

# 自由貿易協定： 紐西蘭在亞太地區的經驗

安德森

紐西蘭威靈頓維多利亞大學法律系教授

**關鍵字：**紐西蘭、中國、自由貿易協定、亞太地區、世界貿易組織

## 中文摘要

2007 年 11 月底在本文撰寫之際，杜哈回合（Doha round）的多邊貿易協商似乎又再度陷入困境。任何解決都將至少要再拖一年。尤其是在農業補貼（subsidies）與關稅減讓方面僅有極為有限的進展，而非農業市場開放（non-agricultural market access, NAMA）的協商也面臨重大瓶頸。之所以陷入困境的原因眾所周知，勿須在此贅述。其中最重要的原因是自杜哈回合（Uruguay Round）結束與 1995 年世界貿易組織（WTO）成立後，WTO 內部的政治平衡發生重大的轉變。如中國現在是世界最大的經濟體之一與首屈一指的出口大國，但直到 2001 年 12 月中國才加入 WTO。中國的入世以及其他崛起的主要新興經濟體如印度與巴西逐漸形成發展中國家聯盟意味著主要的已開發國家已不再能夠主控國際貿易的條件與強將他們閉門商議的結果到其他的國家。

本文將首先就自由貿易協定做簡短評論，然後深入剖析紐西蘭的雙邊自由貿易協定的談判經驗，尤其聚焦於包括目前正在進行中的紐中 FTA 在內的與亞太各國的 FTA 協商。紐西蘭的地位有些特殊，因為紐國是個小國，既無政治力量又無經濟力量可迫使其貿易伙伴接受其談判立場。而且，紐西蘭主要出口產品為初級商品，尤其是各出口市場傾向高度保護的農產品。因此，紐西蘭的觀點與 FTA 協商的經驗多多少少堪稱不尋常，且可作為這類協商的有用的個案研究。

## **Free Trade Agreements: New Zealand's Experience in the Asia-Pacific Region**

**Gordon Anderson**

Professor of Law, Victoria University of Wellington New Zealand: [gordon.anderson@vuw.ac.nz](mailto:gordon.anderson@vuw.ac.nz)

Key words : New Zealand, China, FTA, Asia Pacific, WTO

*After an initial comment on Free Trade Agreements(FTAs<sup>1</sup>) this paper will discuss New Zealand's experience in negotiating bilateral trade agreements with a particular focus on those FTAs with other countries in the Asia-Pacific region including the proposed FTA currently being negotiated with China. The New Zealand position is somewhat unusual in that New Zealand is a relatively small country and has neither the political or economic strength to impose its negotiating position on its trade partners. Moreover New Zealand exports remain dominated by primary products and particularly agricultural products, products that tend to be highly protected in export markets. For this reason the New Zealand's perspective and experience in negotiating FTAs is somewhat unusual and provides a useful case study of such negotiations.*

---

<sup>1</sup> This paper will use the term "Free Trade Agreements" although it is noted that such agreements may also be called "Preferential Trade Agreements" or "Regional Trade Agreements".

## Introduction

At the end of November, as this paper was being written, it appeared that the Doha round of multilateral trade negotiations were (again!) running into difficulties and any resolution at least another year away.<sup>2</sup> There appears to have been only limited progress on agricultural subsidies and tariff cuts and the non-agricultural market access (NAMA) negotiations also seem to have run into significant obstacles. The reasons for these difficulties are well known and need not be rehearsed in any detail in this paper. Among the most important, however, is the significant shift that has occurred in the political balance within the WTO since the conclusion of the Uruguay Round and the establishment of the WTO in 1995. One need only note that China, now one of the world's largest economies and its top exporter, did not become a member of the WTO until December 2001. China's accession together with the much higher profile of other major developing countries such as India and Brazil and the increasing coalition of developing countries generally has meant that the major developed countries can no longer dictate the terms of international trade and impose their closed door deals on other parties.<sup>3</sup> Moreover the changed political balance means that the European Union and the United States cannot continue their intransigent and ethically corrupt refusal to reform their agricultural subsidies regimes while demanding that other

---

<sup>2</sup> *Bridges Weekly Trade News Digest* - Vol. 11, Number 40 21 November 2007.

