

Free Trade Agreement between New Zealand and the Republic of Korea

National Interest Analysis

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1 Executive summary

1.1 Background

The conclusion of negotiations of the Free Trade Agreement (FTA) between New Zealand and the Republic of Korea (hereinafter referred to as 'Korea') was announced jointly by Prime Minister John Key and President Park Geun-hye in Brisbane on 15 November 2014.

A Joint Study was completed by the New Zealand Institute for Economic Research and the Korean Institute for International Economic Policy in 2007. The study concluded that given the strong and complementary relationship between both sides, an FTA was feasible and would generate benefits for both countries.

The first round of negotiations was held in Seoul in June 2009. A further eight formal rounds were held, with the final round held in Seoul in October 2014.

This National Impact Analysis (NIA) assesses the FTA from the perspective of its impact on New Zealand and New Zealanders. The NIA does not seek to address the impact of the FTA on Korea.

1.2 Reasons for New Zealand to become a party to the treaty

The principal gains for New Zealand in entering into the FTA are:

- increased access and improved quality of access for New Zealand trade and investment, which will contribute to growth, jobs and higher living standards;
- the establishment of a framework through the FTA for resolving trade and investment issues in the future;
- the establishment of a framework through the FTA for discussing, co-operating and resolving issues on trade and labour, and trade and environment;
- the support provided by the FTA to New Zealand's wider trade policy interests in strengthening economic integration in the Asia-Pacific and multilaterally; and
- the FTA's contribution to raising the commercial profile for New Zealand companies in Korea.

1.3 Advantages and disadvantages to New Zealand in becoming a party to the agreements

1.3.1 Advantages

New Zealand will benefit from the removal over time of tariffs on approximately 98 percent of New Zealand's current exports to Korea. It is estimated that New Zealand exporters currently pay around NZ\$229million¹ in duties each year to Korean authorities. The removal of tariffs will help New Zealand exporters to retain their competitiveness in the Korean market in relation to exports from other countries.

For New Zealand goods exports that meet the required rules of origin, market access gains include:

- On entry-into-force (EIF), tariffs on 48.3 percent or NZ\$793.7 million of New Zealand's current exports to Korea will be eliminated;
- New Zealand wine, cherries, hides and skins, some forestry products, some aluminium and many industrial goods exports will become duty-free on EIF;
- New Zealand beef exports to Korea (worth NZ\$120.6 million in the year ending June 2014) will become duty and safeguard-free 15 years after EIF², with an estimated annual duty saving to New Zealand of NZ\$48.2 million;
- All duties on New Zealand kiwifruit exports to Korea (worth NZ\$44.3 million in the year ending June 2014) will be eliminated over five years, with an estimated annual duty saving to New Zealand of around NZ\$20 million;
- By the end of the first five years, 67.4 percent of current exports to Korea will become duty-free;
- By the end of 10 years, 79.3 percent of current exports to Korea will become duty-free;
- By the end of 15 years, 97.8 percent of current exports to Korea will become duty-free;
- During the phasing period, New Zealand exporters will also have access to transitional tariff rate quotas (TRQs) with zero in-quota duty for cheese, butter and infant formula; and
- Under the FTA, exporters will have access to a country specific permanent zero-duty TRQ for milk powder, starting at 1,500 tonnes and a three percent annual growth rate, capped at 1,957 tonnes after 10 years.

¹ Based on Korean import statistics averaged over 3 years, 2009-2011.

² In fact the actual tariff phase-out could be less than 14 years depending on the EIF date, since the first tariff cut (Year 1) takes place on EIF, the second (Year 2) on 1 January of the following year, the third (Year 3) on 1 January of the next year and so on.

The phase-out of tariffs on New Zealand imports also has advantages for New Zealand producers who use imported Korean components or capital equipment in the production of their goods. Lower import costs on these factors of production will lower many New Zealand firms' costs and improve their international competitiveness. Consumers may benefit directly from cheaper products, although the impact of tariff cuts overall on Korean imports will be likely be small.

The model for evidencing origin is based on New Zealand's preferred approach of self-certification by the exporter. Unlike other models, this does not impose extra costs for exporters.

New Zealand will benefit from a high-quality cross-border trade in services outcome which builds on the commitments made by Korea in the World Trade Organization (WTO) General Agreement on Trade in Services (GATS). In particular, Korea has agreed to additional commitments on domestic regulations.

Investment rules have been agreed which are designed to promote investment flows between New Zealand and Korea. New Zealand investors will benefit from the agreed protections for investment, including an Investor-State Dispute Settlement (ISDS) mechanism which incorporates transparency requirements and key safeguards to preserve the Government's right to regulate for legitimate public policy purposes.

The FTA includes services and investment market access commitments, based on New Zealand's preferred negative list format, that exceed Korea's commitments under the GATS. These commitments provide new market access commitments that will benefit New Zealand businesses in a range of sectors, including the education services sector. A "ratchet" mechanism incorporated into the FTA also means that Korea is required to automatically extend to New Zealand the benefit of any future liberalisation of a scheduled commitment, except in the relatively limited situations where specific exceptions to the ratchet have been included. A non-discrimination clause ("MFN") is also included which, subject to limited exceptions, will safeguard the competitive position of New Zealand businesses relative to competitors in the future.

New Zealand will benefit from provisions to facilitate the movement of business people in Korea.

The FTA includes substantive chapters on trade and labour and trade and environment that promote labour rights and standards and sustainable development and provide for co-operation and dialogue on issues that may arise between the parties and in areas of mutual interest.

The FTA contains measures relating to customs procedures and co-operation, sanitary and phytosanitary measures, and technical barriers to trade that enhance New Zealand's WTO rights and which should reduce barriers to doing business with Korea.

The FTA makes existing arrangements on intellectual property legally binding and reinforces our rights under the WTO TRIPS Agreement. New Zealand and Korea have agreed to specific obligations covering trademarks, copyright, technological protection measures, electronic rights management information and enforcement. The FTA allows for appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions and folklore.

The FTA secures a level of access to government contracts with Korea's central government entities that is equivalent to the access granted by Korea to parties to the WTO Agreement on Government Procurement (GPA).

The FTA includes a chapter on agriculture, forestry and fisheries co-operation that provides an opportunity for ongoing policy dialogue, enhanced private sector engagement and co-operative activities of mutual interest.

The FTA includes a chapter on Film and Television Co-production, which builds on a previous film agreement and broadens this out to include television.

1.3.2 Disadvantages

While not disadvantaging New Zealand relative to the status quo, the outcomes for some products of current export value to Korea mean that they will remain subject to duties, including frozen squid, honey, onions, persimmons and unprocessed deer velvet. These account for 0.6 percent of current trade. Apples and pears will also remain subject to duties, but currently face significant phytosanitary barriers to access which the FTA itself would not resolve. In addition to these non-elimination outcomes, there will be two permanent TRQs on milk powder and mussels, representing 1.4 percent of current trade.

While remaining New Zealand tariffs applied on imports from Korea are low (the current trade weighted tariff for Korean imports is 0.2 percent), the removal of these tariffs will reduce annual tariff revenue by NZ\$4.2 million. The removal of these tariffs may, at the margins, expose New Zealand industry to increased competition from Korea imports. While tariff removal may involve some adjustment costs in the form of reduced output and employment in affected industries, such adjustment is likely to be quite limited because industries are already exposed to, or should be preparing for, tariff-free competition through New Zealand's overall network of FTAs.

New Zealand's commitments on services, investment and government procurement are all within current policy settings. As in our other recent trade agreements, New Zealand has committed not to introduce new restrictions on Korean investors and service suppliers, and committed to bind any future autonomous liberalisation of certain existing restrictions or discriminatory measures; except where specifically excluded.

New Zealand's exclusions in the FTA are comparable to those in a number of our existing trade agreements, and in a similar way preserve the necessary policy space for the government to pursue legitimate public policy goals.

1.4 Obligations under the FTA

Key new obligations for New Zealand under the FTA include:

- the elimination of tariffs on all goods originating from Korea, but with up to a seven year phase out period on some goods;
- co-operation provisions in agriculture, forestry and fisheries which entail a range of co-operation activities implemented over three years;
- consultation mechanisms on labour, environment, technical barriers to trade, agriculture, forestry and fisheries co-operation, sanitary and phytosanitary measures, customs procedures and outward processing zones;
- new co-production arrangements for film and television;
- enhanced domestic regulation rules, ensuring that regulations do not constitute unnecessary barriers to cross-border trade in services; and
- some new “negative list” commitments on national treatment, most-favoured-nation (MFN), local presence, market access, senior management and boards of directors, and performance requirements obligations for service suppliers and investors from Korea, which go beyond New Zealand’s commitments in the GATS.

Obligations in almost all areas of the FTA are fully consistent with existing New Zealand law and practice. Legislation will only be required to implement the agreed tariff changes and New Zealand’s obligations under the bilateral safeguards provisions. The FTA does not prevent New Zealand from taking measures it deems necessary to fulfil its obligations to Māori under the Treaty of Waitangi, or to support creative arts of national value.

1.5 Economic, social, cultural and environmental effects

1.5.1 Economic Effects

The FTA is expected to have an overall positive effect on the New Zealand economy, with gains to GDP, trade and welfare. The FTA is expected to deliver economic benefits through the removal of tariffs and the reduction of other impediments to trade and investment between New Zealand and Korea over time. It is expected that actual gains for New Zealand will be greater as tariff reductions in Korea are likely to increase demand for New Zealand goods in that market. Publicity about these tariff reductions is also likely to increase exporter and investor interest in this market. While concessions have been given to Korea on Working Holiday Schemes and temporary employment entry for skilled workers, we expect the impacts on New Zealand’s labour market to be limited, as affected programmes contain criteria that aim to mitigate these impacts.

1.5.2 Social effects

The FTA is not expected to have any discernible negative social effects in New Zealand. It will provide gains (or prevent losses) for export industries, which should lead to a

positive impact on incomes and employment. No negative impact on employment is expected as the level of tariff protection against imports from Korea is low. This is also the second trade agreement that New Zealand has negotiated that contains a dedicated chapter on trade and labour (the first being the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (ANZTEC)). The FTA provides for dialogue and co-operation in these and other areas, which may have mutually beneficial spin-offs.

1.5.3 Cultural Effects

The FTA contains safeguards to ensure that there are no negative effects on New Zealand cultural values, including the interests of Māori.

1.5.4 Environmental Effects

The FTA is not expected to have any discernible negative effects on the environment in New Zealand that cannot be managed using existing policy and regulatory frameworks. This is also the second trade agreement that New Zealand has negotiated that contains a dedicated chapter on trade and environment (the first being the ANZTEC). Its provisions are intended to promote sustainable development and enhance environmental performance in both countries.

1.6 Costs

One-off costs associated with implementing the FTA incurred in the 2014/2015 Financial Year will be met within existing baselines. This includes the continued costs of ratification procedures and of concluding arrangements with Korea for implementation of commitments after EIF. One-off costs for amendments to the MFAT website, publicity material and road-shows to promote the benefits of the FTA to exporters and other stakeholders are estimated at NZ\$130,000. Funding is secured through the inter-agency Trade Negotiations Fund.

Activities that will be implemented under the *Arrangement between the Government of New Zealand and the Government of the Republic of Korea on Agriculture, Forestry and Fisheries Co-operation* will require funding for three years once initiated. Exact costs will be determined once New Zealand and Korea have engaged further to design the activities. Korea has agreed to share the costs of these activities.

There will be on-going costs in terms of travel and staffing to meet the new obligations agreed in the FTA. These are expected to be met where feasible from the baselines of the agencies involved or, where necessary, will require new funding. A number of the obligations agreed in the FTA will replace or can be combined with activities that were part of the relationship prior to the negotiation of the FTA.

1.7 Subsequent Protocols and/or amendments to the Agreement and their likely effects

The FTA includes general provisions for review and amendment subject to the agreement of the parties and subject to the completion of domestic legal procedures.

1.8 Implementation

Legislative and regulatory amendments are required to align New Zealand's domestic regime with rights and obligations created under the FTA – in particular those relating to the agreed tariff commitments, rules of origin and transitional safeguards. These changes are relatively minor in scope.

1.9 Consultation

The preparation and negotiating phases of the FTA involved extensive consultation between the negotiating team and stakeholders in New Zealand.

2 Nature and timing of the proposed treaty action

The FTA was signed in Seoul in March 2015 following legal verification and translation into Korean. EIF is subject to the domestic legal procedures of both parties and will occur on a date specified in the exchange of notes between the Parties notifying each other that their respective domestic procedures are complete. Both Parties hope to have completed necessary procedures in time for the FTA to enter into force by September 2015.

The treaty action will not apply to Tokelau, the Cook Islands or Niue.

3 Reasons for New Zealand becoming Party to the treaty

3.1 Background

Negotiations towards an FTA with Korea were announced by New Zealand Prime Minister John Key and then Korean President Lee Myung-bak during the latter's visit to New Zealand in 2009.

The first round of negotiations was held in Seoul in June 2009. Initial offers for the elimination of goods tariffs were exchanged in September 2009, and initial services, investment and government procurement market access offers were exchanged in June 2010. In July 2013, Prime Minister Key met Korean President, Park Geun-hye, and both reaffirmed the commitment to conclude the negotiations as soon as possible. Negotiations formally resumed in February 2014 with a full round in Wellington. A final round was held in Seoul in October 2014, and the conclusion of negotiations was announced by Prime Minister Key and President Park at the G20 Summit in Brisbane on 15 November 2014.

3.2 Benefits from enhanced trade and economic links

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

3.2.1 Direct benefits from enhanced trade and economic links with Korea

A core objective of New Zealand trade policy is to broaden and deepen the opportunities available to exporters by removing and reducing barriers to trade, as well as to establish frameworks through which trade and investment linkages can evolve and expand. Concluding agreements with a group of key trading partners to remove trade barriers on a reciprocal basis is one way of achieving this objective. Given that New Zealand maintains a very open trade regime, the benefits of FTAs accrue disproportionately to New Zealand, even though these benefits might be phased in over a number of years.

The FTA is expected to contribute to New Zealand's economic performance. Specifically, it will promote the flow of goods, services, capital, people, knowledge and technology on a "New Zealand Inc" basis.

The FTA also contributes to the outcome enumerated in the Ministry of Foreign Affairs and Trade's Statement of Intent 2014-18: "Economic growth and international competitiveness advanced through New Zealand's international connections"³.

This FTA is with one of New Zealand's biggest trading partners. Korea is New Zealand's sixth largest export destination for goods and services and our eighth largest import

³ See Ministry of Foreign Affairs and Trade's Statement of Intent 2014-18. The Statement of Intent is available on the MFAT website (www.mfat.govt.nz).

source of goods and services, with more than NZ\$4 billion in total two-way trade between New Zealand and Korea in the year ending June 2014.

3.2.2 Indirect benefits from enhanced trade and economic links with Korea

As well as offering direct economic benefits, the FTA advances a number of New Zealand's broader strategic interests. New Zealand and Korea are both members of the WTO. Trade reform and liberalisation through negotiations at the WTO remains New Zealand's primary trade policy objective. Entering into a comprehensive FTA with Korea, which has relatively high tariff barriers particularly in agriculture, contributes towards New Zealand's wider goal of multilateral trade liberalisation. New Zealand and Korea also work together on trade and economic issues in a range of other multilateral organisations.

A government-to-government agreement of this nature has further value beyond the rights and obligations negotiated under the FTA. For example, it provides further mechanisms and avenues for government officials to take up trade issues encountered by business where this might be necessary. It also represents an important political and economic statement on the value New Zealand places on its relationship with Korea. It provides a vehicle for lifting New Zealand's profile in Korea. We expect it will serve as a catalyst for a deeper level of economic integration, education and people-to-people linkages.

4 Advantages and disadvantages to New Zealand in entering into the Free Trade Agreement

In the sections below, the advantages and disadvantages of the various provisions of the FTA are described. Where there are no particular disadvantages for New Zealand, only the nature of the provisions and advantages are described. Most disadvantages are relative to an ideal trade outcome, with some disadvantages relative to the status quo or arising as the result of new obligations.

