

# KEY OUTCOMES:

## Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

### Summary

- This twelve country FTA creates new opportunities for New Zealand exporters of goods and services and investors with one of the world's most dynamic economic regions and New Zealand's third largest export market.
- This importance is reflected in the high rate of growth in trade between New Zealand and the ASEAN economies. New Zealand exports to the ASEAN countries have increased 121 percent since 2000 to around \$4.6 billion in 2008. Over the same period, imports from the ASEAN countries have increased 244 percent to almost \$7.6 billion in 2008.
- Within twelve years at most, 99 percent of New Zealand's current trade with Indonesia, Malaysia, the Philippines and Viet Nam will be duty free.
- Association of South East Asian (ASEAN)<sup>1</sup> countries have made new "GATS-Plus"<sup>2</sup> commitments in New Zealand's priority services sectors, including education services.
- New Zealand investors and their investments will benefit from new and additional protections for their investments into the region including through the potential for recourse to binding investor-state arbitration procedures.
- The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) represents a new high water mark in New Zealand's integration with the ASEAN combined market. At present, ASEAN represents a market of more than 566 million people and accounts for more than US\$1,400 billion in global trade.

<sup>1</sup> The Members of the Association of South East Asian (ASEAN) are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

<sup>2</sup> "GATS-plus" commitments refer to commitments that improve on existing WTO General Agreement on Trade in Services (GATS) commitments.



- The Agreement is the first time ASEAN has negotiated a comprehensive FTA as part of a “single undertaking”, ie spanning goods, services, investment, as well as the other subjects covered in a modern FTA such as intellectual property and competition policy.
- The Agreement facilitates trade in goods and services by eliminating barriers, providing greater certainty and transparency, reducing associated transactions costs for New Zealand businesses wishing to operate in the ASEAN markets.
- The Agreement includes a robust and transparent dispute settlement framework to resolve any trade-related disputes that may arise between New Zealand and its ASEAN partners.
- In addition to the AANZFTA Agreement, New Zealand has also concluded legally binding agreements on trade and labour as well as trade and environment with the Philippines.
- These outcomes supplement existing instruments on these issues with other ASEAN Partners (Thailand, Brunei, Singapore) and the ongoing process with Malaysia where the negotiation of a bilateral FTA includes negotiations on labour and environment instruments.
- As well as immediate commercial benefits, the AANZFTA Agreement also represents an important ‘building block’ in the growing East Asia trade and economic architecture and underscores our strategic commitment to greater regional integration.

## Trade in Goods: Principal Outcomes for New Zealand

### Overall outcomes

- New Zealand will benefit from the elimination of tariffs, within twelve years, of 99 percent of New Zealand’s current exports to the four key export markets in ASEAN of Indonesia, Malaysia, the Philippines and Viet Nam<sup>3</sup>. On full implementation, this will equate to an annual duty saving of approximately \$50 million based on current trade. It is also worth noting that unlike with some previous agreements New Zealand has concluded, ASEAN countries will not have access to dedicated rules providing for ‘special agricultural safeguards’ during or after the phase down of their agricultural tariffs
- **Dairy:** By 2010, tariffs will be eliminated on whole milk powder, butter, ice cream and cheese in Indonesia; and casein, milk powder, cheese and butter milk in the Philippines. Tariffs on other key dairy exports to Indonesia, the Philippines and Viet Nam will be eliminated at various stages between 2011 and 2020 (i.e. within twelve years at the most). New Zealand’s current duty free access to Malaysia for milk powder, liquid cream, whey and casein is now locked in and protected meaning that Malaysia cannot now legally raise those tariffs. Malaysia’s tariffs on butter and cheese will be eliminated once the agreement enters into force and those on ice cream will be

<sup>3</sup> Indonesia, Malaysia, the Philippines and Viet Nam markets were deemed priority markets in negotiations with ASEAN as New Zealand already has FTAs with Singapore, (Singapore-New Zealand Closer Economic Partnership) Thailand, (Thailand-New Zealand Closer Economic Partnership) and Brunei, (Trans-Pacific-Strategic-Economic-Partnership-Agreement). The Least Developed Country members of ASEAN (Cambodia, Laos and Myanmar), were not accorded the same priority as New Zealand has little to no current trade to these markets and these countries have, since 2001, had duty free and quota free access to the New Zealand market.

eliminated in 2010.