<sup>3</sup> For example the 1992 "Blair House" agreement between the United States and the European Union on agricultural access during the Uruguay Round.

economies not only reduce their own agricultural protectionism but also that they provide much more open access for manufactured goods and services. The much greater complexity of the negotiating process that has resulted, together with the unwillingness of the major developed trading blocs to make significant concessions in critical areas, suggests that whatever the final outcome of the Doha Round its results are likely to be less than satisfactory and unlikely to lead to large scale reforms in the more intractable areas of world trade.

One consequence of the difficulties of achieving consensus in multilateral negotiations is that economies have sought to achieve their trade and economic objectives through other processes, most commonly through regional and bilateral trade agreements. One of the more predictable outcomes of both the ongoing delay and a modest conclusion to the Doha Round is that the current stream of FTAs is likely to turn into a deluge. FTAs already play an increasingly important role in international trade, a role that is certain to increase, and which will have profound, if not fully predictable, consequences for the world trading order. What seems clear is that FTAs are becoming increasingly sophisticated, increasingly strategic and increasingly plurilateral. As such the impact of FTAs on international trade flows is likely to become increasingly important.<sup>4</sup>

The nature of such agreements varies significantly as do their objectives and their impact. Many such agreements are more

---

<sup>4</sup> For a general discussion see Meredith Kolsky Lewis, "The Free Trade Agreements Paradox" (2005) 21 *New Zealand Universities Law Review*, 554.

political than trade orientated.<sup>5</sup> Even where FTAs are trade focussed they may present a real threat to the multilateral trading system and are used by major powers to impose outcomes they cannot achieve at a multilateral level.<sup>6</sup> At best they may promote and encourage multilateralism and the underlying principles of most-favoured-nation (mfn) treatment and non-discrimination in trade. Before turning to that issue, however, reference should be made to the legal and institutional structure that permits FTAs.

### **FTAs: an overview**

#### ***FTAs within the WTO Framework.***

Although FTAs (and customs unions<sup>7</sup>) are permitted under both the original GATT and GATT 1994 FTAs are in principle contrary to the core principles of the GATT/WTO agreements, that of most-favoured-nation (mfn) treatment and non-discrimination. The essential rationale of FTAs is to create a bloc of trading partners who offer preferential terms of trade to other members within the group to the exclusion of non-

---

<sup>5</sup> For example the US-Israel and US-Jordan FTAs.

<sup>6</sup> The United States attempts to force TRIPS plus protection is one such example: see the policy analyses on the Oxfam website for examples: <http://www.oxfam.org/en/>. In particular *Signing Away The Future: How trade and investment agreements between rich and poor countries undermine development* (2007).

<sup>7</sup> This paper will not discuss customs unions in general as they constitute a relatively small proportion of notified agreements (about 10 percent). A customs union, unlike an FTA involves a common external tariff being imposed against non-members with a move to free trade within the union.

members. Nevertheless FTAs were permitted under the original GATT agreement, a derogation that reflected the largely political imperatives that often lie behind such agreements and in particular, in 1947, the initial movement towards creating what is now the European Union.

The GATT negotiators, while allowing FTAs, were however concerned to exert some degree of control over the terms on which they could be created. GATT Article XXXIV (and GATS Article V) permit the creation of a customs union or FTAs for the purposes of closer integration but stress that the purpose should be “to facilitate trade between the constituent territories and not to raise barriers to the trade if other contracting parties.”<sup>8</sup> In order to ensure these conditions are met the GATT imposes three principal obligations on both customs unions and FTAs:<sup>9</sup>

- (a) an obligation not to raise the overall level of protection against third parties (external trade requirement),
- (b) an obligation to liberalise substantially all trade among the members of the agreement (internal trade requirement), and
- (c) an obligation to notify the WTO of the agreement.

---

<sup>8</sup> Article XXIV (4).

<sup>9</sup> Article XXIV: (5, 7-8). Countries need not meet these requirements immediately but are able to enter interim agreements to form an RTA within a reasonable time, normally taken to be ten years: Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994: Article 3. (“Understanding”)

