EXCEPTIONS

The Malaysian FTA contains a number of general exceptions which make it clear that the FTA does not prevent either country's government from taking certain measures in certain circumstances. These exceptions acknowledge the regulatory right of the two countries to adopt or enforce measures to deal with a crisis or to achieve certain priority policy outcomes, even if these measures may affect their Malaysian FTA obligations. The exceptions contain disciplines to ensure that they cannot be abused for trade protectionist purposes.

In general, the Malaysian FTA will not prevent New Zealand from taking measures necessary to:

- > Protect public morals, or human, animal or plant life or health.
- > Deal with serious balance of payments and external financial difficulties.
- > Protect its essential security interests.
- > Conserve exhaustible natural resources.

TREATY OF WAITANGI

New Zealand's ability to take measures to accord more favourable treatment to Māori in fulfillment of Treaty of Waitangi obligations, is expressly provided for in a Treaty of Waitangi exception.

CREATIVE ARTS

The Malaysian FTA 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.

13 MOVING FORWARD

The Malaysian FTA recognises the importance of establishing a framework to directly support implementation of the Agreement and to enable maximum commercial benefit to be derived from it.

JOINT COMMISSION

The Malaysian FTA establishes an “FTA Joint Commission” to review the implementation and operation of the FTA and recommend any amendments to it. The FTA Joint Commission will meet within one year of the FTA entering into force and thereafter as the Parties agree.

In addition to the FTA Joint Commission, a number of specialist committees are also established under the Malaysian FTA to facilitate the ongoing interaction of experts. These committees cover the following:

- > Trade in Goods;
- > Trade in Services;
- > Technical Barriers to Trade;
- > Sanitary and Phytosanitary Measures;
- > Investment; and,
- > Economic Cooperation.

These committees will review and monitor the operation of their respective specialist areas, provide a forum to discuss any problems that might arise in the implementation of the Agreement and identify prospects for future joint coordination and strengthening of links. The requirement to convene each committee varies between the specialist areas.

REVIEW

Consistent with New Zealand’s previous FTAs, the Malaysian FTA provides for the review of the Agreement, which affords New Zealand and Malaysia the opportunity to accelerate, or expand, the commitments under this Agreement.





14 LABOUR AND ENVIRONMENT

In conjunction with the Malaysian FTA negotiations, New Zealand has also concluded binding treaty-level agreements with Malaysia covering labour and environmental cooperation. These instruments were included in the context of the Malaysian FTA and their value is referenced in its preamble.

The Agreements will enhance communication and cooperation on labour and environment issues and assist in meeting the shared objectives of raising working standards and improving environmental protection in New Zealand and Malaysia.

The Agreements supplement similar instruments negotiated previously with other ASEAN partners (Thailand, Brunei, Singapore and the Philippines).

LABOUR COOPERATION

The Labour Agreement outlines a set of shared objectives with the goal of promoting the improvement of working conditions and quality of life for workers. It also enunciates New Zealand and Malaysia's shared objectives of promoting *and observing the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)*. It includes recognition that it is inappropriate to set or use labour laws, regulations, policies and practices for trade protectionist purposes, and that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws, regulations, policies and practices.

Issues that may arise that touch on these or any other commitments in the Agreement can be consulted on with a view to their resolution. A timeframe of 90 days is established for a meeting to "assist in the resolution of any such matters". The Agreement also provides for the involvement of Ministers in resolving any issues that may arise.

The Labour Agreement provides a framework for dialogue and cooperation on trade and labour issues in areas including:

- > labour laws, regulations, policies and best practices in employment relations, including the promotion of labour rights and obligations and decent work;
- > compliance and enforcement systems, including management of labour disputes;
- > labour management cooperation, including initiatives to foster improved workplace productivity;

- > occupational safety and health; and,
- > human capital development, training, and employability.

Each country may, as appropriate, invite the participation of its unions and employers and/or other persons and organisations in identifying potential areas for cooperation and in undertaking cooperative activities.

The New Zealand contact point for the labour cooperation Agreement is the Department of Labour. Contact details are available at the end of this Guide.

ENVIRONMENTAL COOPERATION

The Agreement on environmental cooperation with Malaysia establishes a set of shared commitments which include recognition that it is inappropriate to set or use environmental laws, regulations, policies and practices for trade protectionist purposes and that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environmental laws, regulations, policies and practices.

As with the Agreement on labour cooperation, there is provision for either country to consult with the other on any issues that may arise in relation to the operation of the Agreement with a view to their resolution. A timeframe of 90 days is established for a meeting to “assist in the resolution of any such matters”.