4.1 Legal and Institutional Issues

The legal and institutional provisions include party-to-party dispute settlement mechanisms that are simple, effective, and in line with the principles of the WTO Dispute Settlement Understanding and New Zealand's other trade agreements. The chapters also include appropriate general provisions, the establishment of a Joint Commission to review the operation of the FTA and general exceptions including the Treaty of Waitangi and creative arts exceptions, in line with previous New Zealand trade agreements.

4.2 Market Access for Goods

Advantages

Market Access – Exports

Korea represents New Zealand's sixth largest market for goods, buying NZ\$1.7 billion of New Zealand products in the year ending June 2014. A major outcome of this FTA is keeping New Zealand exporters competitive in the Korean market. Korea's average MFN tariff rate is 13.3 percent, but agricultural imports face an average tariff of 52.7 percent. Some of New Zealand exporters' main competitors already have reduced tariffs in the Korean market under existing FTAs. It is estimated that New Zealand exporters currently pay around NZ\$229 million in duties each year to Korean authorities.⁴

Under the FTA around 98 percent of New Zealand's current exports to Korea will have duties eliminated. Korea will eliminate tariffs for New Zealand exporters in stages. Beginning at EIF, tariffs will be progressively phased out through linear reductions. This staged tariff elimination will deliver exporters the following outcomes:⁵

- on EIF, current duty-free access will be "bound in" and existing tariffs will be eliminated on NZ\$793.7 million (or 48.3 percent) of exports including wine, cherries, hides and skins, some forestry products, some aluminium and many industrial goods;
- between 2 and 5 years after EIF, tariffs will be eliminated on NZ\$312.7 million (or 19.0 percent) of exports including kiwifruit, buttercup squash (in-season),

⁴ Based on Korean import statistics averaged over three years, 2009-2011.

⁵ *ibid.*

methanol, some food preparations, some fisheries, dairy spreads, milk albumins, race horses and aluminium. 5 years after EIF, 67.4 percent of New Zealand's total current exports to Korea will enter duty and quota-free;

- between 6 and 10 years after EIF, tariffs will be eliminated on NZ\$195.0 million (or 11.9 percent) of exports including cheddar cheese, timber, butter, sheepmeat, caseinates, avocados, apple juice, beer and some fisheries. 10 years after EIF, 79.3 percent of New Zealand's total current exports to Korea will enter duty and quota-free;
- between 11 and 15 years after EIF, tariffs will be eliminated on NZ\$304.5 million (or 18.6 percent) of exports including beef, mozzarella and all other cheese, processed deer velvet, fibreboard, frozen cream, infant formula, meat extracts and other meat products. 15 years after EIF, 97.8 percent of New Zealand's total current exports to Korea will enter duty and quota-free; and
- between 16 and 20 years after EIF, tariffs will be eliminated on NZ\$1.8 million (or 0.1 percent) of exports including liquid milk and sheep offal. 20 years after EIF 97.9 percent of New Zealand's total current exports to Korea will enter duty and quota-free.

Key Outcomes for Major Goods Exports to Korea

- **Kiwifruit:** New Zealand's main horticulture export to Korea currently faces a 45 percent tariff. In the year ending June 2014, New Zealand exported NZ\$44.3 million worth of kiwifruit to Korea. Under the FTA, New Zealand kiwifruit exporters will have duty-free access to the Korean market five years after EIF.
- **Dairy:** New Zealand exported NZ\$219.8 million of dairy products to Korea in the year ending June 2014. Dairy tariffs range from 36 percent to 176 percent. Under the FTA New Zealand's largest dairy exports to Korea (including cheese and butter) will have tariffs eliminated between 6 to 14 years after EIF. During the phasing period, New Zealand exporters will also have access to transitional TRQs with zero in-quota duty for cheese, butter and infant formula, as well as a permanent TRQ on milk powder.
- **Meat and meat products:** Korea represents New Zealand's fifth largest beef export market with exports of NZ\$120.6 million in the year ending June 2014. New Zealand beef exporters currently face a 40 percent tariff and many of their competitors have preferential rates into Korea. The FTA will stop this tariff disadvantage from increasing, as tariffs will start to be reduced for New Zealand exporters on EIF and will be duty and safeguard⁶-free 15 years after EIF. Other meat products such as offal and meat preparations will see tariffs as high as 72

⁶ The safeguard volume is set at 37,000 tonnes. The safeguard volume will grow at 2 percent per year and if triggered the duty rate reverts to the 40 percent MFN rate over the first 5 years. This then reduces to 30 percent (6 to 10 years), 24 percent (11 to 15 years) and is removed in Year 16.

percent eliminated in the same timeframe. Sheep meat will see the 22.5 percent tariff eliminated within 10 years.

- **Fisheries:** Mussels, one of New Zealand's major fisheries exports to Korea, currently face a 20 percent tariff. Under the FTA, New Zealand exporters of mussels will have access to a permanent TRQ with zero in-quota tariff rates, with volumes starting at 1,600 tonnes and a six percent annual growth rate capped at 3,999 tonnes 15 years after EIF. All other mussel tariff lines will have the tariff eliminated two years after EIF. Other fish lines (livers and roe and frozen fish including fillets) will have the 10 percent tariff eliminated in 10 years or less. Salmon will see the 20 percent tariff removed in Year 3. Live eels with a 27 percent tariff will receive tariff elimination in Year 10. Frozen squid and live abalone were excluded by Korea from tariff elimination.
- **Forestry:** New Zealand exported NZ\$503.1 million of forestry and forestry products to Korea in the year ending June 2014. Over 99 percent of New Zealand's exports will be duty-free within 10 years. Only 2 of the 543 forestry product tariff lines are excluded from tariff elimination (unworked particleboard and 12mm to 15mm plywood).
- **Other Horticulture:** New Zealand is the largest supplier of buttercup squash to Korea, exporting NZ\$10.8 million in the year ending June 2014. Under the FTA the 27 percent tariff will be eliminated four years after EIF for New Zealand's export season (December through May). The out-of-season period will remain at 27 percent. Other products with outright tariff elimination outcomes include cherries, which will have the 24 percent tariff removed on EIF; apple juice, which will have the 45 percent tariff eliminated 6 years after EIF; and avocados, which will have the 30 percent tariff elimination 9 years after EIF.

Market Access – Imports

The phase-out of tariffs on New Zealand imports also has advantages for New Zealand producers who use imported Korean components or capital equipment in the production of their goods. Lower import costs on these factors of production will lower many New Zealand firms' costs and improve their international competitiveness. Consumers may benefit directly from cheaper products, although the impact of tariff cuts overall on Korean imports will be likely be small.

Disadvantages

Market Access – Exports

While the FTA provides for the elimination of tariffs on key New Zealand exports to Korea, some products of current export value will remain subject to duties. These include frozen squid, honey, onions, persimmons and unprocessed deer velvet. These account for around 0.6 percent of current exports to Korea. New Zealand also has a global trade interest in apples and pears which will remain subject to duties in Korea, although they are not currently exported to Korea due to significant phytosanitary barriers that effectively exclude imports from the largest exporting countries in these

products. In addition to these non-elimination outcomes, there will be permanent TRQs on milk powder and mussels which represent 1.4 percent of current trade.

Market Access – Imports

Any trade agreement involving reciprocal tariff removal can create – at the same time as export-focused sectors secure improved access to offshore markets – negative adjustment effects for domestic producers as a result of increased exposure to foreign suppliers.

The FTA will eliminate New Zealand's tariffs on Korean imports for certain steel, air conditioning units and some textiles, which compete with import sensitive industries in New Zealand. The removal of these tariffs may, at the margins, expose New Zealand industry to increased competition from Korea imports. In order to help mitigate the potential for any negative adjustment effects, the FTA includes longer phase-out periods for certain steel and other industrial items (four years after EIF) and for certain textile items (six years after EIF). In addition, the FTA has preserved each country's right to apply anti-dumping, countervailing and global safeguard measures to trade in accordance with the relevant WTO rules. As noted in paragraph section 4.7 below, the FTA also contains a bilateral transitional safeguard provision for possible application during the transition to tariff-free conditions.

4.3 Rules of Origin and Origin Procedures

Advantages

The model for evidencing origin is based on New Zealand's preferred approach of self-certification by the exporter. Unlike other models, this does not impose extra costs for exporters. The majority of the product specific rules (PSRs) adopted closely align with those of the New Zealand-China, ASEAN-Australia-New Zealand (AANZFTA), New Zealand-Malaysia and ANZTEC trade agreements.

Disadvantages

Some alternative PSRs were agreed for a few non-sensitive product lines (rice, rice products and processed grains).

New Zealand had to accept more restrictive provisions for certain whole foods and products made from them, but managed to limit the constraints to only those processes that do not go beyond simple mixing.

4.4 Customs Procedures and Trade Facilitation

This Chapter is in line with the approach followed by New Zealand in other recent trade agreements. The Chapter builds on existing bilateral customs co-operation to enable the early resolution of any issues affecting the movement of trade across borders.

4.5 Sanitary and Phytosanitary Measures

Context

The Sanitary and Phytosanitary (SPS) Chapter reflects the Parties' obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement). It reaffirms their rights and obligations under that Agreement and establishes a simple structure in which SPS issues and co-operation may be discussed and advanced.

Advantages

A Committee is established to facilitate consultation and to record any decisions reached. Contact points will serve as the channel for communication (Articles 5.4 and 5.5).

Other than establishing a Committee to facilitate communication between the Parties, the Chapter does not add any substantive obligations to those the Parties are already bound by under the WTO SPS Agreement. However, it is still considered more useful to include an SPS Chapter than to be silent on SPS issues, in order to ensure that it is clear that the implementation of SPS measures in a manner consistent with the WTO SPS Agreement is integral to ensuring an effective bilateral trade relationship between New Zealand and Korea.

Disadvantages

More ambitious provisions similar to those included in the SPS Chapter of New Zealand's other FTAs were not able to be agreed with Korea.

Due to Korea's sensitivities surrounding trade in primary products, New Zealand did not gain Korea's acceptance that the Chapter should set out specifics of what the Parties might work on in a bilateral context to build on WTO obligations.

New Zealand has no recourse to the Chapter 19 dispute settlement provisions for the resolution of SPS issues that might be hampering bilateral trade; however recourse may still be made to the WTO dispute settlement mechanism for breach of SPS obligations.

4.6 Technical Barriers to Trade

The Technical Barriers to Trade (TBT) Chapter affirms the Parties' existing rights and obligations in the WTO Technical Barriers to Trade Agreement and builds on these by promoting co-operation to build strong institutional relationships. The Chapter aims to facilitate trade and reduce transaction costs associated with trade. It sets up systems to resolve any specific trade concerns and to manage risks associated with imported products more effectively and efficiently.

The means of co-operation include the exchange of information; co-operation between regulators, trade officials and other technical experts; regular meetings; and working groups established to address specific issues (Articles 6.8–6.11). The Chapter encourages Korea to recognise New Zealand's regulatory approaches, standards and conformity

assessment infrastructure (Articles 6.6 and 6.7). It also establishes a mechanism for the negotiation and conclusion of sector-specific arrangements on mutually agreed terms (Article 6.12).

Implementing the TBT Chapter does not require amendments to existing New Zealand legislation.

4.7 Trade Remedies

The Trade Remedies chapter retains both Parties' ability to use trade remedies in accordance with WTO rules on anti-dumping, countervailing measures and safeguards. The Chapter also provides for the possibility of either country excluding imports from the other country from a WTO global safeguard action if such imports are non-injurious (Article 7.6). This 'non-injury' exemption clause, if invoked by Korea, will mean that New Zealand exporters are not needlessly caught by a Korean WTO global safeguard measure where their exports have not been a cause of the action. This is consistent with the approach that New Zealand has taken in other recent FTAs.

The FTA provides for enhanced transparency rules. Under the Chapter, Korea and New Zealand have also confirmed in the interests of transparency, existing practices affecting the implementation of the WTO Agreement on Anti-Dumping around calculation of dumping margins and application of the lesser duty rule (by which a Party only imposes the a lesser amount of duty than the full dumping margin if this is all that is necessary to remove injury to the domestic industry) (Articles 7.7–7.9).

The FTA also establishes a bilateral transitional safeguard mechanism which is available to both New Zealand and Korea (Article 7.2). The rationale for transitional safeguard measures within an FTA is similar to that for global safeguards under the WTO rules, in that it provides for the ability of a Party to respond to unforeseen increases in imports caused by bilateral tariff reductions, in order to pause or claw back such reductions.

The mechanism has a dual purpose. It addresses both real difficulties that might arise as well as providing reassurance that such action can be contemplated if necessary, and thereby obtains domestic support for trade liberalisation. New Zealand was a relative latecomer to concluding an FTA with Korea compared to our competitors, and therefore the retention of such a mechanism with New Zealand too was seen as important by Korea.

4.8 Cross-Border Trade in Services

Advantages

The structure of the services commitments in this Chapter follows New Zealand's preferred approach. Subject to specific listed exceptions (Annexes I and II), both Parties have committed to provide full access to each other's markets across all sectors and undertake obligations not to discriminate against service suppliers from the other Party.

This approach has substantial benefits in terms of transparency and certainty for New Zealand businesses looking to supply services into the Korean market. A robust mechanism is also included to ensure FTA commitments keep pace with domestic reform (Article 8.8): across most sectors, if Korea (or New Zealand) makes a policy change to liberalise restrictions on foreign competition, the new level of opening becomes a binding commitment, providing New Zealand services suppliers confidence and certainty as they weigh up entering the Korean market.

New Zealand services suppliers will benefit from substantially improved services market access commitments over and above Korea's existing WTO commitments, including new commitments on adult education services, legal services, tourist guides services, tour operator services, beverage serving services, packaging services, services incidental to mining, market research and public opinion polling services, and research and development services. As a result, New Zealand services suppliers will be on a level playing field with competitors from Australia, Canada, the European Union and the United States, who have already secured the same improved market access commitments in their FTAs with Korea.

This level playing field will be protected going forward as the FTA contains a non-discrimination (MFN) provision where Korea has committed in almost all sectors to automatically extend any further liberalisation agreed with a future FTA partner to New Zealand (Article 8.5).

In addition, New Zealand service suppliers will benefit from greater certainty and transparency doing business in Korea under the highest standard of domestic regulation rules that Korea has agreed to with any FTA partner (Article 8.10). Korea has also agreed to education co-operation provisions for the first time in an FTA (Article 8.12). Korea is an important export education market for New Zealand, as one of the top source countries for international students studying in New Zealand. The co-operation provisions will build on existing collaboration between our education authorities and provide another platform to engage Korea in dialogue on education issues of importance to New Zealand, such as qualifications recognition.

Disadvantages

While substantially similar market access outcomes have been achieved in most areas to those Korea has agreed under its most recent FTAs, e.g. with Australia, the commitments offered by Korea in some sectors of interest to New Zealand (agriculture-related warehousing and distribution services, and accountancy services) do not reflect the level of opening Korea has been willing to extend to partners like the United States.

4.9 Temporary Entry of Business Persons

Advantages

The commitments in the Temporary Entry of Business Persons Chapter guarantee access for New Zealand skilled service suppliers, intra-corporate transferees and business visitors to enter and stay in Korea; and facilitate New Zealand businesses taking up commercial opportunities under the FTA. Under the FTA Korea will provide access to:

- Business visitors for up to 90 days (Annex 9-A);
- Intra-corporate transferees for up to three years, which may be renewed for subsequent periods (this includes New Zealand personnel who are executives, managers and specialists) (Annex 9-A); and
- Contractual Service Suppliers, in certain sectors, for up to one year (Annex 9-A).

The commitments on Contractual Services Suppliers are new commitments that go beyond Korea's existing WTO GATS commitments.

The Chapter commits Korea and New Zealand to provide streamlined and transparent procedures for applications. New Zealand business persons applying to enter Korea will benefit from Korea's commitment to publish all relevant information online, process applications for temporary entry without undue delay, and to keep any fees imposed at a reasonable, cost-based level (Articles 9.5 and 9.6).