- **Meat and Wool:** Tariffs on key beef exports will be eliminated between 2012 (Philippines) and 2020 (Indonesia). Tariffs on sheep meat will be eliminated in 2010 for the Philippines and in 2016 for Viet Nam. Tariffs on wool will be eliminated in 2010 (the Philippines and Indonesia) and 2016 (Viet Nam). New Zealand's existing duty free access for meat and wool exports to Malaysia is also now "locked in", i.e. Malaysia cannot now legally increase those tariff levels.
- **Forestry:** Tariffs on key products will be eliminated over a twelve year period between 2010 and 2020. Examples of products that will be eliminated by 2010 include fibreboard and some paper for Indonesia and less processed wood products for the Philippines. Examples of products that will be subject to later tariff elimination include plywood and major paper exports to the Philippines (where tariffs will be eliminated in 2017) newsprint for Malaysia (where tariffs will be eliminated in 2020) and some paper and particle board for Viet Nam (where tariffs will be eliminated in 2020).
- **Horticulture:** Tariffs are eliminated on a wide variety of horticulture products, with some globally significant exports subject to early elimination. Tariffs on apples and kiwifruit for instance will be eliminated in 2010 (Indonesia Malaysia - apples), 2011 (Philippines), 2012 (Malaysia - kiwifruit) and 2016 (Viet Nam). Tariffs on onions will be eliminated by 2010 for Indonesia, and will be reduced from 40 percent to 5 percent in the Philippines, by 2018.
- **Manufactured Goods:** A key benefit of the AANZFTA for manufacturers is that rules of origin can be met on a regional basis. This means that New Zealand manufacturers will benefit through both improved direct access and also through the ability to include New Zealand materials in the origin assessment of goods manufactured and traded within the region by Australia and the ASEAN manufacturers and exporters. This will allow New Zealand manufacturers to better integrate into regional supply chains.
- Examples of manufactured products subject to relatively early elimination include navigational equipment, electrical static converters, air conditioners, commercial refrigerators, toys, road sign equipment and switchboard equipment. Tariffs on these products (which can be as high as 15 percent) will be reduced and eliminated between 2010 and 2013, in one or more of New Zealand's key markets (Indonesia, Philippines, Viet Nam and Malaysia).
- Although AANZFTA provides for tariff elimination on all key products of export interest in major markets, there are instances of products of global export interest to New Zealand that are not subject to tariff elimination outcomes – in these cases, the tariff will either be reduced, subject to a "tariff rate quota", bound, or the MFN tariff rate will apply. These include some horticulture, wine, seafood, meat, dairy and steel products. Collectively, exports of such products only constitute one percent of New Zealand's exports to the major markets of Indonesia, Malaysia, the Philippines and Viet Nam with a current trade value of \$15 million.

## Trade in Services: Principal Outcomes for New Zealand

### Overall outcomes

- The FTA will assist in the expansion of services trade between New Zealand and ASEAN partners.
- In sectors included in each country's services schedule and subject to specific reservations as set out in those schedules the Agreement establishes the general obligations of 'market access' and 'national treatment'<sup>4</sup>. In sectors where they apply, these obligations entitle New Zealand service suppliers access to ASEAN markets and the ability to operate in those markets on the same basis as domestic suppliers.
- The FTA improves on WTO Agreement on Trade in Services (GATS) disciplines in relation to transparency, domestic regulation and administrative processes and in the inclusion of investment protections for the supply of services by a service supplier through commercial presence (Mode 3)<sup>5</sup>
- The Agreement includes a review clause that requires the Parties to renegotiate services commitments with the aim of further improving commitments within three years of the entry into force of AANZFTA.
- The FTA includes a "trigger" for negotiations on improving services commitments if ASEAN concludes an agreement on trade in services at some stage in the future with a third country that includes better commitments than in the AANZFTA.
- In addition to the review clause, outlined above, Viet Nam has committed to provide a most favoured nation (MFN) treatment to New Zealand for mode 1 higher education services (ie distance learning, mostly internet-based). This means that any improvements Viet Nam provides to a future partner in an FTA (involving ASEAN) in this area will be automatically extended to New Zealand as well.
- Services commitments are set out in each Party's services schedule according to a positive list approach, similar to that used in the GATS.
- AANZFTA includes specific annexes on telecommunications and financial services that introduce a number of commitments that expand on existing ASEAN commitments in the GATS in these areas.
- The obligations on services do not apply to government procurement and subsidies (although there are provisions enabling the Parties to enter into consultations on subsidies issues).