In principle the GATT provisions both set down criteria for establishing an FTA and provide a process for examining compatibility with GATT/WTO obligations. Parties “deciding to enter” a FTA are to “promptly” notify the WTO and the agreement in question is then referred to the Council for Trade in Goods which adopts the terms of reference and transfers the agreement to the Committee on Regional Trade Agreements (CRTA) for an examination to ensure the FTA is compatible with GATT rules.<sup>10</sup> The CRTA has power to make recommendations but in practice its powers are limited by the political realities of WTO decision-making so that any serious challenge to the validity of a FTA is unlikely.<sup>11</sup> Consensus decision making within the CRTA is by consensus which means of course that any adverse report is unlikely as the members of the FTA will obviously support the legitimacy of the FTA. A reluctance to agree to the final text of an examination report also seems to be due to an awareness that information or findings might later be used by a disputes panel. Lack of any real incentives to push for compliance either in the Council or through the disputes process also means serious scrutiny is unlikely. These problems are compounded by the fact that most FTAs are not in fact notified until after their establishment, effectively presenting the Council with a *fait accompli*.<sup>12</sup> Current efforts within the WTO and the Doha Round

---

<sup>10</sup> Understanding, Article 7.

<sup>11</sup> On the legal requirements for FTAs see further Matsushita et al *The World Trade Organisation* (Oxford University Press, 2003) 345-371.

<sup>12</sup> For a full discussion of issues related to FTAs see: *Compendium of Issues Related to Regional Trade Agreements*, WTO Secretariat: (TN/RL/W/8/Rev.1).



negotiations seem to be focussed primarily on increasing the transparency of FTAs rather than any substantial reform of process.<sup>13</sup>

The political reality then is that while FTAs have come to form an increasingly significant and rapidly proliferating component of the international trading system their establishment occurs with relatively little constraint from the WTO institutional structures. As a matter of practical international politics FTAs are likely to continue to blossom outside the formal WTO structures and the practical challenge will be to maximise their benefits while attempting to minimise their potential to undermine the multilateral trading system.

### ***The structure and pattern of FTAs.***

The WTO reports that at July 2007 it had been notified of some 380 FTAs. At that date, 205 agreements were in force but once account is taken of RTAs in force but not notified, those signed but not yet in force, those currently being negotiated, and those in the proposal stage it was estimated that of close to 400 FTAs are scheduled to be implemented by 2010. FTAs and partial scope agreements account for over 90 percent of such agreements.<sup>14</sup> The changing pattern and objectives of FTAs has

---

<sup>13</sup> See for example *Transparency Mechanism for Regional Trade Agreements*: General Council Decision of 14 December 2006 (WT/L/671).

<sup>14</sup> See WTO figures at [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm). Fiorentino et al *The Changing Landscape of Regional Trade Agreements: 2006 Update*, Discussion Paper No 12, WTO ("Fiorentino et al") point out that quantification of active FTAs poses a difficult task.

been recently surveyed in some detail<sup>15</sup>. It is useful to highlight a number of findings from this paper and in particular the findings most relevant to the Asia-Pacific region. Among the more generalised conclusions of the paper were that:

- FTAs have become the centrepiece of the trade policies of many countries. The implication that follows is that this not only diverts resources from multilateral negotiations but also suggests that the political reality is that many countries do not see multilateral negotiations as providing significant trade benefits when compared to enhancing or cementing bilateral relationships with existing and realistic potential trade partners.
- FTAs are becoming increasingly sophisticated extending not only to services but also to regulatory regimes that fall outside traditional trade negotiations such as investment and competition regimes and more balanced anti-dumping provisions.
- The range and nature of partners to FTAs is becoming more complex and less geographically bound. While bilateral agreements remain the norm it appears that more complex arrangements are appearing including negotiations where the parties are themselves FTAs. This reflects not only the greater number of economies entering FTAs but also the potential for “template expansion” as FTAs become more sophisticated and generic in character once initial precedents are established.

---

<sup>15</sup> Fiorentino et al

Fiorentino et al suggest that the reason for the expansion of FTAs, and the preference for FTAs over other forms of RTA or a customs union, is straightforward – “speed, flexibility and selectivity.” The parties have flexibility in terms of the trade policy objectives to be achieved and they are able to achieve the specific strategic market or political objectives of the parties while retaining considerable control of trade policy in relation to third parties.

### ***FTAs in the Asia-Pacific Region***

Within the Asia-Pacific region the major economic organisation is of course APEC.<sup>16</sup> APEC spans four continents and is home to just under half of the world's population, accounts for close to 50 percent of the world's trade and 57 percent of global GDP. Among the more important of APEC's goals are the 1994 Bogor Goals – the agreement to achieve a common goal of free and open trade and investment in the Asia-Pacific region by 2010 for industrialised economies and 2020 for developing economies. APEC promotes ambitious economic goals that go well beyond international trade, narrowly defined, to include such matters as regional capacity building, trade facilitation including behind borders issues.<sup>17</sup>

---

<sup>16</sup> The 21 APEC members are Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong China, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Chinese Taipei, Thailand, the United States and Viet Nam.