The Environment Agreement establishes a framework for cooperation with the intention of working together in environmental areas of common interest including, but not limited to:

- > environmental expertise and technology;
- > waste management;
- > wetlands management;
- > eco-tourism;
- > water resources/watershed management;
- > environmental remediation;
- > climate change-related technologies;
- > extended producer responsibility;
- > biodiversity conservation;
- > national park/reserve management;
- > sustainable forest management;
- > marine and coastal resources management;
- > public participation in environmental management; and,
- > environmental education.

The non-government sector and other organisations may also be invited to participate in identifying potential areas for cooperation and in conducting cooperative activities.

The New Zealand contact point for the environmental cooperation Agreement is the Ministry for the Environment. Contact details are available at the end of this Guide.

15 TAKING ADVANTAGE OF THE FREE TRADE AGREEMENT

The Malaysian FTA presents opportunities for New Zealand firms and consumers in a wide range of areas. To assist with fully taking advantage of the opportunities that the Malaysian FTA provides, New Zealand will be taking a collaborative approach to implementation. A number of government agencies – many of whom are listed at the end of this guide – will work with exporters, business organisations and other groups to ensure that the potential gains are realised.

The New Zealand Government will draw on stakeholder feedback in monitoring and reviewing the Malaysian FTA, and will be focussed on addressing any problems associated with its implementation, as well as any additional barriers to trade that might arise. There will be ongoing efforts to ensure that New Zealand businesses are well informed about the benefits of the Agreement.

The www.mfat.govt.nz website contains the texts of the FTA and its Annexes, the Agreements on Labour Cooperation and Environmental Cooperation, and an explanation of how the Agreements will operate. A 'tariff finder' tool enables traders to locate the tariff and Rules of Origin applying to their products.

The websites www.asean.fta.govt.nz and www.asean.nzte.govt.nz also have extensive information on doing business with Malaysia.



APPENDIX 1

EXPORTING AND IMPORTING GOODS UNDER THE NEW ZEALAND – MALAYSIA FREE TRADE AGREEMENT

This step-by-step guide is designed for individual exporters and importers who want to determine how their goods will be treated under the FTA.

A tariff finder tool, can be found on the MFAT website – www.mfat.govt.nz.

There are 4 key steps.

- Step 1** Establish the tariff classification of a good
- Step 2** Check the tariff commitments for the good in the relevant tariff schedule
- Step 3** Determine the Rules of Origin (ROO) applying to the good
- Step 4** Prepare a declaration of origin (on the commercial invoice minor exceptions apply)

Step 1: Establish the tariff classification of a good

Classification

Tariff classification determines the specific Rule of Origin (ROO) for each good and what tariff preferences might apply. It is therefore critical to establish the tariff classification first.

You can get an indication of the tariff classification of a good by entering a description of the good into the tariff finder tool on the MFAT website.

If you or your broker are not confident with your classification of a good, you can apply for a binding tariff classification or 'advance ruling'.

Exporters

If you are exporting to Malaysia and would like a tariff classification advance ruling, you, or the importer, will need to contact the Royal Malaysian Customs.

You may also seek advice from the New Zealand Customs Service on the likely tariff classification in Malaysia. However, the New Zealand Customs Service cannot provide a guaranteed tariff classification ruling for Malaysia.

Importers

If you are importing goods into New Zealand and would like an advance ruling on the classification or origin status of a good, please contact the New Zealand Customs Service.



Step 2: Check the tariff commitments for the good in the relevant tariff schedule

Please note, tariff preference is only applicable to 'originating goods' – see step 3.

If you are exporting to Malaysia, you need to check their tariff schedule. If you are importing from Malaysia, you need to check New Zealand's tariff schedule. Both tariff schedules are contained in Annex 1 to the FTA and are available on the MFAT website. The schedules contain lines that show the year-by-year tariff phase-out arrangements for every tariff item. You can use the 'tariff finder' tool on the MFAT website to search for tariff lines.

Each tariff line contains the following details:

- > A 'base rate' column showing the tariff that applied in 2005
- > The preferential rates under the FTA for each year over the 12-year tariff phase-out period

The tariff cuts shown will take effect on 1 January of the relevant year, except for the 2010 tariff cut, which will take place on the date of entry into force of the Agreement.

Step 3: Determine the Rules of Origin applying to the good

Goods must qualify as 'originating' to gain preferential tariff treatment under the FTA.

Any imports into New Zealand or Malaysia that do not meet the Rules of Origin (ROO) set out in Chapter 3 and Annex 2 to the FTA will be subject to normal tariff rates and not the preferential rates that apply under the FTA.