<sup>4</sup> 'National treatment' means each Party treats the services and service suppliers of the other Parties no worse than it treats its like domestic services and service suppliers.

<sup>5</sup> There are four "modes" of supply associated with trade in services: *Mode 1: Cross Border Trade*, where the service is supplied by a provider physically located in one country (eg by way of the Internet), to a consumer in another; *Mode 2: Consumption Abroad*, where a customer travels to another country to consume a service; *Mode 3: Commercial Presence*, where a foreign service supplier establishes a presence in another country to provide a service, through incorporation, branch office, joint venture or some other form of business entity; and *Mode 4: Movement of Natural Persons*, which covers the temporary movement of a person into a country in order to supply a service directly.

## For New Zealand service suppliers to ASEAN Partners

- 8 of the 10 ASEAN partners have made services commitments that expand on their commitments in the GATS.<sup>6</sup> Such “GATS-plus” commitments are in the following sectors:<sup>7</sup>

### BUSINESS SERVICES

- Professional services
  - Legal services (Indonesia, Viet Nam);
  - Accounting services (Malaysia, Myanmar, the Philippines);
  - Taxation services (Malaysia);
  - Architectural services (Brunei<sup>8</sup>, Indonesia, Malaysia, Myanmar);
  - Engineering services (Indonesia, Malaysia, Myanmar, the Philippines, Thailand);
  - Urban planning services (Indonesia, Malaysia, Thailand);
  - Landscape architectural services (Malaysia, Myanmar, Thailand, the Philippines);
  - Veterinary services (Malaysia); and
  - Interior design services (the Philippines).
- Computer and related services (Indonesia, Malaysia, Myanmar, Thailand).
- Research and development services (Indonesia).
- Other business services
  - Advertising services (Malaysia, Myanmar);
  - Management consulting services (Myanmar);
  - Technical testing and analysis services (Indonesia);
  - Services incidental to manufacturing (Indonesia);
  - Services incidental to mining (the Philippines);
  - Project management services (Indonesia);
  - Maintenance and repair of equipment (Indonesia);
  - Translation services (Myanmar); and
  - Printing and publishing services (Myanmar).

### COMMUNICATION SERVICES

- Telecommunication services (Brunei, Indonesia, Malaysia, the Philippines, Thailand).
- Audiovisual services (Myanmar).

<sup>6</sup> The two that have not are Cambodia (which has only recently acceded to the WTO and therefore did not offer improvements over and above those it has recently agreed with WTO members) and Laos (which is not currently a WTO member and does not therefore have any existing GATS commitments). Consequently all of Laos’ commitments are new benefits for New Zealand service suppliers.

<sup>7</sup> The commitments, as set out below, have been grouped according to the WTO’s Services Sectoral Classification List MTN.GNS/W/120, 10 July 1991.

<sup>8</sup> Brunei is a Party to the Trans-Pacific SEP, but was given an extension to complete its services schedule. This has not yet been agreed, and so for the time being Brunei’s GETS-plus commitments in AANZFTA represent new benefits to New Zealand.

#### CONSTRUCTION AND RELATED ENGINEERING SERVICES

- Construction services (Brunei, Indonesia, Malaysia, Myanmar, the Philippines).

#### EDUCATIONAL SERVICES

- Education services (Indonesia, Malaysia, Myanmar, the Philippines, Thailand, Viet Nam).

#### ENVIRONMENTAL SERVICES

- Environmental services (the Philippines).