Disadvantages

Korea did not make the specific commitments it has made to some FTA partners on an additional 'traders and investors' category to New Zealand, however this category overlaps with and is largely covered in the business visitor and intra-corporate transferees categories.

4.10 Investment

Context

Up until now, New Zealand has not had an international agreement in place to safeguard the interests of New Zealand investors in Korea. This Chapter establishes a set of rules based on international best practice intended to facilitate investment flows and provide for the protection of investment.

The investment relationship between New Zealand and Korea continues to be positive, but Korea's position as New Zealand's 18th largest source of total foreign investment, and as our 19th largest destination for total New Zealand investment abroad, lags behind its status as our 6th largest merchandise trading partner.

Total investment by New Zealand into Korea grew from NZ\$83 million in 2001 to NZ\$575 million in 2014, and is anticipated to continue to rise as the trading relationship expands. Korea has sought to steadily improve its attractiveness as a foreign investment destination and in the 2015 World Bank Ease of Doing Business Report Korea was ranked fifth (New Zealand is currently ranked third). This raises the importance of establishing a formal investment relationship with this advancing North Asian economy. Investment by Korea into New Zealand has also grown over this period, from NZ\$122 million in 2001 to a total of NZ\$421 million by 2014.⁷

Advantages

The FTA Investment Chapter establishes a modern high quality rules-based framework that will facilitate free and open flows of investment between New Zealand and Korea. These include rules against discrimination (national treatment or most favoured nation treatment), nationality requirements imposed on senior managers and boards of directors of foreign companies, and trade distortive performance requirements (Articles 10.5–10.7, 10.11 and 10.12). These rules are designed to assist foreign investors to enter the market and compete on an equal footing with domestic investors and international competitors. There are also rules designed to protect investments from unjustified expropriation, or arbitrary or unfair conduct by a Party, and to facilitate the transfer of capital related to investment (Articles 10.7, 10.9 and 10.10).

Of the established rules, commitments concerning ‘national treatment’ and ‘most favoured nation treatment’ are particularly important for New Zealand (Articles 10.5 and 10.6).

The ‘national treatment’ provision requires Korea to accord New Zealanders investing in Korea to treatment no less favourable than that accorded to Korean investors in ‘like circumstances’ (subject to any exceptions).

Under the ‘most favoured nation treatment’ provision any better treatment relating to either market access or protection for investment agreed by Korea with third countries will automatically be extended to New Zealand investors. Certain exceptions apply for both Korea and New Zealand, including preferences granted under prior FTAs and for specific sectors such as maritime, fisheries and aviation where specific international treaty frameworks exist. Aside from this exception, this provision future-proofs the investment commitments and ensures that the level of treatment afforded to New Zealand investors will not fall behind as Korea agrees new commitments with third countries in the future (Article 10.6).

Both New Zealand and Korea have exceptions from the Chapter’s obligations set out in a schedule of investment ‘non-conforming measures’ (Annexes I and II). These exceptions either preserve existing discriminatory laws and regulations that do not conform to the

⁷ Trade and investment data sourced from Statistics New Zealand.

obligations of particular provisions or reserve policy space to allow the introduction of such measures in the future. Exceptions which relate to existing measures are subject to a “ratchet” mechanism under which any improvement in such measures is automatically provided to New Zealand investors. Access for New Zealand investors into the Korean market has been secured on a basis which is broadly in line with Korea’s commitments to other FTA partners, save for investment in certain service sectors (such as postal services), of which some reflect equivalent exceptions retained by New Zealand.

The Chapter also includes a mechanism which can be used by investors for the settlement of disputes arising under the Chapter with Korea (Article 5.10). The Chapter incorporates transparency requirements and key safeguards to preserve the Government’s right to regulate for legitimate public policy purposes.

While the ISDS provisions have been developed with the understanding that an investor from Korea could take the New Zealand Government to international arbitration for a breach of any of the provisions of the Chapter which concern investments established in New Zealand by Korean investors, these provisions incorporate safeguards that protect the right of governments to regulate for legitimate public policy purposes and establish clear boundaries on the nature of claims which may be brought. No issues have arisen under the investment provisions of New Zealand’s other trade agreements.

4.11 Intellectual Property Rights

Context

This Chapter promotes the importance of intellectual property rights in fostering trade between New Zealand and Korea. The Chapter incorporates the WTO Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) and both Parties reaffirm their commitments to TRIPS. Included in the Chapter are specific commitments concerning protection of trademarks, copyright and related rights, technological protection measures and electronic rights management information, enforcement of intellectual property rights, sharing of information and co-operation. It also retains flexibility for the Parties to deal with issues related to the protection of traditional knowledge, folklore and genetic resources.

The commitments outlined in this Chapter all fall within current New Zealand regulatory settings and are generally in line with previous trade agreements, but with more extensive commitments regarding the protection of trademarks.

Advantages

The provisions of the Chapter support more certainty over the provision and enforcement of intellectual property rights in the bilateral trade relationship. The Chapter will support growth in exports to Korea by New Zealand businesses and greater certainty for the protection of trademarks, because it sets out consistent standards for the protection of

trade marks as well as ensuring due process and transparency apply around procedures for registering trademarks.

The inclusion of a consultation mechanism means that New Zealand can request consultations to seek a timely and mutually satisfactory solution on any intellectual property issues within the scope of the FTA.

Disadvantages

The FTA imposes new treaty obligations on New Zealand concerning the protection of intellectual property rights. These include requirements to:

- enable the registration of certain non-visual trademarks;
- protect well-known trademarks in specific circumstances;
- provide a publicly available electronic trademark application and registration database;
- protect electronic rights management information applied to copyright works; and
- provide legal protection against circumvention of technological protection measures applied to copyright works.

Although these obligations are consistent with New Zealand's current intellectual property law and practice, they limit New Zealand's policy flexibility. This could have implications for ensuring the intellectual property regime is able to address domestic issues as they arise. However, the practical impact of the loss of this policy flexibility in these areas in this case is judged to be low.

4.12 Competition and Consumer Policy

Context

The Competition and Consumer Policy Chapter takes a similar principles-based approach to previous competition chapters in New Zealand's other trade agreements and is consistent with New Zealand law, policy and practice.

The Chapter supports New Zealand and Korea's objective of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare.

Advantages

The Competition and Consumer Protection Chapter requires both Parties to maintain laws which prohibit anti-competitive business conduct (Article 12.3). This is an advantage for New Zealand because it lessens the risk of the benefits of increased trade and investment under the FTA being compromised by activities which restrict or distort

competition. The requirement is consistent with New Zealand's well-developed and well-functioning competition laws.

The Parties have committed to applying competition laws to all forms of business activity. Having laws of general application is an important part of creating a more competitive operating environment which in turn can lead to increased efficiency and economic growth as well as enhanced consumer welfare. At the same time, New Zealand is able to exempt certain activities from laws prohibiting anti-competitive business conduct on the grounds of public policy or public interest, so long as this is done in a transparent way (Article 12.3). This gives the flexibility to carve out specific areas of interest for New Zealand.

The Chapter provides that competition laws and their enforcement shall be consistent with the principles of transparency, comprehensiveness, non-discrimination and procedural fairness (Article 12.3). This is an advantage for New Zealand because it helps to ensure that there is a stable and predictable business environment for New Zealand businesses operating in Korea. These principles are consistent with the approach New Zealand already takes in the implementation of competition laws and policies and are in line with the APEC *Principles to Enhance Competition and Regulatory Reform*.

New Zealand and Korea have agreed to co-operate in the enforcement of competition laws and policy (Articles 12.4 and 12.7). Co-operation in this area can help to reduce enforcement costs and to deter cross-border anti-competitive business conduct. This in turn should have a positive impact on the business environment in both Parties, promoting competition over the long-term. There are protections for any confidential information that is shared as part of co-operation activities (Article 12.6). The co-operation provisions also encourage the sharing of best practices, addressing practical competition issues that arise between the Parties and maintaining contacts which can be called upon if more serious issues arise (Articles 12.6 and 12.8).

Policies and laws aimed at consumer protection (for example rules against false or misleading descriptions in trade) play a role in creating efficient and competitive markets. Such issues increasingly transcend national borders and international co-operation is important in addressing such activities. The Chapter provides for co-operation in the enforcement of consumer protection laws, and the Parties have affirmed their commitment to having appropriate consumer protection laws in place (Article 12.9). These commitments are consistent with New Zealand's law and practice.

The Competition and Consumer Policy Chapter is not subject to the FTA's dispute settlement mechanism (Article 12.10). The general expectation is that, if a person has concerns about anti-competitive business conduct in either New Zealand or Korea, that person may seek relief from the competition authority or the courts of that jurisdiction. The Chapter does provide for government-to-government level consultation on competition-related issues adversely affecting trade or investment between Parties (Article 12.6). This approach is an advantage to New Zealand because it encourages dialogue and co-operation between competition regulators and facilitates the amicable

resolution of issues that arise, while at the same time ensuring the independence of New Zealand's competition regulators. It is also consistent with New Zealand's practice in other trade agreements.

Disadvantages

There are no expected disadvantages arising from this Chapter, as its provisions are consistent with New Zealand's competition and consumer policy.

4.13 Government Procurement

Context

The Government Procurement Chapter establishes an agreed framework of rights and obligations relating to government procurement. These are constructed around the fundamental commitments to open, competitive and non-discriminatory access to government contracting opportunities and include agreed minimum procedural standards based on fairness and transparency.

The approach in the Chapter is fully aligned to previous government procurement chapters in New Zealand's other trade agreements, the WTO Agreement on Government Procurement (to which Korea is a party and to which New Zealand is looking to accede in 2015) and to New Zealand's government procurement policy and practice.

Advantages

The Chapter secures a level of access to government contracts with Korea's central government entities that is equivalent to the access granted by Korea to Australia, the United States, as well as parties to the WTO Agreement on Government Procurement (GPA).

As all commitments made by New Zealand are consistent with New Zealand's current policy framework including the Government Rules of Sourcing, there is no practical impact on New Zealand government agencies.

Both parties have committed central government entities only (Article 13.3). New Zealand has committed all 29 departments and ministries as well as the New Zealand Police and New Zealand Defence Force (consistent with the entities committed in previous FTAs). Korea has committed the central government entities listed in its annex to the WTO GPA. The value thresholds (contract value at which the commitments must be applied) are 130,000 SDRs (equivalent to approximately NZ\$246,000) for goods and services and 5,000,000 SDRs (equivalent to approximately NZ\$9,400,000) for construction services (including private public partnerships).

The Chapter also gives New Zealand suppliers access to private public partnerships contracted by Korean central government entities. This will place New Zealand businesses on an equal footing with suppliers from GPA parties in respect of central government contracts and on a preferred footing with respect to private public partnerships where some GPA parties have not granted Korean suppliers reciprocal access.

Disadvantages

Under the FTA, New Zealand suppliers will not have access to government contracts of sub-central or other government entities of Korea. In this regard, suppliers from Australia and the United States have superior access under their agreements with Korea. This will be re-balanced once New Zealand has acceded to the WTO GPA (which will occur later in 2015 once New Zealand has completed its domestic processes, including parliamentary examination of the GPA) at which point, New Zealand businesses will have access to the same sub-central and other entities as Australia and the United States.

While New Zealand will gain access to the same entity list as Canada, Korea has agreed a lower value threshold (i.e. 100,000,000 Korean won which is the equivalent of approximately 65,000 SDRs) in its agreement with Canada. This lower threshold means that Canadian suppliers will be entitled to bid for lower value contracts.

4.14 Agriculture, Forestry and Fisheries Co-operation

The Agriculture, Forestry and Fisheries Co-operation Chapter builds on existing co-operation arrangements and provides a vehicle for ongoing dialogue and information exchange between the Parties that is aimed at strengthening the trade and economic relationship in the agriculture, forestry and fisheries sectors, and advancing closer collaboration in areas of mutual interest.

This Chapter is intended to supplement existing government-to-government arrangements by providing a single platform for all co-operative discussions and activities related to agriculture, forestry and fisheries

Similar to other FTA co-operation chapters that New Zealand has negotiated, this one envisages a regular Committee meeting between the Parties. At Korea's request, it also includes provision for separate consultations if export prohibitions or restrictions cause the importing country food security concerns (Articles 14.7 and 14.8).

Advantages

Alongside the FTA, New Zealand has also agreed that specific co-operative activities will occur in addition to regular dialogue and information sharing between officials. These activities are set out in an Implementing Arrangement (*Arrangement between the Government of New Zealand and the Government of the Republic of Korea on*

Agriculture, Forestry and Fisheries Co-operation) and have been agreed in advance in order to allow for implementation from the date the FTA enters into force. The activities include:

- English language training for school students from rural and fishing communities;
- scholarships to study in the agriculture, forestry and fisheries fields; and
- disease risk analysis training.

New Zealand and Korea have agreed that the cost of activities will be shared equally.

While the activities under the Implementing Arrangement will cost New Zealand – both financially and in terms of human resources – they also represent an opportunity for New Zealand by fostering positive relationships and helping to open up future economic opportunities.

4.15 Labour

The FTA includes a chapter on Trade and Labour – the second time such a chapter has been included in the body of a New Zealand trade agreement (the first being ANZTEC). In New Zealand's other FTAs, this topic has usually been covered by side arrangements or agreements. Key elements of the chapter include the following:

- the Parties reaffirm their obligations as members of the International Labour Organization (ILO) and their commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. The Parties agree to strive to adopt and maintain in their laws, policies and practice the internationally-recognised labour principles stated in the Declaration (Article 15.1);
- the Parties agree not to use their labour laws, regulations, policies and practices for trade protectionist purposes. They also agree not to fail to effectively enforce their labour laws, or waive or derogate from their laws or regulations, in a manner affecting trade or investment between them (Article 15.2);
- in addition, the Chapter obliges the parties to ensure fair transparent and equitable labour institutions and processes for labour administration and enforcement, and the promotion of public awareness of labour laws and labour issues;
- the Chapter provides for the Parties to co-operate on matters of common interest, which can include labour rights, working conditions, health and safety, or any other agreed topic. Unions, employers or other bodies may be involved in the selection of and participation in co-operative activities (Article 15.6);
- each Party is required to designate contact points to facilitate communication and coordination between the Parties. A Labour Committee is also established to discuss matters of common interest and oversee the implementation of the chapter (Article 15.4); and

- in the event that an issue arises between the Parties over any matter relating to the chapter, there is a process of consultation where the parties can work towards resolving their issues. The dispute settlement provisions under Chapter 19 of the FTA do not apply to the Labour Chapter (Article 15.5).

Advantages

The provisions in the Chapter are intended to promote and enforce labour rights, improve working conditions and living standards, strengthen co-operation on labour issues and enhance labour capacity and capability through co-operation and dialogue.

The Chapter's obligations help level the playing field for New Zealand companies and employees by ensuring that the Parties' competitive advantage is not secured or maintained through labour exploitation or practices that are not consistent with internationally recognised labour standards. This, in turn, helps ensure that our exporters or local businesses (and the jobs of their employees) are not undercut or put at risk by unfair competition.

New Zealand's commitment to these obligations will also have positive reputational effects amongst likeminded states, bolstering our standing in bilateral and multilateral relationships, including trade relationships.

Labour co-operation may also prove beneficial in terms of cross-fertilisation over best practice in labour administration and labour policy matters.

Disadvantages

Direct costs to Government will arise from participation in labour co-operative activities, and representation on the Labour Committee established under this Chapter. Should any issues arise between the Parties under the Chapter, costs might arise in terms of responding to them. These additional costs due to any issues arising are not able to be precisely quantified; this situation has not occurred under previous trade agreements.