A good can qualify as 'originating' under the FTA if:

- > The good is wholly obtained or produced in the territory of a Party
- > To qualify as wholly obtained or produced the good must be:
 - 'obtained entirely from within either Malaysia or New Zealand from specified natural resource-based goods: for example farmed or fished in that country
 - 'produced' entirely from within either Malaysia or New Zealand from such goods: for example products made from goods farmed or fished in that country

OR

- > The good is produced entirely in the territory of either or both Malaysia and New Zealand, exclusively from materials whose origin conforms to the provisions of the ROO Chapter and the ROO schedule (Chapter 3 and Annex 2 of the FTA)

OR

- > The good is manufactured in the territory of either or both Malaysia and New Zealand, using inputs from countries not party to the Malaysian FTA, but meets the product-specific ROO in Chapter 3 and Annex 2, and the other requirements specified in the ROO Chapter

In all circumstances above, to claim the preferential tariff rate, the good must not enter the commerce of a country that is not a member of the FTA after export or before import. Simple trans-shipment is however allowed.

As with tariff classification, you may seek an ‘advance ruling’ on the origin of the good when the importing country’s domestic laws, regulations and administrative determinations permit the issuing of such advance rulings. The New Zealand Customs Service can provide such rulings for imports, but the Royal Malaysian Customs Service does not currently provide such rulings. The contact details for requesting an advance ruling on origin of goods are listed under ‘Contact details’ later in this section.

Step 4: Exporters complete a declaration of origin

Goods exported from New Zealand to Malaysia require a declaration of origin on the export invoice (minor exceptions apply) in order to obtain the preferential tariffs under the FTA. The declaration of origin can be completed either by the producer or exporter of the goods.

Appendix 2 of this booklet details the wording and minimum data requirements for the declaration of origin.

The declaration of origin supports a claim for obtaining a preferential tariff. However, the Customs administration of either country may request additional information which they consider necessary to satisfy them that a good complies with the ROO.

Contact details are available at the end of this booklet.



APPENDIX 2

WORDING AND MINIMUM DATA REQUIREMENTS – DECLARATION OF ORIGIN

The declaration of origin on the export invoice should be completed in English and be clearly legible and not obscure other information.

The declaration shall state

For goods wholly obtained:

"I [state name and designation], being the [exporter/producer/exporter and producer] hereby declare that the stipulated goods on this invoice [item numbers...] originate in [New Zealand] [Malaysia] and comply with the provisions of Article 3.2(a) or (b) (Origin Criteria) of the New Zealand – Malaysia Free Trade Agreement".

For other originating goods:

"I [state name and designation] [being the exporter/producer /exporter and producer] hereby declare that the stipulated goods on this invoice [item numbers] originate in [New Zealand] [Malaysia] and comply with the provisions of Article 3.2(a) or (b) and Annex 2 (Product Specific Rules) of the New Zealand – Malaysia Free Trade Agreement".

The minimum data to be included in the declaration of origin are:

- (a) a full description of the goods including quantity and value of goods exported;
- (b) the six digit level according to the Harmonized Commodity Description and Coding System (HS);
- (c) the producer's name(s) and address if known; (if the producer is not the exporter);
- (d) the exporter's name(s) and address;
- (e) the importer's name(s) and address;
- (f) date of invoice;
- (g) marks, number of packages and gross weight.

If the declaration of origin is more than one page, then subsequent pages should be numbered in sequence. For example: a 3 page declaration of origin invoice should be numbered as 1 of 3, 2 of 3 and 3 of 3.

APPENDIX 3

USING THE SERVICES SCHEDULES

To look up a service in the services schedule, you need to know how the service is classified.

Services are classified in the schedules according to sector, sub-sector and Central Production Classification (CPC) number.

The WTO Services Sectoral Classification Code (Services Sectoral Classification List WTO Document MTN.GNS/120, also referred to as W-120) is used to classify services sectors. A summarised version of the Sectoral Classification Code is included in Appendix 5 of this booklet and the full Code can be found at

http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc

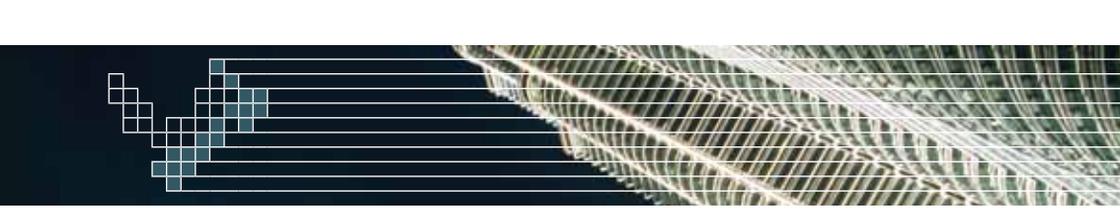
The service sectors are divided into sub-sectors which are then further broken down into services using the CPC number.

The CPC is a numerical listing of almost all services. It expands on the Services Sectoral Classification Code. It is similar to the Harmonised System (HS) code, which is used to classify goods. The full CPC can be found at

<http://unstats.un.org/unsd/cr/registry/regct.asp?Lg=1>

Once you know how a service is classified, you can check the services schedules to:

- > See if the service is included in the commitments made under the FTA by Malaysia or New Zealand;
- > See if the Party has placed any limits on national treatment or market access for that service;
- > See if the Party has made any additional commitments for that service.