#### FINANCIAL SERVICES

- Financial services (Indonesia, Malaysia, Singapore<sup>9</sup>, the Philippines).

#### HEALTH RELATED AND SOCIAL SERVICES

- Health services (Indonesia, Malaysia).

#### TOURISM AND TRAVEL RELATED SERVICES

- Tourism services (Brunei, Indonesia, Malaysia, the Philippines, Thailand).

#### TRANSPORT SERVICES

- Maritime transport services (Brunei, Indonesia, Myanmar); and
- Air transport services (Indonesia, Myanmar, the Philippines, Thailand); and
- Pipeline transport (the Philippines).

#### OTHER SERVICES

- Energy services, including services related to the energy sector (Indonesia, the Philippines, Thailand)

Laos is not yet a member of the WTO. As such, New Zealand does not currently benefit from any commitments with Laos. In that sense, all of Laos's services commitments in AANZFTA are a benefit to New Zealand. Laos made commitments in the following sectors:

- Accounting services;
- Landscape architectural services;
- Integrated engineering services;

<sup>9</sup> Singapore has made a number of GATS-plus commitments in AANZFTA, however only those that relate to financial services go beyond what it has already committed in the New Zealand-Singapore CEP or the Trans-Pacific SEP.

- Computers and related services;
- Telecommunication services;
- Construction services;
- Education services;
- Tourism services;
- Environmental services; and
- Financial services.

Indonesia and Malaysia have also made GATS-plus commitments on the establishment of commercial presence (Mode 3) that will apply to all sectors in their respective schedules.

### **Temporary Entry for Business People: Principal Outcomes for New Zealand**

- The FTA will facilitate the movement of business people engaged in trade and investment in the ASEAN region.
- The Agreement establishes streamlined and transparent procedures for applications for immigration documents and processes for business people.
- The Agreement includes a schedule of specific commitments from each of the Parties on the temporary entry and stay of particular categories of business people, investors and service suppliers. Some of the key improvements on existing GATS commitments are:
  - extension of stay (or new commitments) for business visitors in sectors listed in the Party's schedule (Indonesia, Lao PDR, the Philippines, Thailand);
  - extension of stay (or new commitments) for intra-corporate transferees in sectors listed in the Party's schedule (Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand);
  - new commitments in Mode 4 in a range of services sectors (Indonesia, Malaysia, Myanmar, the Philippines, Thailand);
  - new commitments for investors (the Philippines); and
  - new commitments for installers/maintainers (Malaysia).

### **Electronic Commerce: Principal Outcomes for New Zealand**

- The FTA takes a cooperative and facilitative approach to electronic commerce that will, in the medium term, help improve transparency (through information provision requirements), reduce transaction costs, (through the promotion of paperless trading and e-certification) and promote greater certainty and predictability (including through data protection) in relation to electronic commerce in ASEAN markets.

## Investment: Principal Outcomes for New Zealand

### Overall outcome

- The FTA provides greater security for New Zealand investors and investments in the markets of all 10 ASEAN Partners. Principal investment obligations in the FTA include a range of investment protection disciplines such as national treatment and provision for recourse to binding investor-state arbitration procedures<sup>10</sup>. The obligations on investment do not apply in respect to subsidies or government procurement.
- The Agreement provides new treaty-level frameworks to safeguard New Zealand investors' interests and investments with 8 of the 10 ASEAN Partners and, with the remaining two, builds on investment protection provisions already agreed in New Zealand's existing FTAs containing Investment Chapters (with Thailand and Singapore).<sup>11</sup>