4.16 Environment

The FTA includes a chapter on environment. As with the Labour Chapter, this is only the second time such a chapter has been included in the body of a New Zealand trade agreement, the first being in ANZTEC. In previous trade agreements, environment provisions have been included in side arrangements or agreements. Key elements of the Chapter include:

- the Parties agree not to use their environmental laws, regulations, policies and practices for trade protectionist purposes. They also agree not to fail to effectively enforce their environmental laws, or waive or derogate from their laws or regulations, in a manner affecting trade or investment between them (Article 16.2);

- the Chapter provides for the Parties to co-operate on matters of common interest, which can include trade related aspects of environmental laws and policies, including those related to multilateral environmental agreements. Particular attention is given to energy related matters including renewable energy and energy efficiency. Non-government organisations (such as businesses, research institutes, and universities) may be involved in the selection of and participation in co-operative activities (Article 16.8);
- each Party is required to designate contact points to facilitate communication and coordination between the Parties on environmental matters. An Environment Committee of senior officials is also established to discuss matters of common interest and oversee the implementation of the Chapter (Article 16.7); and
- in the event that an issue arises between the parties over any matter relating to the chapter, there is a process of environmental consultation where the parties can work towards resolving their issues (Article 16.9). The dispute settlement provisions under Chapter 19 of the FTA do not apply to the Environment Chapter (Article 16.9).

Advantages

The FTA environmental provisions are intended to promote sound environmental policies to achieve a high level of environmental protection, and to advance the objectives for sustainable development (Article 16.1).

The obligations help level the playing field for New Zealand businesses by ensuring that neither Party can secure an unfair advantage by weakening or failing to enforce environmental laws, or by using such laws in a discriminatory manner (Article 16.2).

Co-operation on environmental issues may also prove beneficial in terms of cross-fertilisation over best practice in environmental management and environmental policy matters.

Disadvantages

Direct costs to Government will arise from participation in environmental co-operative activities, and representation on the Environment Committee established under this Chapter. Should any issues arise between the Parties under the Chapter, costs might arise in terms of responding to them. These additional costs due to any issues arising are not able to be precisely quantified; this situation has not occurred under previous trade agreements.

4.17 Audio-Visual Co-Production

Context

The Audio-Visual Co-Production Annex provides for the possibility of official co-productions between New Zealand and the Korea for film or television audio-visual formats. The Annex covers:

- approval;
- contributions;
- entitlement to benefits;
- rules of participation and engagement in a co-production;
- government facilitation; and
- implementing arrangements for the guidance of the competent authorities.

This Annex (which covers both film and television co-production) will replace the existing *Agreement between the Government of the Republic of Korea and the Government of New Zealand Concerning the Co-Production of Films*, which covered feature films only. New Zealand currently has 14 other bilateral co-production agreements or arrangements with Australia, Canada, Denmark, France, the United Kingdom, Germany, Singapore, Italy, Spain, Ireland, India, South Africa, China (for feature films only) and Chinese Taipei. Since 1988 there have been 60 official co-production projects under these agreements.

There is a high degree of uniformity internationally among film and television co-production agreements. Their underlying objectives, the benefits they confer, the mechanisms employed and the way they are administered are relatively standard. The case-by-case consideration of what qualifies as an official co-production film or television programme is left to the competent authorities of the two countries. However, the agreements do set out certain minimum criteria that must be met including articles on participation/nationality and creative/financial contributions.

Advantages of the Audio-Visual Co-Production Annex to the FTA

- **Access to Benefits** – a key provision of the Annex is that films (defined widely to include inter alia, videos, documentaries, mini-series or television dramas) will be considered to be 'national' productions entitled to all the benefits provided to such domestic productions by the legislation of each country. In New Zealand the main benefit accruing to domestic productions is qualification for financial assistance pursuant to section 18 of the New Zealand Film Commission Act 1978. Korea will likewise make any domestic production subsidies, tax breaks, or other financial incentives open to an official co-production. Each country's criteria for accessing such subsidies still apply.

- **Immigration, customs facilitation** – the Annex provides for each country to facilitate the temporary entry of relevant personnel and the duty-free temporary admission of equipment necessary for making the official co-production. Facilitation does not, however, mean exemption from normal regulations – including payment of applicable fees for (temporary) work permits.
- **Closer cultural and economic co-operation** – the Annex increases the scope for cultural and economic co-operation and collaboration between the New Zealand and Korean screen industries.

Disadvantages

- The Chapter is not a significant departure from established New Zealand policy or practice. There are no disadvantages to New Zealand to highlight.

5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

5.1 Preamble and Initial Provisions and Definitions

The Preamble and the Initial Provisions and Definitions Chapter of the FTA confirm that the FTA builds on the rights and obligations of the Parties in the WTO and other multilateral and bilateral trade agreements to which both Parties are Party. The Initial Provisions and Definitions Chapter also recognises the Agreement reached between the two Parties concerning Audio-Visual Co-Production which is annexed to the FTA (Article 1.4).

5.2 Market Access for Goods

New Zealand is required to eliminate its customs duties (tariffs) on goods originating from Korea in accordance with the phase-out schedule in Annex 2-A of the FTA, and may not increase existing customs duties.

The FTA imposes obligations, consistent with WTO requirements, to accord national treatment⁸ (Article 2.3), to ensure that all fees and charges are limited in amount to the approximate cost of services rendered, and that any non-tariff measures do not represent any unnecessary obstacles to trade (Article 2.9).

There is provision for consultation and discussion of any issues arising pursuant to the chapter (Articles 2.15 and 2.16). This Chapter is also subject to the dispute settlement provisions of Chapter 19 of the FTA.

5.3 Rules of Origin and Origin Procedures

This Chapter sets out rules for determining whether goods traded between the Parties qualify as originating goods and therefore qualify for bilateral tariff preferences.

There are three avenues through which goods can qualify for preferential tariff treatment (Article 2):

- the goods are wholly obtained or produced in New Zealand or Korea;
- the goods are produced entirely in New Zealand or Korea exclusively from originating materials from one or both of the Parties; or
- the goods are produced in New Zealand or Korea using third-party inputs.

⁸ National treatment means that foreigners and locals should be treated equally i.e. that imported and locally-produced goods should be treated equally after the foreign goods have entered the market.

This Chapter uses a change of tariff classification (CTC) approach to determine origin. Under the CTC approach, a good will qualify for preferential tariff treatment if all third party inputs used in its production have undergone a specified change of tariff classification. Annex 3-A to the FTA details the precise form of CTC that will apply to a particular good.

For some products there are optional regional value content (RVC) rules. Under the RVC approach, a good will qualify for preferential tariff treatment provided the value of originating inputs is equal or greater than the specified RVC threshold for that good. These rules are optional and allow the producer to choose which rule best suits their particular business model.

For any good to qualify for the tariff preferences, it must be consigned directly between the two Parties. If transported through a third party, the good must not enter into the trade or commerce there or undergo any operation there other than unloading and reloading, repacking, or any operation required to preserve them in good condition or to transport them to the importing Party (Article 3.17).

Importers wanting to make a claim for preferential tariff treatment under the FTA may do so based on (Article 3.18):

- a written or electronic declaration of origin by the exporter or producer;
- a written or electronic certificate of origin by the exporter or producer; or
- other evidence to substantiate the tariff preference.

The Chapter includes the establishment of a Committee on Outward Processing Zones on the Korean Peninsula (Annex 3-B). This Annex is similar to what Korea has previously agreed with its other FTA partners. The Committee allows for a dialogue between Korea and New Zealand to discuss the possibility of including trade partially manufactured in outward processing zones, including goods manufactured in Kaesong province. Any requests to include such goods, and the criteria under which they could be included, will be subject to further negotiation. The first Committee meeting shall take place within 12 months of EIF.

5.4 Customs Procedures and Trade Facilitation

This Chapter involves a range of commitments on trade facilitation and customs co-operation. These commitments fall within current policy settings and include:

- ensuring customs procedures and practices are predictable, consistent, and transparent (e.g. providing customs valuations, using internationally accepted tariff classifications, and providing advanced rulings) to ensure efficient administration and the expeditious clearance of goods (Article 4.9);

- encouraging the use of international best practice on customs and facilitating the use of automated systems, express consignments and providing for the electronic submission of import requirements in advance of the arrival of the goods, to expedite the procedures for the release of goods (Articles 4.5, 4.7 and 4.8). In the normal course of events, customs administrations in both parties are required to release originating products within 48 hours of arrival (Article 4.7);
- encouraging customs co-operation and providing for contact points and consultations to discuss any issues which might arise (Articles 4.11, 4.12 and 4.14); and
- publishing customs laws and administrative procedures (Article 4.3).

5.5 Sanitary and Phytosanitary Measures

In the SPS area, the FTA provides a framework for enhanced dialogue and co-operation on the Parties' application of SPS measures. The objective is to facilitate trade in goods affected by SPS measures, and to provide a means to improve transparency, communication and consultation on SPS issues. The SPS Chapter is not subject to the dispute settlement provisions of Chapter 19.

5.6 Technical Barriers to Trade

The TBT Chapter preserves New Zealand's existing rights and obligations under the WTO Agreement on Technical Barriers to Trade (Article 6.4).

The Parties will promote trade facilitation through enhancing the implementation of the TBT Agreement, ensuring that standards, technical regulations and conformity assessment procedures do not create unnecessary barriers to trade, promoting regulatory co-operation and providing a framework to implement supporting mechanisms to realise these objectives (Article 6.1).

The Parties shall give positive consideration to accepting as equivalent technical regulations of the other Party. A Party must explain the reasons for a decision not to accept equivalence of technical regulations (Article 6.6).

A Party also has an obligation to explain its reasons for not accepting conformity assessment procedures performed by the other Party and to give positive consideration to a request to negotiate arrangements to facilitate the acceptance of conformity assessment procedures (Article 6.7).

The Parties will strengthen their co-operation in the field of standards, technical regulations and conformity assessment procedures to increase mutual understanding of their respective systems, enhance co-operation between regulatory agencies and facilitate access to their respective markets. This will be achieved by exchange of information and development of joint initiatives (Article 6.8).

A Committee on Technical Barriers to Trade shall be established to promote and monitor the implementation and administration of the Chapter (Article 6.10). The functions of the Committee include ensuring steps are taken to address any issues relating to technical regulations and conformity assessment procedures, facilitating technical discussions, and establishing working groups to undertake specific tasks.

The Parties may conclude annexes and/or implementing arrangements to the TBT Chapter setting out agreements reached under the Chapter (Article 6.12). They will discuss the feasibility of developing sector-specific mutual recognition arrangements.

5.7 Trade Remedies

The Chapter preserves the ability of either Party to take anti-dumping, countervailing, and global safeguard actions under WTO rules. Significantly, the Chapter also provides for the possibility of either country excluding imports from the other country from a WTO global safeguard action if such imports are non-injurious (Article 7.6). This 'non-injury' exemption clause, if invoked by Korea, will mean that New Zealand exporters are not needlessly caught by a Korean WTO global safeguard measure where their exports have not been a cause of the action.

The Chapter also provides for enhanced transparency rules including notification for when an anti-dumping or countervailing duty investigation has been launched, as well as any preliminary positive determination from such an investigation (Articles 7.7–7.9). Under the Chapter, Korea and New Zealand have also confirmed in the interests of transparency, existing practices affecting the implementation of the WTO Agreement on Anti-Dumping.

The Chapter establishes a bilateral transitional safeguard mechanism which is available to both New Zealand and Korea (Article 7.2). Through this mechanism, either country can temporarily suspend tariff reductions or increase the tariff rate if there have been increased imports 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. The measures only apply for a limited period of up to two years, which may be extended by one year. At the end of the period during which the safeguard measure applies, the tariff returns to the rate that would have applied had the safeguard measure never been applied. The mechanism will apply for up to five years after phase-out period for any tariff.

A full investigation is required to prove whether serious injury has, or is likely to occur, before the safeguard can normally be applied. A provisional safeguard measure (for up to 200 days) may also apply in limited circumstances before an investigation has been completed, however, if it is found after the investigation that the measure should not have been applied, the country that applied the measure must promptly refund the higher tariff rates paid under any provisional measure (Articles 7.3–7.5).

5.8 Cross-Border Trade in Services

The FTA seeks to facilitate the expansion of cross-border trade in services, improve the efficiency and transparency of the Parties' service sectors and work towards progressive liberalisation. The FTA also recognises each Party's right to regulate and introduce new regulations and to provide and fund public services, in a manner that gives due respect to government policy objectives. The Chapter excludes services supplied in the exercise of government authority, government procurement and financial services.

Subject to reservations or exceptions in the services and investment schedules (see NIA sections 5.23 and 5.24), the FTA establishes the following general obligations:

- **National treatment:** where applicable, Korean services and service suppliers operating in New Zealand are entitled to non-discriminatory treatment compared to domestic services and service suppliers;
- **Most-favoured-nation treatment (MFN):** where applicable, Korean services and service suppliers operating in New Zealand are entitled to non-discriminatory treatment compared with services and service suppliers of a non-party "in like circumstances". This means that Korean service suppliers receive the benefits of any better treatment which New Zealand provides to service suppliers of other countries, subject to certain reservations and exceptions (for example, better treatment of service suppliers under an existing trade agreement would not have to be extended to Korean service suppliers);
- **Market access:** where applicable, Korean service suppliers wishing to operate in New Zealand are entitled to access the market without limitation on the number of service suppliers, value of the service transaction, number of service operators, total quantity of service output, total number of persons employed in a service sector or that a service supplier may employ, or the type of legal entity or joint venture which a service supplier may provide a service; and
- **Local presence:** in most cases New Zealand cannot require a Korean service supplier to establish a local presence (for example, set up a representative office) or be a resident, as a condition for supplying their service in New Zealand.

New Zealand's market access, national treatment, local presence and MFN treatment commitments in the FTA go beyond New Zealand's existing WTO commitments. However, none of these new commitments go beyond New Zealand's current regulatory environment or policy settings.

The commitments are supplemented by provisions to ensure that domestic regulation is administered in a reasonable, objective and impartial manner in order to avoid unnecessary technical barriers to trade, and by provisions to encourage recognition of professional qualifications and registration.

5.9 Temporary Entry of Business Persons

There is a requirement that applications for immigration formalities are processed expeditiously and that any fees imposed for the processing of an immigration formality must be reasonable and based on the approximate cost of services rendered.

Each Party under the FTA makes specific commitments relating to the movement of business persons. New Zealand's schedule is consistent with current New Zealand policy settings and contains the following commitments on the temporary entry and duration of stay for particular categories of business persons on the following basis:

- business visitors for a period not exceeding in aggregate three months in any calendar year;
- intra-corporate transferees for a period of initial stay up to a maximum of three years for senior managers (provided they have been employed by their employer for at least 12 months prior to their proposed transfer to New Zealand) and specialists;
- installers or servicers for periods not exceeding three months in any 12-month period; and
- independent professionals, subject to economic needs tests, and restricted to those services sectors specified in New Zealand's GATS commitments, for a period up to a maximum of 12 months.

5.10 Investment

The investment rules in the FTA are designed to facilitate and protect investments. Subject to specific reservations or exceptions in the services and investment schedules of the FTA (refer to Sections 5.23 and 5.24), the following rules that will facilitate investment flows have been included:

- **National treatment:** Investors and investments are entitled to non-discriminatory treatment compared to domestic investors and investments in a Party "in like circumstances" (Article 10.5);
- **Most-favoured-nation treatment (MFN):** Investors and investments are entitled to non-discriminatory treatment compared to other foreign investors and investments "in like circumstances". This means for instance that New Zealand investors receive the benefits of any better treatment which Korea provides to other foreign investors, subject to certain reservations and exceptions (Article 10.6);
- **Performance requirements:** Investors and investments may not be subject to a range of trade and investment distorting performance requirements, such as requirements to purchase goods produced in a Party or to tie domestic sales to export earnings (Article 10.11); and

- **Senior management and boards of directors:** Requirements may not be imposed on investors to appoint persons of a particular nationality to senior management positions, or to impose nationality or residency requirements on a company's board of directors which would impair the ability to exercise control over its investment (Article 10.12).

These are supplemented by rules designed to protect investors and investments from conduct to which investors in foreign countries can be exposed:

- **Transfers:** Limitations on the circumstances in which restrictions can be imposed on the transfer of capital (Article 10.10);
- **Expropriation and compensation:** A Party can only expropriate or nationalise an investor's property for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, do not constitute indirect expropriation (Article 10.9); and
- **Minimum standard of treatment:** Investments must be treated in accordance with the customary international law minimum standard of treatment which requires fair and equitable treatment and the provision of full protection and security (Article 10.7).