<sup>17</sup> See generally on the APEC goals and progress to achieving them: *A Mid-term Stocktake of Progress Towards the Bogor Goals - Busan Roadmap to Bogor Goals* (APEC, 2005, 2005/AMM/002anx1rev1).

Although APECs size and the enormous variations in the member economies means that the negotiation of comprehensive trade agreements at APEC level is unlikely APEC plays a major role in the promotion and facilitation of liberalised trade. One technique for achieving the Bognor Goals is APEC's strong supported for the negotiation of high quality FTAs. The *Mid-Term Stocktake* states:

APEC has led the world in recognising and developing the link between high-quality RTAs/FTAs and the broader trade and investment liberalisation and facilitation agenda...while recognising the necessity for such agreements to be WTO consistent, comprehensive, transparent and truly trade-liberalising as described in the 2004 APEC Best Practice for RTAs/FTAs.

Promoting FTAs has included the development of APEC Best Practice models for RTAs/FTAs as well as capacity building in the negotiation of FTAs<sup>18</sup>. In particular APEC has sought to provide draft models to address what it refers to as the “noodle bowl” problem of a mixture of FTA provisions that hinder and complicate trade liberalisation. By 2006 APEC Ministers had adopted six sets of model measures including: trade in goods; technical barriers to trade; transparency; government procurement; dispute settlement and cooperation. Fiorentino et al note that a number of Asian countries, particularly Singapore, Thailand and Malaysia have increasingly entered into bilateral FTA negotiations.

---

<sup>18</sup> For example the Workshop on *Identifying and Addressing Possible Impacts of RTAs/FTAs Development on APEC Developing Member Economies* 28-30 Jun 2005, Hanoi, Viet Nam.

Within the Asian region itself the core agreement is the ten member ASEAN Free Trade Area within which there has been very significant progress in the lowering of intra-regional tariffs through the Common Effective Preferential Tariff (CEPT) Scheme.<sup>19</sup> The ASEAN group itself is currently negotiating FTAs with a number of other countries within the region, including India, Japan and Australia/New Zealand.

## **The New Zealand Perspective**

### ***Introduction and Background***

I now turn to the particular position of New Zealand. New Zealand is a small country with a small population (4 million) at the far end of the world.<sup>20</sup> Australia, the nearest neighbour is 1600 kilometres away and both Asia and the Americas are about 9,000 kilometres distant. The country has limited natural resources such as iron, coal and other such commodities and is largely reliant on the export of primary commodities, especially agricultural commodities, for its economic welfare. For good reason New Zealand's foreign policy is essentially its trade policy. The hard fact of economic life for New Zealand's is that its prosperity depends on trade and the bulk of that trade is in agricultural products.

---

<sup>19</sup> ASEAN members are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

<sup>20</sup> For an annually updated overview of New Zealand's economy see: <http://www.treasury.govt.nz/economy/overview>.

In order to understand New Zealand's trade policy some brief historical background is useful. From the late nineteenth century<sup>21</sup> until the 1970s New Zealand trade policy was focussed on retaining preferential and protected access to the United Kingdom market for bulk agricultural commodities especially meat and dairy products. As late as the 1950s 70 percent of New Zealand exports were still sent to the United Kingdom and even by the time of the United Kingdom's accession to the then European Economic Community in 1973 that figure was still approximately 25 percent.

The United Kingdom's accession to the EEC, which required entry to the trade restrictive Common Agricultural Policy, coincided with a number of external shocks and in particular the oil price shocks of the 1970s. At same time as a period of considerable global economic uncertainty New Zealand's access to its primary traditional market became increasing uncertain. New Zealand responded to the challenges presented in two major ways.