### For New Zealand Investors in ASEAN Markets

- ASEAN Partners have committed to providing New Zealand investments approved and established in their countries the same level of post-establishment treatment and protection as they provide nationals of their own countries. This applies subject to market access commitments, which Parties are scheduled to negotiate within five years of entry into force of the AANZFTA agreement.
- The FTA provides for additional protections for New Zealand investors in ASEAN countries. These include protection from arbitrary expropriation, compensation for losses owing to armed conflict, civil strife, or state of emergency, provisions to allow the free transfer of payments relating to a covered investment, and a commitment to accord covered investments minimum international law standards of fair and equitable treatment and full protection and security.
- The Agreement further includes provisions to enhance the transparency of investment regimes, including by requiring the publication of a country's international investment agreements and domestic investment measures.
- It also includes provisions for the compulsory settlement of disputes between foreign investors and the country in which the investment is made. This will give New Zealand investors recourse to international procedures beyond the domestic legal system in certain circumstances. These procedures can be accessed only if a dispute cannot be settled through consultation and negotiation, and unless the parties to the dispute agree otherwise.
- The FTA establishes an Investment Committee, which will meet to discuss market access commitments, the treatment of investment in non-mode 3 services, and the extension of Most Favoured Nation treatment. These specific discussions will be concluded within five years of entry into force of the AANZFTA.

<sup>10</sup> The obligations of the Investment Chapter do not apply to services investment that falls within the scope of the Mode 3 (commercial presence) category of service suppliers, except for those obligations on Treatment of Investment, Compensation for Losses, Transfer, Expropriation and Compensation, Subrogation, and Investment Disputes between a Party and an Investor.

<sup>11</sup> The AANZFTA's investment protection provisions improve on the scope of the Thailand CEP, which does not cover permanent residents, and on the Singapore CEP, which, while covering permanent residents, does not contain all the protection elements that the AANZFTA does (for example, around expropriation of investments).

## New Zealand's Commitments to ASEAN Partners

### Goods

- New Zealand will eliminate tariffs on all products originating from ASEAN Partners, with longer transitional periods of up to twelve years for some goods in import-sensitive manufacturing sectors (such as clothing, footwear, carpets, certain textiles, furniture, plasterboard and some steel products).
- Several ASEAN partners (Thailand, Singapore and Brunei) currently have preferential access to the New Zealand market through existing FTAs. The three least developed members (Lao PDR, Cambodia and Myanmar) already have duty free access to the New Zealand market for all products.
- Approximately, 78 percent of New Zealand imports from Indonesia, Malaysia and the Philippines currently enter New Zealand duty free. Under the FTA, this will increase to between 81-92% by 2012 and to 100% by 2020.
- The percentage of New Zealand imports from Viet Nam that enter duty free will increase from 26% at present, to 39% in 2012, 51% in 2013 and 100% in 2020.
- Tariffs on a range of food, plastic, rubber, wood and manufactured products will be eliminated between entry into force and 2012.
- Products with later elimination, in some cases as late as 2020 (ie a twelve year timeframe), include: clothing, footwear, carpets and some textile products; some manufactured products: (wooden) furniture, some steel products and plasterboard (gib-board). Tariffs on the most heavily traded clothing, footwear and furniture products will be eliminated in by 2017 or later.

### Services

- New Zealand's commitments in AANZFTA comprise its existing WTO GATS services commitments and commitments which go beyond these. These GATS-plus commitments (across Modes 1-3) are in the following sectors:
  - 'Other education services';
  - Environmental services;
  - Legal services;
  - Taxation services;
  - Engineering services;
  - Integrated engineering services;
  - Urban planning and landscape architecture services;
  - Veterinary services;
  - Computer services;
  - Management consulting services and services related to management consulting;
  - Placement and supply services of personnel;

- Photographic services;
  - Convention services;
  - Credit reporting services;
  - Collection agency services;
  - Interior design services;
  - Telephone answering services;
  - Duplicating services;
  - Other business services;
  - Construction services; and
  - Non-life insurance services and insurance intermediation.
- New Zealand's commitments do not require any change to existing legislative settings.

### **Temporary Entry for Business People**

- New Zealand's commitments provide for the entry of ASEAN member country 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. ASEAN member country Independent Professional Service Suppliers are permitted entry for up to one year, subject to labour market tests.