The Chapter also includes a mechanism which can be used by investors for the settlement of disputes arising under the Chapter with Korea (Section B). The scope of ISDS provisions in the FTA do not go beyond those established under New Zealand's concluded trade agreements, and standard safeguards and limitations have been built in, such as:

- an investor must firstly enter consultations with the State for at least six months before a claim may be brought;
- frivolous claims can be challenged and thrown out at an early stage of arbitration;
- an investor may only bring a claim for an alleged breach of the obligations of the Investment Chapter;
- provisions in the Investment Chapter explicitly refer to the protection of legitimate public welfare measures, such as public health, safety and the environment;
- a decision by the State to refuse foreign investment may not be challenged;
- a State may call on the Joint Commission to issue a binding interpretation on any aspect of the FTA to direct a tribunal's deliberations;
- hearings will be open to the public and tribunals have the authority to accept *amicus curiae* submissions; and
- arbitral awards are limited to the actual loss or damage incurred by the investor, and no punitive damages may be awarded.

5.11 Intellectual Property Rights

The Chapter on Intellectual Property Rights (IP) reinforces commitments Korea and New Zealand have made under the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) (Article 11.3). It builds on TRIPS with provisions for the protection and enforcement of copyright and trade-marks (Articles 11.4 and 11.5).

Korea and New Zealand have committed to accord national treatment in relation to the protection of IP, with some exceptions provided that such exceptions take account of the legitimate interests of the owner of the trade-mark and of third parties. Korea and New Zealand have agreed to specific commitments on trade-marks, copyright, and enforcement (Articles 11.4–11.6).

Each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore provided that such measures are consistent with a Party's international obligations (Article 11.10).

The Chapter also provides mechanisms for the exchange of information on IP, to undertake co-operative activities and to discuss and resolve any IP issues arising within the scope of this Chapter (Articles 11.7–11.9 and 11.11).

5.12 Competition and Consumer Policy

New Zealand and Korea have committed to applying their competition laws to all forms of business activity (Article 12.1). The Parties have agreed to maintain competition laws proscribing anti-competitive business conduct, including anti-competitive agreements, abuse of market power and anti-competitive mergers. These laws and their enforcement are to be consistent with the principles of transparency, non-discrimination, comprehensiveness and procedural fairness. Both Parties have also agreed to maintain an authority or authorities responsible for the enforcement of its competition laws. Any exemptions provided under a Party's competition laws must be transparent and undertaken on the grounds of public policy or public interest (Article 12.3).

The Parties have agreed to co-operate in the enforcement of their respective competition laws and policy, including through notification and information exchange (Articles 12.4–12.6) and may engage in technical co-operation activities (Article 12.7). The Parties are, at the request of either Party, to enter into consultations on any competition-related issue adversely affecting trade or investment between Parties (Article 12.6).

The Parties have agreed to co-operate in the enforcement of their consumer protection laws and to provide protection in their territories from deceptive practices or the use of false or misleading descriptions in trade. Each Party is to provide the legal means to prevent the sale of products which are labelled in a manner which is false, deceptive or misleading or is likely to create an erroneous impression about the product (Article 12.9).

The Competition and Consumer Policy Chapter is not subject to the FTA's dispute settlement mechanism (Article 12.10).

5.13 Government Procurement

The Government Procurement Chapter establishes an agreed framework of rights and obligations relating to government procurement. These are constructed around the fundamental commitments to open, competitive and non-discriminatory access to government contracting opportunities and include agreed minimum procedural standards based on fairness and transparency.

The approach in the Chapter is fully aligned to previous government procurement chapters in New Zealand's trade agreements, the WTO Agreement on Government Procurement (to which Korea is a party and New Zealand is in the process of acceding to) and to New Zealand's government procurement policy and practice.

Both parties have committed central government entities only (Article 13.3). The value thresholds (contract value at which the commitments must be applied) are 130,000 Special Drawing Rights (SDRs) (equivalent to approximately NZ\$246,000) for goods and services and 5,000,000 SDRs (equivalent to approximately NZ\$9,400,000) for construction services (including private public partnerships).

5.14 Agriculture, Forestry and Fisheries Co-operation

The Agriculture, Forestry and Fisheries Co-operation Chapter builds on existing co-operation arrangements and provides a vehicle for ongoing dialogue and information exchange between the Parties that is aimed at strengthening the trade and economic relationship in the agriculture, forestry and fisheries sectors, and advancing closer collaboration in areas of mutual interest (Article 14.1).

The Chapter establishes a mechanism for on-going dialogue, co-operation and information exchange related to agriculture, forestry, and fisheries (Articles 14.4–14.6). It is intended to supplement existing government-to-government arrangements by providing a single platform for all co-operative discussions and activities related to agriculture, forestry and fisheries. It aims to advance closer collaboration, promote understanding and strengthen the trade and economic relationship.

Similar to other FTA co-operation chapters New Zealand has negotiated, this one envisages a regular Committee meeting between the Parties (Article 14.8). It also includes provision for separate consultations if export prohibitions or restrictions cause the importing country food security concerns (Article 14.7).

5.14.1 Arrangement between the Government of New Zealand and the Government of the Republic of Korea on Agriculture, Forestry and Fisheries Co-Operation

Alongside the FTA, New Zealand has also agreed that specific co-operative activities will occur in addition to regular dialogue and information sharing between officials. These activities are set out in a separate Implementing Arrangement and have been agreed in advance in order to allow for implementation as soon as possible after the FTA enters into force. The activities include: English language training for school students from rural and fishing communities; scholarships to study in the agriculture, forestry and fisheries fields; and disease risk analysis training. The cost of activities will be shared equally between the two countries.

5.15 Labour

The objectives of the FTA Labour Chapter include the promotion of improved working conditions and living standards within the Parties' countries; the protection, enhancement and enforcement of basic workers' rights; and the promotion of better understanding and improved labour capacity and capability through co-operation and dialogue (Article 15.1).

The Parties reaffirm their obligations as members of the ILO and their commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work* (Article 15.2).

The Parties agree not to use their labour laws, regulations, policies or practices for trade protectionist purposes. They also agree that they will not fail to effectively enforce their labour laws, or waive or derogate from their laws or regulations in a manner affecting trade or investment between them. The Parties recognise that each Party retains the right to exercise discretion with respect to the distribution of enforcement resources and to make decisions regarding the allocation of resources to enforcement (Article 15.2).

In addition, the Chapter obliges the Parties to ensure fair, transparent, accessible and equitable labour institutions and processes for labour administration and enforcement, and the promotion of public awareness of labour laws and labour issues.

Each Party is required to designate contact points to facilitate communication and coordination between the Parties on labour matters, and a Labour Committee, which includes senior officials, is also established to oversee the implementation of the chapter (Article 15.4).

The Chapter provides for the Parties to co-operate on matters of common interest. Unions, employers or other bodies may be involved in the selection of and participation in co-operative activities.

Co-operative activities can occur through a variety of means, including exchanges of information and/or expert delegations or study visits, joint projects, studies and reports, conferences, seminars, workshops, or co-operation within international for a, such as the ILO. Any co-operative activities agreed to must take into consideration each Party's labour priorities and needs as well as the resources available (Article 15.6).

The dispute settlement provisions of Chapter 19 of the FTA do not apply to the Labour Chapter. In the event that an issue arises between the Parties over any matter relating to the Chapter, there is a process for consultation through which the Parties can work towards resolving their issues (Article 15.5).

5.16 Environment

The objectives of the Environment Chapter include the promotion of an integrated approach to sustainable development; promotion of sound environment policies to achieve a high level of environmental protection and the sustainable management of natural and infrastructure resources; promotion of trade and investment opportunities for environmental goods and services; improved capacity and capability to address trade-related environmental issues; and a better understanding of each Party's environmental management systems (Article 16.1).

The Parties agree to promote public awareness of their environmental laws, regulations, policies and practices domestically, and ensure that the processes and institutions for the operation and enforcement of its environmental laws and regulations are fair, equitable and transparent. The Parties agree not to use their environmental laws, regulations, policies or practices for trade protectionist purposes. They also agree that they will not fail to effectively enforce their environmental laws, or waive or derogate from their laws or regulations in a manner affecting trade or investment between them (Article 16.2).

Each Party respects the right of the other to establish its own policies and national priorities, and to adopt, modify, administer and enforce its own environmental laws, regulations, policies and practices according to its priorities. The Parties undertake to ensure that their laws and policies provide for and encourage high levels of environmental protection and promote the sustainable management of natural and infrastructure resources, and to ensure their environmental laws, regulations, policies and practices are consistent with and effectively implement their international commitments on environmental protection, including those established by multilateral environmental agreements (Article 16.2).

Recognising the value and importance of trade and investment in environmental goods and services, the Parties resolve to make efforts to facilitate and promote trade and investment in environmental goods and services, including environmental technologies, renewable-energy, and energy-efficient goods (Articles 16.1 and 16.2).

Each Party is required to designate contact points to facilitate communication and coordination between the Parties on environmental matters. An Environment Committee of senior officials is also established to discuss matters of common interest and oversee the implementation of the Chapter (Article 16.7).

The Chapter provides for the Parties to co-operate on matters of common interest. Non-government sectors and organisations may be involved in the selection of and participation in co-operative activities (Article 16.8 and Annex 16-A).

Co-operative activities can occur through a variety of means, including exchanges of information and/or expert delegations or study visits, joint projects, studies and reports, conferences, seminars, workshops, or co-operation within international fora, such as the WTO, the Organisation for Economic Co-operation and Development (OECD), and the United Nations Environment Programme (UNEP). Any co-operative activities must take into consideration each Party's environmental priorities and needs as well as the resources available (Article 16.8 and Annex 16-A).

The dispute settlement provisions of the FTA do not apply to the Environment Chapter. In the event that an issue arises between the Parties over any matter relating to the Chapter, there is a process of consultation within set timeframes where the Parties can work towards resolving their issues (Article 16.9).

5.17 Transparency

The FTA's Transparency Chapter contains obligations that ensure that each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application (Article 17.2). Each Party commits to providing impartial administrative proceedings and reviews and appeals in accordance with its law (Articles 17.3 and 17.4). The FTA provides for notification should any proposed or actual measure materially affect the operation of the FTA or substantially affect the other Party's interests (Article 17.5).

5.18 Institutional Provisions

The FTA's Institutional Provisions Chapter sets out how the implementation of the FTA will be overseen by a Joint Commission comprising of delegates from the Republic of Korea and New Zealand. The Joint Commission will review the implementation and operation of the FTA; supervise the work of all the FTA committees and working groups; and consider any other matters in relation to the FTA's operation (Article 18.2). The Joint Commission may also consider any proposal to amend or modify the FTA, issue interpretations of the provisions of the FTA and explore ways to enhance further trade and investment between the Parties (Article 18.2).

The Joint Commission is to meet within a year of EIF and annually thereafter or as mutually agreed by the Parties (Article 18.3). Each Party shall designate a Contact Point

or Points to facilitate communications between the Parties on any matter covered by the FTA (Article 18.4).

5.19 Dispute Settlement

The Dispute Settlement Chapter provides a mechanism for the resolution of disputes between the Republic of Korea and New Zealand arising under the FTA. The dispute settlement mechanism provides effective, efficient and transparent processes to settle any disputes with a focus on co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of the FTA.

This ensures that New Zealand is able to pursue a matter to arbitration should it consider that Korea has not acted in accordance with obligations under the FTA. Conversely, New Zealand may also be held to account if the Republic of Korea considers that New Zealand has not fulfilled its obligations.

Each Party must allow adequate opportunity for consultation to resolve any disputes (Article 19.6) and may agree to alternative dispute resolution through good offices, conciliation or mediation (Article 19.7). The Chapter also allows for Parties to select the WTO or any other dispute settlement mechanism in any other agreement to which both Parties are party as a forum for dispute settlement, rather than the FTA dispute settlement process, but once that selection is made the Parties must stick to their choice of forum (Article 19.4). If the FTA mechanism is chosen, the Chapter sets out a process for the establishment of an arbitration panel, its functions, proceedings, termination of proceedings and reports (Articles 19.8–19.12). The model rules of the arbitration panel (Annex 19.A) set out the procedures for the conduct of the panel including in relation to its operation and hearings. Parties must comply with the findings and rulings of the arbitration panel (Article 19.13) and in cases of non-compliance the complaining Party will be able to suspend the benefits of the FTA after following the procedures set out in Article 19.15. The Chapter provides for recourse to the original panel, if possible, if there are disagreements between the Parties over the time taken to implement the findings and rulings of the arbitration panel (Article 19.14), the suspension of benefits (Article 19.15), and over the continued FTA consistency of the measures taken to comply with the findings and rulings of the arbitration panel (Article 19.16).

5.20 General Provisions and Exceptions

Provided that such measures are not used for disguised trade protectionist purposes, the FTA will not prevent New Zealand from taking measures (including environmental measures) necessary to protect human, animal or plant life or health (Article 20.1). This also applies to measures relating to the conservation of living and non-living exhaustible natural resources, to prevent the adoption or enforcement by a Party of measures necessary to protect that Party's works or specific sites of historical or archaeological value, or to support creative arts of significant value to that Party (Article 20.1). The FTA will also not prevent New Zealand from taking any actions necessary to protect its

essential security interests (Article 20.2), or to respond to a serious balance of payments, external financial difficulties, or serious difficulties relating to the operation of monetary policy or exchange rate policy (Article 20.3).

The FTA will not prevent New Zealand from taking measures for prudential reasons, including for the protection of investors and others owed a fiduciary duty by a financial service supplier, or to ensure the integrity and stability of the financial system (Article 20.4).

The FTA will have limited application with respect to taxation measures. In general, where taxation measures are covered by the WTO Agreement, the FTA obligations will also apply. Expropriation obligations will generally not be applicable to legitimate taxation measures (Annex 10-B). Furthermore, nothing in the FTA will affect the rights and obligations of the Parties under any tax convention such as a double taxation agreement in force between the Parties (Article 20.5).

Provided that such measures are not used for disguised protectionist purposes, there is also a general exception to ensure that the FTA will not prevent New Zealand from adopting measures necessary to fulfil its obligations to Māori under the Treaty of Waitangi (Article 20.6). This exception is the same as that applied in previous trade agreements New Zealand has concluded.

5.21 Final Provisions

The FTA shall enter into force 30 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on such other date as the Parties may agree in writing (Article 21.2) and may be terminated by written notification by either Party (Article 21.3).

The Parties may agree, in writing, to amend the FTA (Article 21.4) and the FTA is open to accession or association, by any member of the WTO, or by any other State or separate customs territory if agreed between the Parties (Article 21.5).

5.22 Cross-Border Trade in Services and Investment Market Access

The Cross-Border Trade in Services and Investment joint schedule is split into two parts, Annex I and Annex II. Annex I sets out existing measures (laws, regulations, decisions, practices and procedures) that New Zealand reserves the right to maintain in their present form, and which currently restrict the access of foreign service suppliers or investors; or may discriminate in favour domestic service suppliers or investors over foreign ones. These existing measures are subject to a "ratchet" clause. This means that New Zealand has committed to automatically bind under the FTA any future autonomous liberalisation of the measures. If in future a less discriminatory or trade-

restrictive measure replaces the existing measures listed in Annex I to Korea, a more discriminatory or restrictive measure cannot then be re-imposed on Korean service suppliers or investors – even if the measure is repealed or made more restrictive in the future for service suppliers or investors from other countries.

Annex II lists reservations for sectors and activities where New Zealand has reserved the right to maintain existing discriminatory measures and/or to adopt new or more discriminatory measures in future. These sectors and activities are exempted from any or all of the market access, national treatment, MFN treatment, senior management and boards of directors, performance requirements and/or local presence obligations. The “ratchet” clause does not apply to any measure covered by Annex II.

Of note, New Zealand screens all inward investment in significant business assets above NZ\$100 million, sensitive land and fishing quota under the Overseas Investment Act 2005. The current operation of the Overseas Investment Act is not impacted by the FTA; however New Zealand has committed not to reduce the significant business assets screening threshold below NZ\$50 million in the future for Korean investors.