APPENDIX 4

SERVICES SECTORAL CLASSIFICATION LIST

SUMMARY OF THE MAIN SECTORS AND SUB-SECTORS

1. BUSINESS SERVICES

- A. Professional services
- B. Computer and related services
- C. Research and development services
- D. Real estate services
- E. Rental/Leasing services without operators
- F. Other business services

2. COMMUNICATION SERVICES

- A. Postal services
- B. Courier services
- C. Telecommunication services
- D. Audiovisual services
- E. Other

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

- A. General construction work for buildings
- B. General construction work for civil engineering
- C. Installation and assembly work
- D. Building completion and finishing work
- E. Other

4. DISTRIBUTION SERVICES

- A. Commission agents' services
- B. Wholesale trade services
- C. Retailing services
- D. Franchising
- E. Other

5. EDUCATIONAL SERVICES

- A. Primary education services
- B. Secondary education services
- C. Higher education services
- D. Adult education
- E. Other education services

6. ENVIRONMENTAL SERVICES

- A. Sewage services
- B. Refuse disposal services
- C. Sanitation and similar services
- D. Other

7. FINANCIAL SERVICES

- A. All insurance and insurance-related services
- B. Banking and other financial services
- C. Other

8. HEALTH RELATED AND SOCIAL SERVICES

- A. Hospital services
- B. Other human health services
- C. Social Services
- D. Other

9. TOURISM AND TRAVEL RELATED SERVICES

- A. Hotels and restaurants (incl. catering)
- B. Travel agencies and tour operators services
- C. Tourist guides services
- D. Other

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

- (other than audiovisual services)
- A. Entertainment services (including theatre, live bands and circus services)
 - B. News agency services
 - C. Libraries, archives, museums and other cultural services
 - D. Sporting and other recreational services
 - E. Other

11. TRANSPORT SERVICES

- A. Maritime transport services
- B. Internal waterways transport
- C. Air transport services
- D. Space transport
- E. Rail transport services
- F. Road transport services
- G. Pipeline transport
- H. Services auxiliary to all modes of transport
- I. Other transport services

**12. OTHER SERVICES NOT INCLUDED
ELSEWHERE**



FURTHER INFORMATION

Further information about the FTA is available on the www.mfat.govt.nz website.

USEFUL CONTACTS:

For assistance and advice on the New Zealand – Malaysia Free Trade Agreement:

Malaysia/New Zealand FTA Implementation Officer
Asia Division

Ministry of Foreign Affairs and Trade

www.mfat.govt.nz

04 439 8000

For assistance and advice on business in South-East Asia:

New Zealand Trade and Enterprise

www.nzte.govt.nz

0800 555 888

For assistance and advice on Rules of Origin or Customs procedures:

The Manager, Trade Policy

New Zealand Customs Service

www.customs.govt.nz

04 473 6099

For assistance and advice on Rules of Origin policy:

Senior Analyst, Trade Environment

Ministry of Economic Development

www.med.govt.nz

04 472 0030

For assistance and advice on intellectual property:

Senior Analyst, Intellectual Property Group

Ministry of Economic Development

www.med.govt.nz

04 472 0030

For assistance and advice on trade remedies:

Manager, Trade Rules, Remedies and Tariffs

Ministry of Economic Development

www.med.govt.nz

04 472 0030

For assistance and advice on technical barriers to trade:

Senior Analyst, Trade Environment

Ministry of Economic Development

www.med.govt.nz

04 472 0030

For assistance and advice on sanitary and phytosanitary issues:

SPS Enquiry Point Coordinator/Adviser

Ministry of Agriculture and Forestry

www.maf.govt.nz

04 894 0431

sps@maf.govt.nz

For assistance and advice on the Labour

Cooperation Agreement:

Department of Labour

www.dol.govt.nz

04 915 4000

For assistance and advice on immigration issues:

Immigration New Zealand

www.immigration.govt.nz

04 915 4000

For assistance and advice on the Environment

Cooperation Agreement:

International Adviser

Ministry for the Environment

www.mfe.govt.nz

04 439 7400

FEEDBACK:

The business community and other interested parties were consulted extensively when the New Zealand – Malaysia Free Trade Agreement was negotiated.

We want to continue this dialogue as the FTA is implemented. You can make contact through the www.mfat.govt.nz or by contacting the Ministry of Foreign Affairs and Trade through the:

Trade Policy Liaison Unit

Ministry of Foreign Affairs and Trade

Private Bag 18901

Wellington

tplu@mfat.govt.nz

04 439 8000