## **Other Provisions**

### **Rules of origin**

- The inclusion of robust regional rules of origin (ROO) will allow New Zealand exporters to effectively take advantage of the preferential conditions offered under the FTA for trade in goods, without undue compliance costs.
- Under the Agreement, the ROO provides a mechanism through which originating goods can be cumulated across the Parties. The export opportunities under FTA are therefore expanded not only through direct access for New Zealand goods to ASEAN markets, but also through the ability to include New Zealand materials in the origin assessment of goods manufactured and traded within the region by Australia and the ASEAN manufacturers and exporters.
- In this way, the Agreement provides 12 manufacturing bases from which to source input materials, thus enabling New Zealand manufacturers/exporters to make optimal choices in sourcing their inputs in order to remain internationally competitive.
- The AANZFTA ROO provides "co-equal" or alternative rules for the majority of product lines. This means that manufacturers/exporters can choose between either a change in tariff classification (CTC) approach or a regional value content (RVC) approach with a 40% free on board (FOB) threshold, depending on which approach best suits their business model.
- Products must meet either a CTC or a RVC approach for the ROO relating to goods entering New Zealand under a claim for the AANZFTA preferential tariff.

- The FTA also provides for certification of origin (minor exceptions apply), for exports to ASEAN in order to claim preference. The certificates of origin system is intended to facilitate trade and will provide New Zealand exporters with the ability to access the tariff benefits of the FTA if they follow agreed processes. The certificates of origin will be issued by Issuing Bodies approved by the New Zealand Government and notified to ASEAN partners.
- In accordance with long-established practice, New Zealand will not require certificates of origin to accompany imports originating from other AANZFTA partners (i.e. there will be no change to New Zealand's standard import procedures relating to origin claims).

### **Customs procedures**

- The provisions on customs procedures will provide significant facilitation benefits for New Zealand exporters. These are delivered through provisions designed to improve predictability, consistency and transparency in the application of customs laws and administrative procedures to ensure more efficient and effective administration at the border as well as faster clearance of goods in order to facilitate trade.

### **Trade remedies**

- New Zealand retains its WTO rights and obligations in this area. This includes the ability to take trade remedy actions against unfairly traded goods from ASEAN countries which are subsidised or dumped and injure New Zealand producers.
- The ability to take a global safeguard action is also retained.
- The FTA also has a transitional safeguard mechanism under which any Party can either temporarily suspend tariff reductions or increase the tariff rate on imports from another ASEAN Partner to address situations of serious injury to domestic industries caused by increased imports due to tariff reductions under the FTA. A full investigation has to be undertaken to establish whether serious injury has occurred, before tariff reductions or suspensions can be imposed.

### **Sanitary and phytosanitary (SPS) measures**

- The FTA establishes a range of mechanisms to better facilitate trade in goods by ensuring that SPS measures are no more restrictive than necessary, and to provide a means to improve transparency, communication and consultation on SPS issues.

### **Standards, technical regulations and conformity assessment procedures (STRACAP)**

- The FTA establishes a platform for enhanced regulatory cooperation to better facilitate trade and reduce associated transaction costs for trade in goods between the Parties.
- There are provisions for greater transparency and information sharing which are designed to facilitate trade, reduce transaction costs for people doing business between the Parties and strengthen risk management systems.

## **Intellectual property**

- The Agreement ensures that the intellectual property rights of New Zealand businesses are protected and can be enforced according to international standards.
- The FTA reaffirms the Parties' rights and obligations under the WTO Agreement on Trade Related-Aspects of Intellectual Property Rights (TRIPS). Each Party is required to accord to nationals of other Parties treatment no less favourable than it accords to its own nationals with regards to the protection of intellectual property rights.
- Further commitments relate to transparency, protection and enforcement of copyright as well as government use of legitimate software, the protection of trade marks and geographical indications, and greater transparency around the Parties' respective intellectual property laws and systems.
- The chapter also retains the flexibility for New Zealand to deal with issues relating to the protection of traditional knowledge, subject to its international obligations.

## **Competition**

- The FTA reaffirms some core competition-related principles.
- The Agreement provides for cooperation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices amongst AANZFTA Partners.