5.23 Annex I Investment and Services Non-conforming Measures

New Zealand’s Annex I reservations include existing:

- financial reporting requirements on foreign companies;
- restrictions on registration of patent attorneys;
- limitations and obligations related to herd testing data and investment in the Livestock Improvement Corporation under the Dairy Industry Restructuring Act 2001;
- restrictions on Chorus shareholding;
- limitations on the acquisition of licences or management rights to use the radio frequency spectrum;
- marketing and distribution services relating to certain statutory marketing organisations;
- licensing of air transport enterprises of the purpose of providing international air services as a New Zealand airline; and
- restrictions on Air New Zealand shareholding.

5.24 Annex II Investment and Services Non-conforming Measures

In Annex II New Zealand reserves the right to adopt or maintain any measure relating to:

- the provision of public law enforcement and correctional services;

- social services established for a public purpose covering childcare, health, income security and insurance, public education, public housing, public training, public transport, public utilities, social security and insurance and social welfare;
- water, including the allocation, collection, treatment and distribution of drinking water;
- the sale and devolution of state-owned enterprises and assets;
- New Zealand's overseas screening regime (with a commitment not to lower the threshold for screening of investment in significant business assets below NZ\$50 million);
- existing bilateral or multilateral agreements (such as the Australia/New Zealand Closer Economic Relationship or CER), expansion of existing agreements, and any future negotiations relating to aviation, fisheries and maritime matters;
- protected areas (including land and water) set up for heritage management purposes, public recreation, and scenery preservation, and species owned or protected under enactments by the Crown;
- animal welfare, and the preservation of plant, animal and human life and health and in particular food safety of domestic and exported food, animal feeds, food standards, biosecurity, biodiversity, and certification of the plant or animal health status of goods;
- measures in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and issuance of maritime concessions in the continental shelf;
- provision of publicly funded legal services;
- provision of firefighting services, excluding aerial firefighting services;
- research and development services carried out by publically-funded tertiary institutions or Crown research institutes for public purpose and testing and analysis services;
- scientific and technical testing and analysis services;
- fishing, aquaculture and related services;
- nuclear energy;
- services incidental to mining;
- immigration services;
- postal services;
- preferential co-production arrangements for film and television productions;
- promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films;

- the holding of shares in the co-operative dairy company arising from the amalgamation under the Dairy Industry Restructuring Act 2001;
- export marketing of fresh kiwifruit under the Kiwifruit Industry Restructuring Act 1999;
- quota allocation schemes for export products and implementation of export marketing plans;
- educational terms and titles;
- adoption services, hospital services, maternity and midwife services;
- gambling, betting and prostitution services;
- cultural heritage of national value; public archives; library and museum services; and services for the preservation of historical or sacred sites or historical buildings;
- maritime and port services;
- public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages; and
- services market access commitments (with a commitment to New Zealand's existing WTO GATS obligations and additional commitments on integrated engineering services, maintenance and repair of office equipment services, photographic services, duplicating services and convention agency services).

New Zealand's commitments in respect of services go beyond New Zealand's commitments under the WTO General Agreement on Trade in Services (GATS). However both services and investment commitments are consistent with existing policy settings, and commitments made in other trade agreements adopting a negative list format that New Zealand has entered into.

5.25 Annex III Agreement between New Zealand and the Republic of Korea Concerning Audio-Visual Co-Production

The Audio-Visual Co-Production Annex provides for official co-production films and television programmes between the Parties to be recognised as domestic productions and fully entitled to the benefits available to domestic productions. This Annex sets out the process for approval of projects, contribution and participation requirements (Articles 3, 4, and 6), and also provides for the approval of co-productions involving non-Parties (Article 5). It also sets out requirements in relation to production, location filming, language, acknowledgments and credits (Articles 7–10). For the purpose of making or promoting a co-production film or television programme, each Party undertakes to permit natural persons of the Parties and co-producing non-Parties to enter and remain in their jurisdiction (Article 11) and there is also provision, in accordance with legislation, for technical equipment to enter temporarily, free of import duties and taxes, for the making of official co-productions (Article 12). The Annex is an integral part of the FTA, however the dispute settlement provisions of Chapter 19 will not apply to the Annex.

5.26 Temporary Employment Entry; Primary Sector Training Visa; and Working Holiday Scheme Arrangements

In conjunction with the FTA negotiations, but not as part of the FTA itself, New Zealand has agreed to enter into new Arrangements of less-than-treaty status on Temporary Employment Entry (TEE) and Primary Sector Training Visas (PSTV), and updated our existing Working Holiday Scheme (WHS) Arrangement with Korea.

5.26.1 Working Holiday Scheme

New Zealand will increase the number of Korean working holiday makers that can enter New Zealand under the Korea-New Zealand WHS from 1,800 to 3,000 per year; extend the total length of time Korean WHS visa holders are able to undertake study in New Zealand from three to six months, and remove the current three month time limit on Korean WHS visa holders working for a single employer.

The increased numbers of potential students and additional flexibility around study will benefit New Zealand education providers, with Korea already a top source country for international students.

New Zealand tourism businesses will benefit from increased expenditure by a larger number of Korea WHS visa holders travelling and holidaying in New Zealand.

Increased numbers of WHS visa holders will also deliver a positive net contribution to the wider New Zealand economy, as well as strengthening people-to-people links between New Zealand and Korea.

The lifting of restrictions on time working with a single employer (though restrictions against permanent employment remain) will help to facilitate Korean WHS visa holders taking up casual employment and will benefit New Zealand employers looking to WHS visa holders to fill labour shortages.

The restriction against permanent employment is specifically designed to mitigate any potential negative impacts on New Zealand permanent employment. The potential impact on short-term employment is also assessed as limited, because available data indicates that Korean WHS visa holders spend proportionally more time studying or holidaying than working, compared to WHS visa holders from other countries.

5.26.2 Temporary Employment Entry

The TEE Arrangement is for a total of up to 200 skilled workers from Korea to enter New Zealand for up to three years. Entrants under the scheme must have a *bona fide* job offer in New Zealand and appropriate qualifications and registration to enter under one of a specified list of occupations in which New Zealand has an identified long term skills

shortage (e.g. Engineering); or one of several iconic Korea-specific occupations (e.g. Traditional Korean Medicine). Although involving only very limited numbers, this Arrangement may assist in easing labour shortages in identified skill shortage areas; and for iconic occupations may increase New Zealand's cultural links to and understanding of Korea while meeting any unsatisfied demand for Korea-specific skillsets.

The conditions attached to the TEE Arrangement – including the limitation on numbers, skill level requirements and the requirement that the jobs meet New Zealand labour market conditions – are specifically designed to mitigate any potential negative impacts on New Zealand employment.

5.26.3 Primary Sector Training Visa

New Zealand has agreed to allow up to 50 Korean nationals to enter New Zealand for up to one year to undertake a mixture of primary sector-relevant training and related work experience under a new PSTV scheme. The trainees must be approved by the Korean government and must be already studying or working in the field in which they want to undertake training in New Zealand. The programme is based on a successful pilot programme with Chile. It demonstrates New Zealand's willingness to work constructively with Korea to share New Zealand expertise in the agricultural and horticultural sectors, in support of the increased agricultural export market access opportunities New Zealand has secured in the FTA. It will also benefit the selected New Zealand training providers and may generate a small positive contribution to the rural economies where the trainees are located.

The conditions attached to the PSTV scheme; including the limitation on numbers, requirement for a minimum 12 weeks study with an approved training provider, and requirement that the work-experience jobs arranged by the training provider meet New Zealand labour market conditions are specifically designed to mitigate any potential negative impacts on New Zealand employment.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

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

The following changes have been identified as being required:

- an amendment to the Tariff Act 1988 to provide for the transitional safeguard mechanism under the Trade Remedies Chapter;
- an amendment to the Tariff Act 1988, and an Order in Council, to amend the Tariff in order for preferential tariff rates to be applied to Korea; and
- an amendment to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules for goods imported from Korea.

Cabinet has agreed that the Tariff (Free Trade Agreement between New Zealand and the Republic of Korea) Amendment Bill be included in the 2015 legislative programme as a category 2 Bill (must be passed in 2015). The Bill and the relevant regulations are expected to be passed in the third quarter of 2015 to allow entry into force of the FTA.

7 Economic, social, cultural and environmental costs and effects of the treaty action

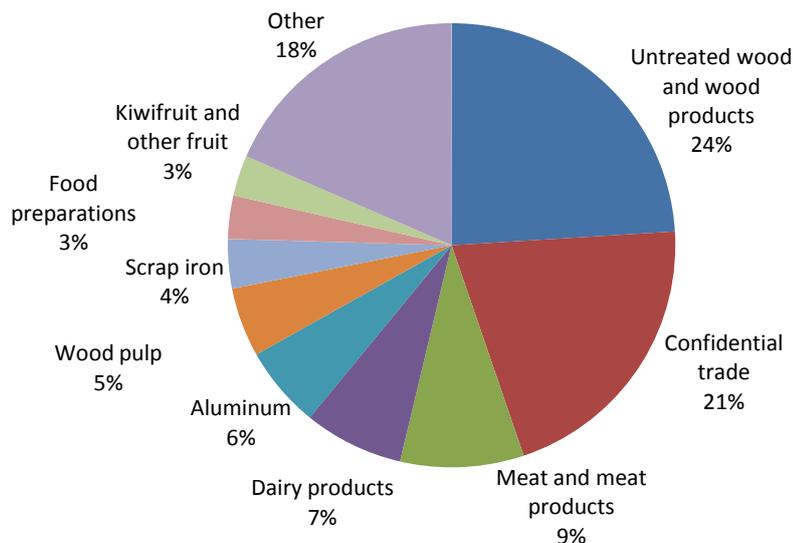
7.1 Economic effects

7.1.1 New Zealand exports to Korea

Korea is New Zealand's sixth largest export destination, taking more than NZ\$2 billion of New Zealand exported goods and services in the year to June 2014. The value of New Zealand imports from Korea is also about NZ\$2 billion, making Korea New Zealand's eighth largest source of imports.

New Zealand exported NZ\$1.65 billion of goods to Korea in the year to June 2014, slightly over three percent of all New Zealand merchandise exports. Almost 80 percent of this merchandise trade is captured in nine categories (See Chart 1). Wood meat and dairy exports were worth almost 40 percent of the total value of New Zealand 2014 goods exports to Korea.

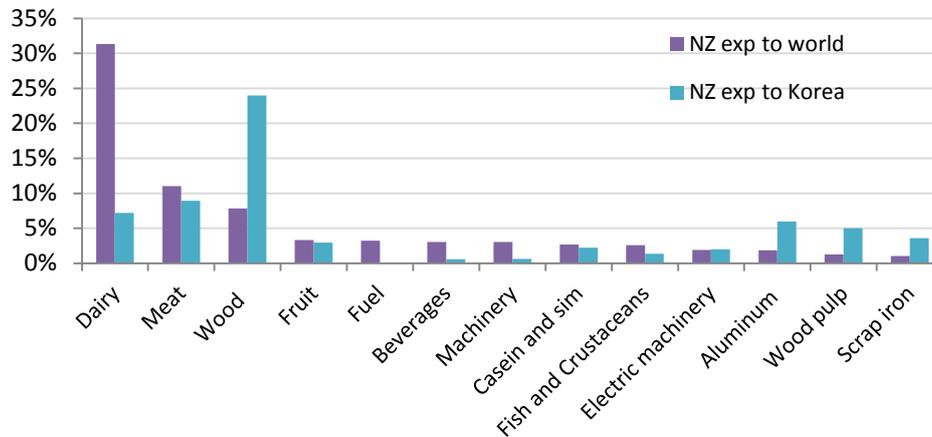
Chart 1: New Zealand's merchandise exports to Korea



Data from Global Trade Atlas; NZ\$ million; Year to June 2014

New Zealand generally exports a different mix of goods to Korea than it does to the world as a whole. This reflects in part commercial drivers and opportunities. Korea is one of a small number of markets that imports aluminium from New Zealand for example. Furthermore, the different mix of goods consumed by Korea relative to other countries highlights where there are barriers to New Zealand exports. For example New Zealand dairy products are highly valued in Korea, but face high tariffs.

Chart 2: New Zealand's most valuable merchandise exports to the World relative to Korea



Data from Global Trade Atlas; Year to June 2014

7.1.2 Why New Zealand wants a Free Trade Agreement with Korea

As highlighted above, Korea is a very valuable market for New Zealand exports, and an important source of New Zealand's imported goods and services. Korea is one of New Zealand's key markets for wood and wood products, aluminium, kiwifruit, beef, and some cheeses. Korea is an important market in its own right but also provides a means for diversifying trade, and hence reducing the risk associated with exporting to a small number of countries.

Korea and New Zealand are natural trading partners in respect of relative competitive advantages. New Zealand is a very efficient producer of agriculture and other primary products, whereas Korea is generally more efficient at manufacturing electronic equipment, motor vehicles and other machinery. New Zealand and Korea have a long history of trading and investing in each others markets. Korea is one of the wealthier Asian markets, and relatively speaking physically close to New Zealand. Macro-economic indicators highlight Korea as a stable and prosperous country with a large population (See Table 1).

Table 1: Macro indicators

	Korea	New Zealand
GDP per capita US\$	28,700	44,300
GDP expected growth (annual avg % to 2019)	3.9	2.6
Inflation annual %	0.8	0.8
Unemployment rate %	3.1	5.7
Population million	50.4	4.6

World Economic Outlook and Statistics New Zealand; Data for 2014

New Zealand-Korea bilateral trade is constrained by tariffs and other barriers to trade, many of which can potentially be addressed with a trade agreement. New Zealand products are competing for Korean market share with countries that already have trade agreements with Korea. For example, most Korean imported beef comes from the United States, Australia or New Zealand. The United States has a tariff preference through their 2012 FTA with Korea, and Australia's FTA with Korea entered into force in December 2014.

The trade data suggests that New Zealand is losing market share to countries with Korea FTAs. New Zealand traders will continue to struggle in Korea, with the United States and other competitors facing declining tariffs. Without an FTA, New Zealand's economic role and profile in Korea will decline with an inevitable impact on the bilateral relationship.

In 2003 Korea established a FTA roadmap and has entered into negotiations with key trading partners. Korean FTAs in force include:⁹

- Korea-Chile FTA - 1 April 2004
- Korea-Singapore FTA – 2 March 2006
- Korea-EFTA FTA (European Free Trade Association of Iceland, Liechtenstein, Norway and Switzerland) – 1 September 2006
- Korea-ASEAN FTA - 1 September 2009
- Korea-India CEPA – 1 January 2010
- Korea-European Union FTA –1 July 2011
- Korea-Peru FTA – 1 August 2011
- Korea-United States FTA – 15 March 2012
- Korea-Turkey FTA – 1 May 2013
- Korea-Australia FTA – 12 December 2014
- Korea-Canada FTA – 1 January 2015

There are several other Korean trade agreements yet to enter into force:

- Korea-Colombia FTA
- Korea-China FTA

⁹ http://www.mofa.go.kr/ENG/policy/fta/status/overview/index.jsp?menu=m_20_80_10

7.1.3 Goods trade

Bovine meat and offal

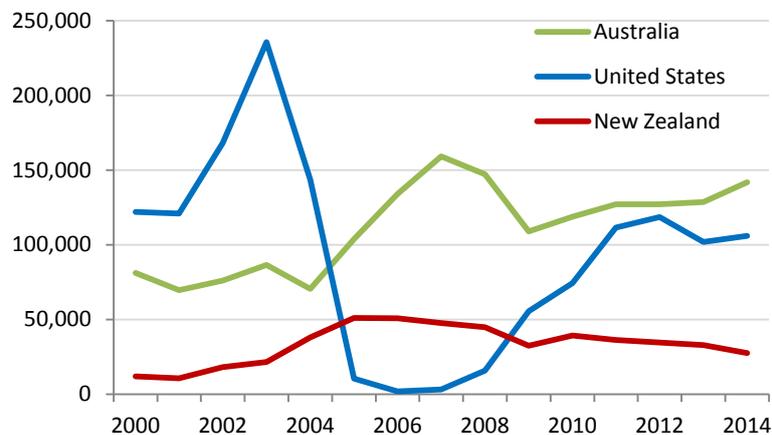
Korea is one of New Zealand's key export markets for bovine meat. In the year to June 2014 New Zealand exported frozen beef worth almost NZ\$120 million to Korea, and a further NZ\$20 million of edible offal. New Zealand's top three meat product exports alone accounted for almost eight percent of the value of New Zealand merchandise exports to Korea (see Table 2). Korea was New Zealand's largest market for beef with bone (HS 020220), our largest market for bovine offal (HS 020629), and our seventh biggest boneless beef market (HS 020230).