The first strategy was been the liberalisation of the domestic economy. After an unsuccessful period of increased government intervention and state regulation of the economy from about 1970 to 1983 successive governments moved rapidly to deregulate the economy: the currency was floated, domestic subsidies were abolished, a long standing policy of import

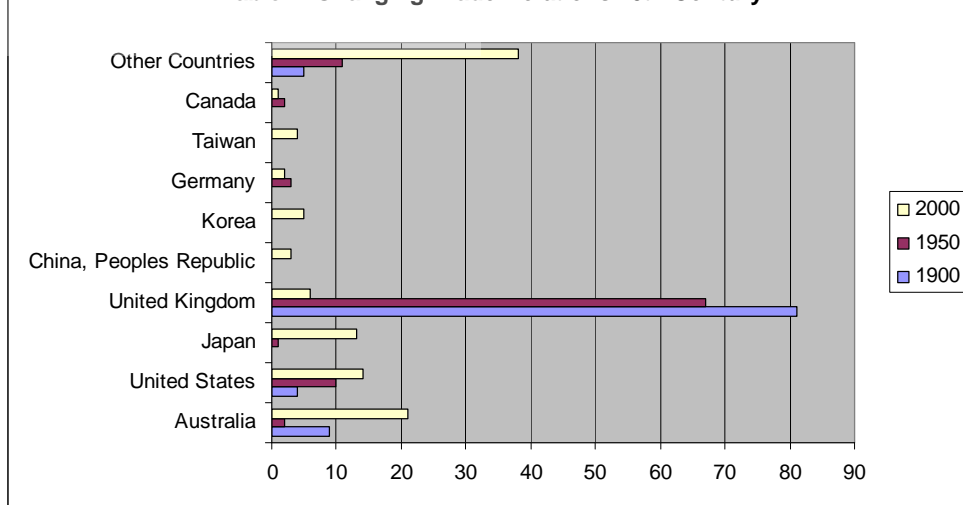
---

<sup>21</sup> New Zealand's move to a major agricultural exporter can be dated from February 1882 when the *Dunedin* sailed from New Zealand to Britain with a refrigerated cargo of 4331 mutton, 598 lamb and 22 pig carcasses, 246 kegs of butter, as well as hare, pheasant, turkey, chicken and 2226 sheep tongues.

substitution was abandoned, controls on external investment were minimised and there was considerable deregulation of the labour market. The result is that New Zealand now has one of the most deregulated and open economies in the world. In the particular context of external trade there were significant decreases in tariffs and other protective devices and an elimination of all quantitative controls. Ninety-five percent of imports into New Zealand, including all imports from developed countries, are now duty free.

The second strategy has been to diversify both its export markets and the range of its exports in order to limit the country's exposure to major fluctuations in the international economy. In particular New Zealand has sought to lessen its dependence on agricultural commodity exports while at the same time diversifying the export markets for those products so as to spread the risk in an area of trade notorious for its level of protection in export markets. This has involved the promotion of manufacturing, especially of more sophisticated products, and the promotion of trade in services. Tourism, for example, is now one of the largest earners of foreign exchange.

To look first at New Zealand's trading parties. Table 1 shows the rough percentage of exports with New Zealand's top ten trading partners at 50 year intervals. The major difference over the twentieth century is that the heavy dependence on the United Kingdom has given way to a more balanced distribution of trading partners focussed within the Asia-Pacific: Australia, the United States, Japan and increasingly China. Seven of the largest ten export destinations are now within this region.

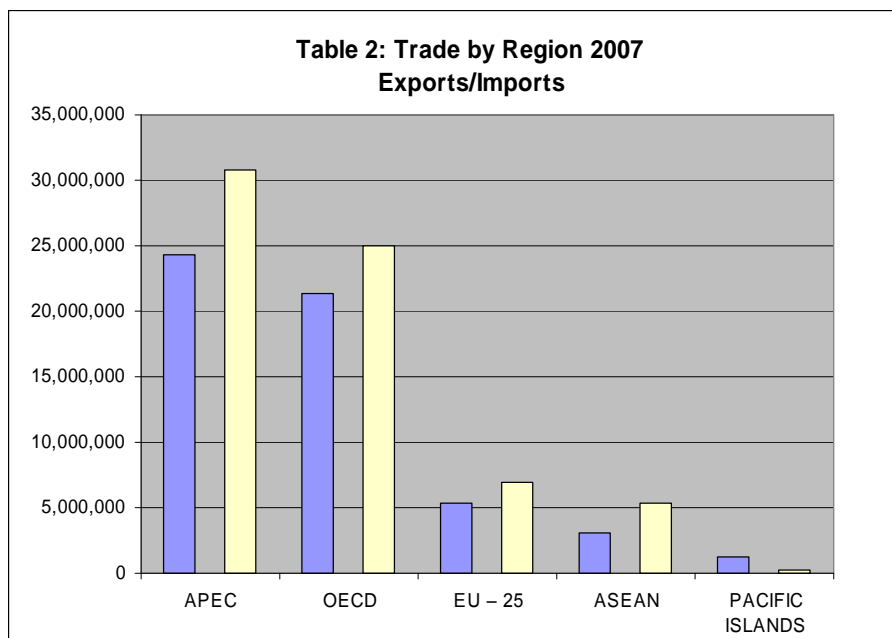
**Table 1: Changing Trade Relations 20th Century**

