



BELL GULLY



# Trading with China – Getting it Right

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# NZ-China Free Trade Agreement

## Introduction

- Negotiations completed and FTA signed 7 April 2008.
- Examination by Select Committee (along with MOU on Labour Co-operation and Environmental Co-operation Agreement).
- Legislative amendments passed - Tariff Act 1988, Customs and Excise Act 1996, Fair Trading Act 1986, Electricity Act 1992, Radiocommunications Act 1989.
- Amendments made to the Electricity Regulations 1997 and Customs and Excise Regulations 1996.
- Exchange of diplomatic notes between New Zealand and China advising completion of domestic legal processes prior to 1 October commencement.

# FTA Structure

- Also includes a number of annexes, side letters, a working holiday scheme arrangement, the MOU and ECA
- The FTA contains:
  - exceptions enabling either party to enact laws for national interest (primarily national security interest); and
  - an amendment mechanism, but no review mechanism – although an FTA Joint Commission is to be established to conduct a review within two years and consider proposed amendments.

# FTA Overview – Trade in Goods


- Phasing out of tariffs on all but certain sensitive products by 2019 (tariffs on some goods are removed immediately, with others over five to six years).
- Specific provisions dealing with trade in:
  - meat & wool;
  - dairy products;
  - fruit & vegetables;
  - seafood;
  - forestry products; and
  - manufactured goods.

# FTA Overview – Meat & Wool

- Tariffs on sheep and beef meat to be phased out by 2016.
- Country specific tariff quota (CSTQ) for NZ wool:
  - duty-free for 25,000t – growing at 5% pa until 2017;
  - initial level of CSTQ provides duty free access for approx 75% of current exports; and
  - exports outside CSTQ will access China's global wool quota.

# FTA Overview – Dairy products

- Tariffs on butter, liquid milk & cheese will be phased out by 2017.
- Tariffs on other milk products to be phased out by 2019.



# FTA Overview – other foodstuffs

## •Fruit and vegetables:

- tariffs on apples phased out by 2012; and
- kiwifruit tariff-free by 2016.

## •Seafood:

- Tariffs on most seafood phased out by 2012; and
- Tariffs on products which currently incur tariffs at less than 5% will be phased out immediately.

# FTA Overview – Forestry Products

- China's current zero tariff rate on logs and sawn timber (approx 80% of NZ's current exports to China) is made binding.
- Additional tariff preferences on a limited number of radiata pine products.
- Tariff liberalisation will **not** apply to certain wood & paper products (approx 4% of NZ's current exports to China) because China's accession to WTO requires any such preferential treatment to be extended to all WTO members.



# FTA Overview – Manufactured Goods

- Tariffs on non-agricultural goods (excluding certain processed wood & paper products) to be phased out by 2013 – with the majority being duty free by 2012.




# FTA Overview- Trade in Services

## Overview

### Subject to certain reservations:

- the FTA establishes general obligations of “market access” and “national treatment” (entitling NZ suppliers to quota-free access to China); and
- enables NZ businesses to operate on the same basis as domestic suppliers.



# FTA Overview – Service Suppliers

China's commitments extend to the following sectors:

- computer services;
- management consulting;
- education;
- environmental services;
- sporting and recreational services;
- air transport services (excluding air traffic rights) - aircraft repair and maintenance and computer reservation services; and
- road transport - freight transport by road, maintenance and repairs, storage and warehousing and freight forwarding.



# FTA Overview – Movement of Natural Persons

- Expeditious processing of visas for business visitors.
- Better treatment for New Zealand service suppliers in the areas included in the services schedule, including:
  - entry for up to three months for installers and servicers;
  - increased maximum stay for business visitors for up to six months (currently 90 days); and
  - up to three years for senior employees on intra-corporate transfers.



# FTA Overview - Investment

- National treatment and most favoured nation status.
- Investor protection mechanism – providing for recourse to arbitration (including recourse to compulsory settlement of disputes between foreign investors and the government of the country in which the investment is made).
- China provides New Zealand investments approved and established in China the same level of post-settlement and protection as that provided to Chinese nationals.

## FTA Overview – NZ commitments to China (Goods)

- New Zealand to eliminate tariffs on products of Chinese origin (subject to a period for phasing out of tariffs), in import-sensitive manufacturing sectors – including textiles, apparel, footwear and carpets).
- Tariffs on most textiles, apparel, footwear and carpets will be phased out from 2014-2016.
- Tariffs on all other products (including steel, whiteware, plastics and furniture will be phased out in 2012 - 2013.

# FTA Overview – NZ commitments to China (Services)

New Zealand's commitments incorporate or exceed existing WTO commitments, including in the areas of:

- education services
- environmental services
- computer services
- photographic/duplicating services
- construction services (consultancy relating to construction).


## FTA Overview – NZ commitments to China (temporary entry for business people)

- Entry for Chinese business people and installers/services for up to three months per year.
- Executives and managers up to three years (through intra-corporate transfers).
- Senior specialists up to 12 months and, subject to labour market test, other specialists up to three years (through intra-corporate transfers).
- In some sectors, Chinese executives and managers may extend three year stay for up to a further three years (on proven need) – and in the same sectors, specialist personnel may enter for three years extendable (on proven need) for up to a further three years.

## FTA Overview – NZ commitments to China (Temporary employment entry)


### Entry without labour market testing or specific qualifications of up to:

- 200 entrants in each of traditional Chinese medicine practitioners, and Chinese chefs;
  - 150 entrants in each of Mandarin teaching aides and martial arts coaches; and
  - 100 entrants as Chinese tour guides.
- Entry without labour market testing or specific qualifications of up to 1,000 entrants in 20 specified skilled occupations (with a limit of 100 per occupation) in which New Zealand has identified a skills shortage.

A background image showing a man in profile, wearing a striped shirt, looking out of a window. The window has vertical blinds, and the light is bright, suggesting an outdoor setting.

## FTA Overview – NZ commitments to China (Working holiday scheme)

New Zealand has established a scheme to allow a maximum of 1,000 Chinese nationals aged 18-30 to enter New Zealand in the areas of tourism and incidental employment.



# FTA Overview – other provisions)

- Rules of origin
- Customs rulings
- Trade remedies
- Technical barriers to trade
- Intellectual property
- MOU on Labour Co-operation
- Environmental Co-operation Agreement



# Structuring the deal

- Introduction – China
- Law and international trade – basics:
  - impact of conventions;
  - governing law; and
  - other commonly used arrangements (e.g. Incoterms).



# For the importer

- Do your homework
- Develop an understanding of:
  - regulatory obligations;
  - import documents;
  - valuation/duty issues; and
  - application of rules of origin.
- **Formaldehyde example:**
  - quality assurances;
  - labelling; and
  - rights of recourse.



# Export business

- **Agency arrangements:**
  - control/risk trade off;
  - clarity/precision in describing obligations;
  - marketing programme;
  - performance measurement; and
  - dispute resolution steps.
- **Appointing a distributor:**
  - lower risk/potentially lower reward;
  - many of the same issues as appointing an agent; and
  - need to protect IP.



# Manufacturing

- **Contract manufacturing:**
  - risk management;
  - product specs/standards/inspection; and
  - recall procedures.
- **Technology transfer:**
  - performance criteria/quality control; and
  - royalty mechanism.
- **Joint ventures**
- **Wholly foreign-owned enterprise (WFOE)**



# Making it pay

- Invoicing
- Paying and being paid:
  - security of payment; and
  - risk management.
- Distribution of profits
- Dispute resolution
- The Chinese court system