Table 2:

HS code	Product description	Share of NZ exp	MFN applied tariff	Value trade NZ\$
020220	Frozen bovine with bone	3.47	40.0	60.6
020230	Frozen bovine boneless	3.03	40.0	53.0
020629	Frozen offal bovine	1.13	18.0	19.8

New Zealand beef competes in Korea with product from the United States and Australia. The United States has an FTA with Korea and in 2015 an 11 percentage point tariff advantage over New Zealand exported beef. Korea's FTA with Australia entered into force in December 2014, and its FTA with Canada, another potential competitor for Korean market share, entered into force in January 2015.

Chart 3 SK imports of frozen beef and offal tonnes



Data from Global Trade Atlas; combined trade HS codes 0202, 0201, 02610 and 02629; June years

There was a short-lived increase in Korean beef and offal imports from New Zealand following the 2003 discovery of bovine spongiform encephalopathy (BSE) in North America. As illustrated in the chart, Korea beef imports from New Zealand have declined over the last five years, whereas Korean imports from both Australia and the US have grown on average since 2009. Without an FTA, New Zealand's ability to compete in the market will deteriorate further as tariff preferences on Australian and US trade expand.

On 1 January 2015, the tariff on Korean imports of frozen beef from the US reduced to 29.4 percent, making it 10.6 percentage points lower than the tariff facing product from New Zealand. Following EIF of the Korea-Australian FTA in December 2014, Australian beef has already had two phases of tariff elimination implemented, making it 5.2 percentage points lower than New Zealand beef. Each year that these agreements are in force, the tariff preference to Korean imports of American and Australian beef will increase relative to New Zealand's by 2.6 percentage points. This tariff preference will continue growing until the New Zealand-Korea FTA enters into force, at which stage it will be maintained for the phase out period (since New Zealand will receive the same tariff reductions as the United States and Australia).

The tariff phase out for offal for American and Australian exports also reduces over 15 years, but from a lower initial level of 18 percent.

Dairy products

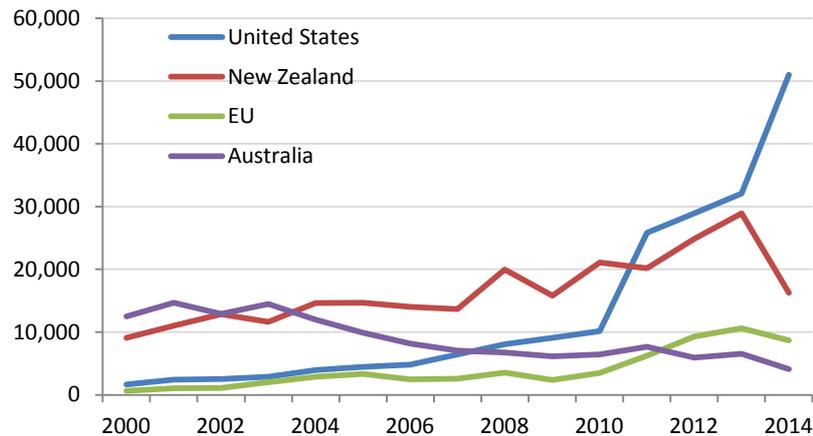
Korea is a relatively minor market for New Zealand dairy exports, taking less than one percent of New Zealand's total dairy exports in the year to June 2014. Korea is New Zealand's 23rd most important dairy market for HS04 tariff lines, behind eleven Asian markets, including Japan at number nine. Korea's income per capita and urbanisation levels suggest dairy trade should be significantly higher. The observed low levels of trade are very likely a result of high barriers on New Zealand dairy exports.

Slightly over five percent of New Zealand exports to Korea by value are cheeses and butter. A further 6.5 percent of New Zealand exports to Korea are food preparations, and ingredients derived from milk. See Table 3 for tariffs and the value of Korean imports from New Zealand of cheese and butter. Table 3 has the same information for Korean imports from New Zealand of food preparations, other processed dairy ingredients and infant formula.

Table 3:

HS code	Product description	Share of NZ exp	MFN applied tariff	Value trade NZ\$
040690	Cheese, cheddar and Colby	2.73	36.0	47.8
040610	Cheese whey and curd	2.01	36.0	35.1
040510	Butter	0.54	89.0	9.4

Data from Global Trade Atlas and WTO; Year to June 2014

Chart 4 SK imports of cheese and butter (tonnes)

Data from Global Trade Atlas; HS 040690, 040610 and 040510; Year to June 2014

Korean import data shows a dramatic increase in Korea cheese and butter imports from the United States immediately after the Korean-United States FTA entered into force in March 2012. American exports have recently been capturing all additional Korean import demand, and have eaten into import shares coming from competitor countries, primarily New Zealand's. The volume of Korean cheese and butter imports from America increased over 50 percent from 2013 to 2014, as the volume imported from New Zealand declined by 44 percent (June years). In New Zealand dollar terms the value of cheese and butter exports to Korea dropped by NZ\$53 million. New Zealand's competitive position will weaken further without an FTA with Korea.

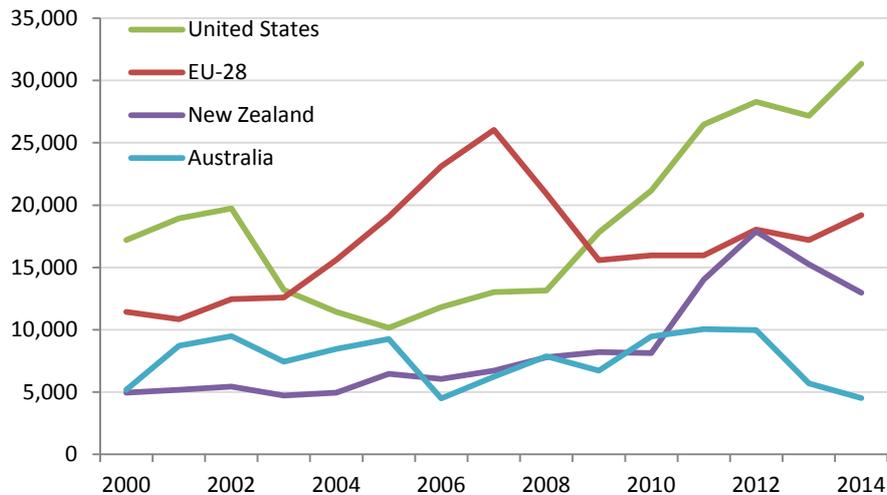
The Korean import tariff on American butter is declining by almost 9 percentage points per annum. Following four cuts (on EIF, 1 January 2013, 1 January 2014 and 1 January 2015) American butter is facing a tariff of 53.4 percent, relative to the 89 percent on New Zealand butter exports to Korea. American cheeses have a tariff preference of almost 10 percentage points.

On EIF of the Korea-Australia FTA, Australia received a tariff quota of 4,630 tonnes of cheese, with in-quota duty progressively eliminated. Australia also received a tariff quota of 113 tonnes for butter on EIF, with volumes growing at two per cent per annum, and in-quota tariffs eliminated over 15 years.

Table 4:

HS code	Product description	Share of NZ exp	MFN applied tariff	Value trade NZ\$
210690	Food preparations	3.29	Avg 76.8	57.6
350110	Casein	1.53	14.0	26.7
190110	Infant formula	1.16	40.0	20.3
350400	Peptones	0.53	8.0	9.3

Data from Global Trade Atlas and WTO; Year to June 2014

Chart 5 SK imports of casein and other derivatives (tonnes)

Data from Global Trade Atlas; HS 350110, 350400, 210690 and 190110; Year to June 2014

New Zealand exporters captured a larger share of the Korean market for casein and other derivatives in 2011 and 2012, with this share declining in 2013 and 2014. A growing tariff preference to United States exports over New Zealand product may see further reversal of these gains. As at November 2014 the United States had a tariff preference from 3.4 percentage points to 10.8 percentage points for the products listed in Table 4. This preference will expand each year until New Zealand's FTA with Korea enters into force.

As illustrated in Chart 5, China's share of Korean imports of the above products has expanded from 2011 volumes. The recently announced Korea-China FTA will possibly provide China exports with a tariff preference, threatening New Zealand markets share.

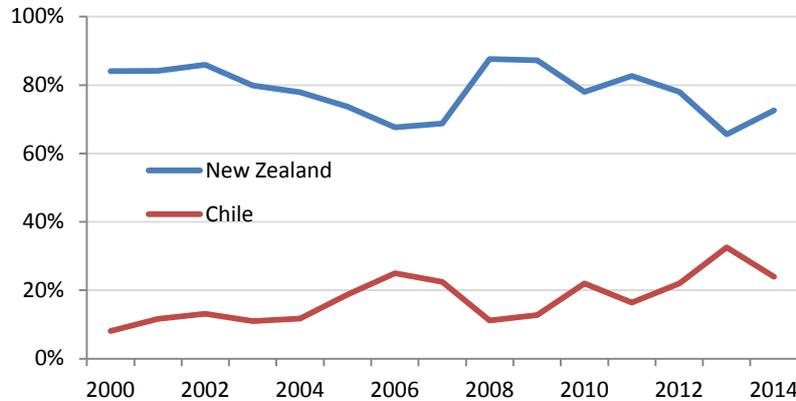
Kiwifruit

Korea is New Zealand's seventh largest market for exported kiwifruit (considering the European Union as one market). In the year to June 2014, about three percent of New Zealand kiwifruit exports by value were to Korea, down from over six percent in 2007.

Table 5: Kiwifruit

HS code	Product description	Share of NZ exp	MFN applied tariff	Value trade NZ\$
081050	Kiwifruit fresh	2.67	45.0	46.8

The only other country that exports kiwifruit to Korea in significant quantities is Chile. Chart 6 displays the shares of Korean imported kiwifruit from New Zealand and Korea. New Zealand's share has generally been contracting, and Chile's has been growing, since the 2004 Korea-Chile FTA. There is now no tariff on Korean imports of kiwifruit from Chile, whereas New Zealand fruit faces a tariff of 45 percent. Whereas New Zealand's higher quality kiwifruit can compete on quality with Chilean fruit, the tariff is making it difficult for New Zealand exporters to grow the market, or indeed market share.

Chart 6 SK imports of Kiwifruit (market share)

Data from Global Trade Atlas; HS 081050; Year to June 2014

Tables 1 to 5 capture almost a quarter of New Zealand exports to Korea by value. Another third of New Zealand exports are allowed into Korea duty-free, and a little less than 25 percent of exports face tariffs of 2 percent or less. The remaining 20 percent of exports by value are in a large number of lines and face a range of tariffs. Some sawn wood faces a tariff of five percent for example. New Zealand exported close to NZ\$15 million worth of pumpkins and squashes to Korea in the year ending June 2014. These face a tariff of 27 percent. Whereas the value of trade is much smaller for these products relative to meat and dairy products, they too will lose market share in Korea unless the New Zealand-Korea FTA is finalised.

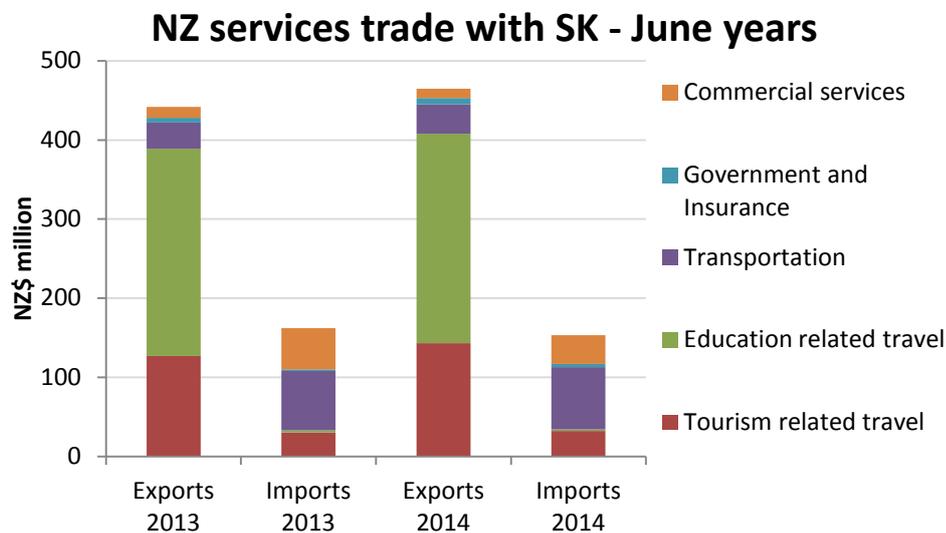
7.1.4 Services Trade

Table 6: New Zealand-Korea services trade by broad services categories

	Year ended June 2013	Year ended June 2014	Percentage change	\$ change
Total services exports	442	465	5%	23
Tourism related travel	127	143	13%	16
Education related travel	262	265	1%	3
Transportation	33	37	12%	4
Government and Insurance	6	8	33%	2
Commercial services	14	12	-14%	-2
Total services imports	162	152	-6%	-10
Tourism related travel	30	32	7%	2
Education related travel	3	2	-33%	-1
Transportation	75	79	5%	4
Government and Insurance	2	4	100%	2
Commercial services	52	36	-31%	-16

As displayed in the table, for the year ended June 2014, New Zealand total services exports to Korea were valued at NZ\$465 million – an increase of 5 percent or NZ\$23 million from the year to June 2013. Most of the growth was due to an increase in tourism related travel. This contrasts with New Zealand total service exports to all markets increasing by 3.7 percent to NZ\$16.9 billion, with most of the aggregate growth also coming from greater tourism export values.

New Zealand imported NZ\$152 million of services from Korea for the year ended June 2014 (an annual decline of 10 percent or NZ\$9 million). Commercial services and tourism are New Zealand's main service imports from Korea. For the year ending June 2014 New Zealand total services imports reached NZ\$15.5 billion, an annual increase of almost 2 percent.



14,400 New Zealand travellers visited Korea in the year ending June 2014 – an annual increase of 4.7 percent. The majority of New Zealanders visiting Korea were visiting friends and relatives.

For the year ended June 2014, 53,072 Koreans visited New Zealand – mostly for holiday/vacation purposes – an annual increase of 4.7 percent on the June 2013 year.

Over the 2013 calendar year, there were 8,452 students from Korea studying in New Zealand – making it New Zealand's fourth largest source of international students.

7.2 Social effects

Because of the net economic benefits of the FTA to New Zealand, the FTA is expected to have an overall net-benefit to New Zealand socially. It is not expected to have any discernible negative social effects. The following section examines potential effects on domestic employment, social regulation and immigration.

7.3 Employment

FTAs may have both positive and negative employment effects. Given that such agreements facilitate greater trade by removing or reducing trade barriers and distortions, the major negative effects can be expected to be found in industries previously protected by tariffs or other barriers to trade, which may find it difficult to compete with cheaper imports under an FTA. Positive employment effects, however, can be expected in industries likely to gain from increased export opportunities under the agreement and in areas of the economy where activity increases, either domestically or in exporting to third countries, as a result of cheaper imports available under the FTA.

Because New Zealand's tariffs on imports from Korea are low, the removal of these tariffs is unlikely to have a significant negative impact on employment in New Zealand. Conversely, it is expected that the FTA will result in an increase in New Zealand's net exports to Korea and will contribute to an increase in overall economic activity in New Zealand. That suggests that, in aggregate, the effect of the FTA on employment in New Zealand is likely to be modestly positive.