### *New Zealand's Current Trade Profile*

In terms of volume of trade New Zealand is of course a minnow internationally. In terms of world trade export rankings, once intra-EU trade is removed, it makes 41<sup>st</sup> place and for imports 32<sup>nd</sup>, in both cases with 0.3% of world trade. In terms of the export and import of commercial services it ranks 27<sup>th</sup>, again once intra-EU trade is removed. The only commodity in which New Zealand has a significant proportion of world trade is dairy products of which it is the world's second largest exporter.



The following charts provide an overview of New Zealand's current trade profile. All figures are NZD.<sup>22</sup> Table 2 indicates that while New Zealand trade is oriented to the APEC economies trade with core ASEAN group is still relatively small. Nevertheless five of New Zealand's top trading partners are within ASEAN and as will be seen below New Zealand's FTA negotiations demonstrate a strong ASEAN link.

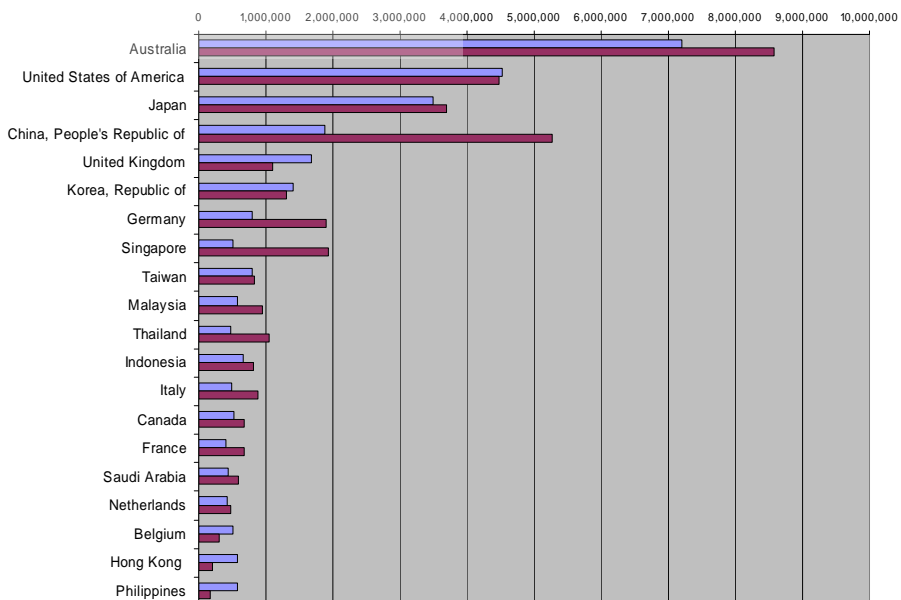


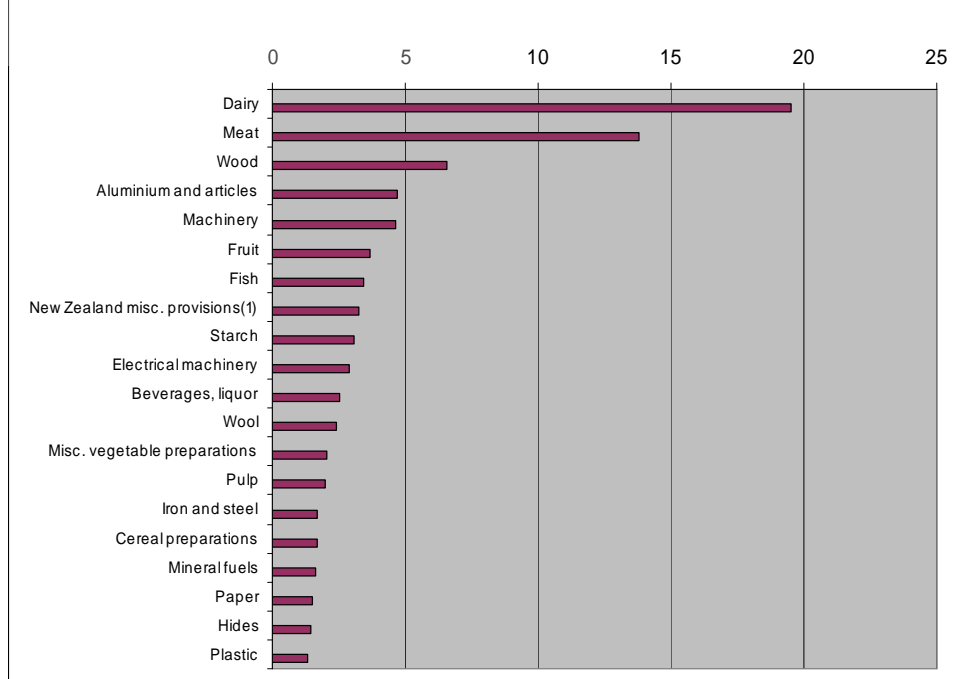
<sup>22</sup> All figures are derived from Statistics New Zealand data.

As can be seen New Zealand trades with a large range of countries and to that extent has spread its trade risk with some success. However merchandise exports continue to be dominated by agricultural products particularly meat and dairy products which together accounted for around 32 percent of total merchandise export by value in 2006. Over the last two decades the manufacturing sector has been a major source of export growth and diversification. The Closer Economic Relations agreement with Australia contributed to a successful expansion by manufacturers into that market and a focus on design, reliability and cost is also seeing manufacturers make inroads into other markets, particularly Asia and the United States. New Zealand now exports a range of manufactured goods, including plastic goods, carpets and textiles, wines and high-tech computer equipment to countries throughout the world.

Services exports are now worth over \$12 billion but this figure is dominated by tourism, a growing but relatively vulnerable area.

**Table 3: Top 20 Trading Partners 2007: Exports/Imports**



**Table4: Top 20 New Zealand Exports: HS Group percentage**

### ***New Zealand's trade policy***

New Zealand's current trade policy is summarised in the following statement from Ministry of Foreign Affairs and trade (MFAT):<sup>23</sup>

<sup>23</sup> Much of the information that follows is taken from material produced by MFAT and available on its website: <http://www.mfat.govt.nz/>. That material has generally not been further identified for the purposes of this paper.