## **Economic cooperation**

- The FTA establishes a framework for trade and investment-related economic cooperation. This is designed to directly support implementation of the Agreement and to enable maximum commercial benefit to be derived from mutually beneficial economic cooperation.
- To this end, an Economic Cooperation Work Programme (ECWP) has been established that sets out objectives and indicative cooperation activities for supporting the implementation of FTA.
- The eight areas of activity covered by the ECWP include: rules of origin and implementation of tariff commitments, SPS measures, technical barriers to trade, trade in services, investment, intellectual property, sectoral integration, and customs.
- New Zealand's funding contribution to the AANZFTA Economic Cooperation Programme is expected to be \$4.6 million over 3–5 years.

## **Treaty of Waitangi**

- As in New Zealand's previous agreements, the FTA contains a specific provisions which maintains New Zealand's ability to take measures it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi.

## **Creative Arts**

- The 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.

**Dispute Settlement**

- The FTA Includes robust and transparent dispute settlement mechanism for the avoidance or settlement of disputes between the Parties arising out of the Agreement. This includes a provision for the establishment of an arbitral tribunal should consultations fail to settle the dispute.
- The dispute settlement mechanism applies to all commitments made under the Agreement excluding commitments made under Economic Cooperation, Competition, Electronic Commerce and Sanitary and Phytosanitary Measures.

**Reviews**

- A general review of the FTA is scheduled to take place in 2016, and every five years thereafter. This review provides the opportunity to accelerate or expand the commitments under AANZFTA.

## Key Outcomes: Memorandum of Agreement on Labour Cooperation with the Philippines

### Objectives

The Memorandum of Agreement (MOA) on Labour Cooperation with the Philippines provides a basis for both countries to promote sound labour policies and practices through an approach based on cooperation, consultation and dialogue that takes into account the unique circumstances, needs and future aspirations of New Zealand and the Philippines.

This instrument is a treaty and is legally binding and has been concluded in the context of AANZFTA.

### Key Undertakings

New Zealand and the Philippines:

- reaffirm their obligations as members of the ILO and their commitment to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow up (1998);
- agree to work to ensure that their labour laws, regulations, policies and practices are in harmony with international labour commitments;
- respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations;
- recognise that it is inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes;
- recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws, regulations, policies and practices;
- support the commitments made by the Parties to this MOA with a view to improving the working conditions and the quality of work life in their respective countries;

### How will the MOA work?

New Zealand and the Philippines are committed to cooperating on labour matters of mutual interest and benefit. Areas for cooperation may include: labour laws and practices; information, compliance and enforcement systems; sound labour relations; occupational safety and health; human capital development, training and employability; and human resource development initiatives including sharing of labour market trends and the promotion and protection of the employment rights and obligations of migrant workers.

There are also mechanisms for implementing the MOA and resolving issues that may arise:

- Each country will designate a national contact point to facilitate communication.
- The Parties shall establish a Labour Committee, which includes senior officials, to meet within the first year of the MOA's operation and then every two years subsequently.
- The Labour Committee will discuss and set the cooperation programme, serve as a channel for dialogue on matters of mutual interest, and provide a forum to discuss and exchange views on labour issues of concern.
- Should any matter arise over the interpretation or application of the MOA, a Party may request consultations. Parties will make every effort to resolve the matter through cooperation, consultation and dialogue. If a Party seeks a meeting to assist in the resolution of any such matter, the Parties shall meet as soon as practicable and, unless other mutually agreed, no later than 90 days following the request. If a matter is not resolved it may be referred to a meeting of the Labour Committee, which may include Ministers.

Parties will provide funding to support mutually agreed cooperative activities.

### **Public participation**

- Each Party may, as appropriate, invite the participation of its unions and employers and/or other persons and organisations of their countries in identifying potential areas for cooperation and in undertaking cooperative activities.
- Each Party may consult with or invite the participation of members of the public or relevant sectors over any matters relating to the operation of the MOA.

## Key Outcomes: Memorandum of Agreement on Environmental Cooperation with the Philippines

### Objectives

The Memorandum of Agreement (MOA) on Environmental Cooperation with the Philippines seeks to promote sound environment policies and processes by establishing a set of shared commitments, a framework for cooperation, and a mechanism for consultation which, taken together, allow the Parties to address any environmental issues through cooperation, consultation and dialogue.