Import tariffs overall into New Zealand are already low. Tariffs are further reducing through the negotiation and implementation of FTAs. (This is also progressively diminishing any potential trade diversion issues.) While tariff removal may involve some adjustment costs in the form of reduced output and employment in affected industries, such adjustment is likely to be quite limited because industries are already exposed to, or should be preparing for, tariff-free competition through New Zealand's overall network of FTAs.

In conjunction with the FTA, New Zealand agreed further commitments for temporary entry by skilled Korean workers to New Zealand's employment market. As noted in section 5.25, the conditions attached to those commitments – including the limitation of numbers, specific skill and skill level requirements and the requirement as employees to observe New Zealand labour market conditions – are designed to avoid negative impacts on New Zealand employment.

The Working Holiday Scheme will also have positive social impact allowing young, skilled Koreans to engage in tourism and incidental employment in New Zealand. The benefits of this scheme should accord with those of similar schemes New Zealand provides.

This is the second trade agreement that New Zealand has negotiated that contains a dedicated chapter on trade and labour (the first being ANZTEC).

7.4 Social regulation

New Zealand's social regulation frameworks will not be affected by the FTA. In the area of trade in services, the FTA follows the structure of the GATS and therefore excludes services supplied in the exercise of government authority. Moreover, New Zealand has not made any commitments in respect of publicly provided services, such as public health, education, housing and social welfare.

7.5 Immigration

Outside the specific commitments entered into in respect of short-term entry, the FTA will not cause any changes in New Zealand's immigration policy. The promotion of trade and investment opportunities under the FTA and subsequent rise in New Zealand's profile in Korea may, however, encourage Korean interest in immigration to New Zealand (including by skilled migrants) and vice versa.

7.6 Cultural effects

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

The FTA incorporates the WTO General Agreement on Tariffs and Trade (GATT) Article XX exception (GATT Article XX (f)) that Parties may take measures necessary to protect national treasures or specific sites of historical or archaeological value, providing that such measures are not used for trade protectionist purposes (Article 20.1). The FTA elaborates further that Parties may take measures in support of creative arts of national value and that this may include a range of artistic activity, for example, theatre, dance and music, literature, indigenous traditional practice and digital interactive media (Article 20.1.3).

As with New Zealand's past FTAs, the FTA includes a Treaty of Waitangi exception (Article 20.6) which provides that nothing in the FTA prevents the New Zealand Government from taking any measure it deems necessary to accord more favourable treatment to Māori, through the fulfilment of its obligations under the Treaty of Waitangi provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on trade in goods and services. Furthermore, interpretation of the Treaty of Waitangi is not subject to the FTA's dispute settlement provisions.

The FTA also confirms that each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore, in accordance with its international obligations (Article 11.10).

The film and television co-production Annex likewise increases the scope for co-operation and collaboration between the New Zealand and Korean screen industries.

7.7 Environmental effects

The FTA includes a chapter on Environment (Chapter 16) – the second time such a chapter has been included in the body of a New Zealand trade agreement (the first being ANZTEC). New Zealand approached the FTA negotiations in the context of the 2001 Framework for Integrating Environment and Labour into FTAs to ensure that the objectives for trade and the environment are mutually supportive and serve the overarching goal of promoting sustainable development.

Given the links between trade and environment, trade agreements can affect sustainable development in a number of positive and negative ways, as outlined below.

7.8 Regulatory effects

Existing environmental policies and standards can, in principle, be affected by trade agreements. International experience related to these regulatory effects is that any potentially negative effects of trade agreements on such policies can be avoided through careful application of provisions in trade agreements. In particular, negotiations on trade agreements should be approached in a fashion that does not undermine the ability of governments to pursue appropriate and effective environmental policies.

The FTA, as with New Zealand's recent other trade agreements, does not inhibit the New Zealand government's ability to regulate for environmental protection. Its general exceptions are consistent with those provided for in international legislation (GATT and GATS). These exceptions apply across all aspects of the FTA, and allow both governments to introduce measures necessary to protect human, animal or plant life or health, and to conserve exhaustible natural resources, provided these measures are not applied in a manner that constitute an arbitrary or unjustifiable discrimination or a disguised restriction on trade or investment. The provisions on co-operation provide an avenue for enhanced dialogue and engagement on environmental matters.

The FTA will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in a discriminatory fashion. New Zealand has a suite of relevant existing legislation that is designed to address any potential adverse environmental outcomes of economic activity¹⁰. Voluntary initiatives such as the Clean Streams Accord

¹⁰ including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Ozone Layer Protection Act 1996, the Soil Conservation and Rivers Control Act 1941, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1996, the Forests Act 1949 (amended 1993), and the Wildlife Act 1953.

and the New Zealand Packaging Accord act alongside and support this legislative framework, and New Zealand also encourages multinational firms to promote environmental management systems through its support of the OECD's Guidelines on Multinational Enterprises.

7.9 Product effects

Trade liberalisation under the FTA is likely to lead to a change in the mix of products that New Zealand exports and imports. In the case of changes in the composition of New Zealand's imports that might arise from the FTA's trade liberalisation provisions, it is possible that there may be increased risks such as to bio-security. These risks, however, are similar to other FTAs that New Zealand has concluded. New Zealand's existing framework of environmental laws, regulations, policies and practices are specifically designed to manage such risks.

7.10 Structural effects

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

7.11 Scale effects

When economies expand, including as a result of trade liberalisation, there is a risk of increasing pollution levels and other environmental factors. This risk stems largely from the potential product and structural effects outlined above. However, this risk may be offset by the productivity improvements (and hence income gains) that are also associated with liberalisation. As a result of allocative efficiency gains, it may in fact be possible to produce more goods and services using the same amount of aggregate resources. Also, over time, technological improvements, which can be hastened by trade liberalisation and broader economic integration, are also likely to contribute to a more efficient use of natural resources.

Given New Zealand's existing environmental and resource management policy frameworks, and the provisions in the FTA to promote the liberalisation of trade in environmental goods and services and to promote capacity building on environmental issues, it is unlikely that scale effects resulting from the FTA would result in any environmental degradation. The FTA is therefore not expected to have any negative effects on the environment in New Zealand that cannot be managed using existing policy frameworks. Its provisions may encourage improved productivity in the use of natural resources.

8 The costs to New Zealand of compliance with the treaty

8.1 Tariff revenue

The FTA is only expected to have a minor impact on overall tariff revenue. In the year ending June 2014, the tariff revenue collected on imports from Korea was NZ\$4.2 million. As tariffs are phased out over time under the FTA, the New Zealand Customs Service will progressively collect less revenue from duty payments. The exact amount of duty collected will be influenced by the pattern of actual imports and the proportion that qualify for preference under the applicable rules of origin.

8.2 Costs to government agencies of implementing and complying with the FTA

The implementation of the FTA will have fiscal implications. Activities undertaken by government departments in support of these agreements are either expected to be funded within existing departmental baselines or, in cases where this is not possible, Cabinet approval for additional funding may be sought by the relevant department. The inter-agency Trade Negotiations Fund (TNF) has a funding pool available to provide departments with funding for “bedding-in” activities associated with the FTA, for a period of 18 months from the date of EIF of the FTA.

8.2.1 Promotion and Outreach Costs

One-off costs associated with implementing the FTA incurred in the 2014/2015 Financial Year are estimated to amount to NZ\$130,000, as currently bid for from the TNF pool for promotion and outreach activities. Key activities include the production of appropriate publications explaining the key outcomes of the FTA, and a series of promotional “roadshows” in New Zealand prior to EIF to outline the content of the FTA to New Zealand businesses and wider stakeholder community and to assist in capacity building for doing business with Korea.

Government agencies will also be working with the private sector and others to implement strategies to best leverage the opportunities arising from the FTA. Such activities are considered, however, to represent an investment in the FTA, rather than a compliance cost.

8.2.2 FTA Implementation Costs

The FTA establishes a Joint Commission to consider the implementation of the FTA. In addition to the Joint Commission, the FTA provides for the establishment of sub-committees under specific chapters. While the specific objectives of these committees differ, their general objective is to facilitate the ongoing interaction of relevant officials to discuss the implementation and operation of the FTA and identify areas for enhanced co-operation. Some of the chapters without committees provide for the establishment of contact points to facilitate communications in specific areas. There is also provision for

contact points in the Transparency Chapter to facilitate communications between the Parties on any matter covered by the FTA. There is also provision for these meetings to take place via videoconference or teleconference in order to reduce implementation costs for both sides.

The establishment and operation of the Joint Commission, specialist committees, and exchanges between contact points are expected to be undertaken within the baselines of the relevant agencies, with the inter-agency TNF providing funding to activities that would embed the FTA during the first 18 months following EIF.

A number of chapters of the FTA establish mechanisms that allow for future co-operation between New Zealand and Korea in areas of mutual interest. Co-operation proposals are expected to be developed over time through these mechanisms and are expected to fall within the scope of existing departmental activity and be funded where possible from within baselines. Where not possible, Cabinet approval for additional funding will be sought.

8.2.3 Agriculture, Forestry and Fisheries Co-operation

Under the Agriculture, Forestry and Fisheries Co-operation Chapter, the FTA provides for specific co-operative activities to occur in addition to regular dialogue and information sharing between officials. These activities are set out in an Implementing Arrangement (*Arrangement between the Government of New Zealand and the Government of the Republic of Korea on Agriculture, Forestry and Fisheries Co-operation*) and have been agreed in advance in order to allow for implementation as soon as possible after the FTA enters into force. The cost of these activities will be shared equally between Korea and New Zealand. Activities will run for three years, after which each one will be evaluated, and there will be an opportunity for it to continue if both New Zealand and Korea agree. Similarly, new activities may also be agreed. Exact costs will be determined once New Zealand and Korea have engaged further to design the activities.

8.3 Costs to businesses of complying with the FTA

As outlined in section 4, the expected effect of the FTA is to reduce compliance and at the border costs for New Zealand businesses through trade facilitating outcomes in areas such as customs procedures, TBT and SPS issues. These outcomes will help reduce transaction costs from the outset of the FTA. The model for evidencing origin is based on New Zealand's preferred approach of self-certification by the exporter. Unlike other models, this does not impose extra costs for exporters. Other outcomes are expected to develop and increase over time from the platform the FTA provides in areas such as TBT and SPS for enhanced regulatory co-operation to facilitate trade.

9 Completed or proposed consultation with the community and parties interested in the treaty action

9.1 Inter-departmental consultation process

The negotiation of the FTA and associated side letters and arrangements was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade. The inter-agency team comprised officials from the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, New Zealand Customs Service, the Ministry for the Environment, the Ministry of Education, the Ministry of Transport, the Ministry for Culture and Heritage, Treasury, New Zealand Film Commission and the New Zealand Qualifications Authority.

Other relevant departments and agencies were also regularly consulted during the negotiations in the preparation of New Zealand's position.

The Department of the Prime Minister and Cabinet and New Zealand Trade and Enterprise were also regularly consulted on the FTA process.

9.2 Public consultation process

From late 2008, the Ministry of Foreign Affairs and Trade, together with other government agencies, organised and conducted a wide-ranging consultation programme to raise public awareness of the negotiations and to seek stakeholder views. This programme used printed, emailed and website information, supported by extensive specific discussions with key stakeholders, such as exporters and industry sectors likely to be interested in or affected by the outcomes of the FTA.

9.2.1 Communication programme

The communication programme supporting the consultations included:

- the release of a feasibility study entitled 'Benefits and Feasibility of a Korea-New Zealand Free Trade Agreement' between New Zealand and Korea in 2007;
- a call for submissions on possible content of the FTA in advance of the commencement of negotiations in early 2009;
- an on-going call for submissions posted on the MFAT website throughout the negotiating period;
- regular updates to the MFAT website which provided information about the negotiations and requested views from stakeholders and the general public;
- updates in the 'International Treaties List', a document produced every six months by MFAT that provided an update on the negotiation process (this has recently been supplemented by an online database, 'New Zealand Treaties Online'). This was

distributed to stakeholders, including Iwi, and provided contact details for feedback;

- ongoing presentations on the negotiations as part of wider trade policy consultations with interested parties including NGOs; and
- regular updates on the negotiating process, emailed to stakeholders who had registered an interest in the negotiations.

9.2.2 Consultation programme

Public outreach and consultation has taken place throughout the negotiation of the FTA, including with key stakeholders on negotiating objectives. In particular, stakeholders have been consulted on the phase-out of tariffs, rules of origin, services and investment commitments (including the shape of potential outcomes on movement of natural persons), and associated labour and environment outcomes.

The communications programme provided the basis for a consultation programme which involved:

- meetings and email correspondence with companies and sectoral organisations with an interest in access to the key Korea goods and services markets;
- meetings and email correspondence with companies and sectoral organisations with an interest in New Zealand's tariff phase-out arrangements under the FTA;
- meetings with organisations with a broad interest in the negotiations;
- meetings with a range of business groups in New Zealand, including Business New Zealand, the International Business Forum, Chambers of Commerce, and the Korea New Zealand Business Council (KNZBC); and
- meetings with New Zealand business groups in Korea (KiwiChamber).

9.2.3 Submissions process

The consultation process elicited a significant number of submissions from individuals, organisations and businesses, including from:

Alpha Laboratories, Airborne Cymbidiums, Beef and Lamb New Zealand, KiwiChamber, Distilled Spirits Association of New Zealand, New Zealand International Business Forum, Horticulture Export Authority, Methanex, New Zealand Bloom, Deer Industry New Zealand, ENZA Foods, PF Olsen, Federated Farmers of New Zealand, Zespri, Kiwifruit Growers Incorporated, New Zealand Kabocha Council, New Zealand Seafood Industry Council, Axis Information and Business, New Zealand Winegrowers, Wellington Regional Chamber of Commerce, Ngati Kahungunu, Dairy Companies Association of New Zealand, Kiwifruit Processing Company, Aquaculture New Zealand, Westland Co-operative Dairy

Company, Pizazz Multimounts, Chelsea Sugar, Business New Zealand, Global Organics, Next Window, Yum Enterprises and Amnesty International.

9.2.4 Issues covered in the consultation process

Two key themes emerged from the submissions: the FTA is important to ensure the long-term competitiveness of New Zealand businesses in Korea and to release untapped potential in the economic relationship.

Submissions focused on the need to address Korea's high tariffs on primary products and its onerous requirements on sanitary and phytosanitary issues and technical barriers to trade. Several submissions argued for improved conditions for trade in services, investment and government procurement. One submission raised concerns about protection for Māori traditional knowledge. Only one opposed the FTA outright (on animal welfare grounds in relation to the treatment of dogs in Korea).

10 Subsequent protocols and/or amendments to the treaty and their likely effects

The FTA provides that it may be amended by agreement in writing by the Parties and that any amendments would come into force on the date agreed among the Parties (Article 21.4).

Certain Chapters (for example, Services) contain future work programmes that may result in particular amendments to the FTA in the medium-term (for example Article 8.16 (Work Programme on Financial Services)).

New Zealand would consider proposed amendments to the FTA on a case-by-case basis and any decision to accept an amendment would be subject to the normal domestic approvals and procedures.

11 Withdrawal or denunciation provision in the treaty

The FTA shall terminate 180 days after the date that either Party notifies the other Party in writing that it wishes to terminate the FTA. Within 30 days of delivery of the notification, either Party may request to enter into consultations on whether any provision of the FTA should terminate later than 180 days. However, if no agreement is reached, the FTA would terminate after 180 days (Article 21.3).

12 Agency Disclosure Statement

This extended NIA has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. The extended NIA identifies all the substantive legal obligations in the *Free Trade Agreement between New Zealand and the Republic of Korea*, a few of which will require legislative implementation, and analyses the advantages and disadvantages to New Zealand in becoming a party to the FTA. The Government has identified certain types of regulatory effects that would require a particularly strong case before regulation would be considered (impose additional costs on business during the current economic recession; impair private property rights, market competition, or the incentives on businesses to innovate and invest; override fundamental common law principles), but implementation of the obligations arising under the FTA are not expected to give rise to effects of this type.