This instrument is legally binding and has been concluded in the context of AANZFTA.

### Key Undertakings

In concluding the MOA, New Zealand and the Philippines have agreed that their objectives are to:

- reaffirm international commitments made at the Earth Summit in Rio De Janeiro in 1992 and at the World Summit on Sustainable Development at Johannesburg in 2002 as well as those agreed to by the Parties in multilateral environment agreements;
- encourage and promote sound environment policies and practices and improve the capacities and capabilities of the Parties, including their respective concerned or relevant stakeholders in addressing environmental issues/matters;
- respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own environment laws and regulations;
- recognise that it is inappropriate to set or use their environment laws, regulations, policies and practices for trade protectionist purposes;
- recognise that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic environment laws, regulations, policies and practices; and
- recognise the desirability of clear and well understood sustainable development policies and practices and the value of broad consultation in formulating these policies;

### How will the MOA work?

New Zealand and the Philippines have undertaken to cooperate on mutually agreed environmental issues including:

- Sustainable management of the environment;
- Air quality management;
- Water quality management;

- Toxic chemicals and hazardous and solid wastes management;
- Restoration of degraded watersheds, river basins and wetlands;
- Conduct of research dealing with major river basins; and
- Concerns affecting or dealing with climate change.

This is not an exhaustive list and other items may be added to the cooperative programme. The non-government sector and other organisations may also be invited to participate in identifying potential areas for cooperation and in conducting cooperative activities.

There are also mechanisms for implementing the MOA and resolving issues that may arise, including through:

- the establishment of a national contact point to facilitate communication; and
- an Environment Committee, which may include senior officials, will be established and will meet within the first year of the entry into force of the MOA and subsequently as mutually agreed. The Environment Committee shall establish and oversee a programme of cooperative activities, serve as a channel for dialogue on matters of mutual interest, review the operation and outcomes of the MOA, and provide a forum for resolving differences.
- A Party may request consultations should any issues arise over the interpretation or application of the MOA. If a Party seeks a meeting to assist in the resolution of any such matter, the Parties shall meet as soon as practicable and, unless other mutually agreed, no later than 90 days following the request. If a matter is unable to be resolved it may be communicated to the Environment Committee which may include Ministers.

### **Public participation**

- As with the Labour MOA with the Philippines, each Party may provide an opportunity for relevant stakeholders to submit views or advice to it on matters relating to the operation of the MOA.
- Each Party may, as appropriate, invite the participation of its non-government sectors and other organisations in identifying potential areas for cooperation. The Parties may invite the participation of non-government sectors and other organisations in undertaking cooperative activities as mutually agreed between the Parties.

## Related Outcomes: Temporary Employment Entry

In conjunction with the AANZFTA negotiations, but not as part of the FTA itself, New Zealand has entered into the following arrangements of less than treaty status for temporary employment entry into New Zealand:

- The Philippines:
  - 100 registered nurses (applicants need not be in the Philippines at the time they apply for a visa, and may work in New Zealand for up to three months while seeking to meet registration requirements);
  - 20 farm managers; and
  - 20 engineering professionals.
  
- Viet Nam:
  - 100 chefs; and
  - 100 engineering professionals.
  
- These arrangements provide for entry as employees for up to three years dependent upon the employment agreement, without labour market testing and subject to specified qualifications requirements.
  
- The skill-based and quantitative limits on the commitments, together with the requirements that prospective employers observe New Zealand labour market conditions (including wage rates) are intended to mitigate the risk of displacing New Zealand workers while offering economic opportunities to key ASEAN partners.

New Zealand has also reached joint understandings to enter into negotiations on working holiday schemes with the Philippines and Viet Nam.

## Related Outcomes: Application of AANZFTA between New Zealand and Australia

New Zealand and Australia have agreed in an exchange of letters of treaty status that the AANZFTA obligations will only apply to a limited extent between the two countries. The key obligations that will apply that will apply between Australia and New Zealand are the tariff and Rules of Origin (ROO) commitments, including the Operational Certification Procedures, and the General Exceptions Chapter, including the Treaty of Waitangi provision.