The multilateral WTO process remains the top trade priority for New Zealand because it offers the largest potential gains. But the scale of the negotiations and the interests involved mean that progress may at times be slow. Regional and bilateral trade agreements therefore complement the multilateral track in New Zealand's wider trade strategy. New Zealand also recognises that such agreements with key trading partners can open up important new opportunities for New Zealand exporters and in a shorter timeframe than through the WTO. They enable New Zealand therefore to set a faster pace towards opening markets by linking up with economies that share the same level of ambition. In this way, these agreements can make a useful contribution to generating momentum for the WTO process by highlighting the benefits of liberalisation, and also contribute to achievement of the APEC Bogor Goals of free and open trade and investment within the Asia-Pacific region by 2010 for developed economies, and 2020 for developing economies.<sup>24</sup>

Multilateral negotiations remain the top priority because it is there that the largest potential gains might be made, particularly given New Zealand's export profile, one dominated by agricultural commodities. Agriculture is one of the most protected areas in international trade and particularly within the major developed economies. The United States, the EU and Japan, all of which have enormous resources to heavily subsidise a sector responsible for a tiny proportion of their GDP, have remained highly intransigent in their refusal to apply the normal rules of international trade to such products. Further such subsidies are particularly acute for livestock products, such as meat and dairy, which are central to New Zealand's agricultural sector. The production of such products is highly subsidised in

---

<sup>24</sup> *New Zealand's approach to Free Trade Agreements/Closer Economic Partnerships/Strategic Economic Partnerships* (MFAT, July 2005)

domestic economies and further protection is provided through both extremely high tariff levels and quantitative restrictions on imports. Compounding the problem is the practice of those economies dumping subsidised agricultural products into manufacturing chains or third country markets. Such actions not only push non-subsidised producers out of international markets but depress world prices for many agricultural commodities.

New Zealand's major negotiating efforts are therefore expended on multilateral negotiations aimed at reducing agricultural protectionism and improving market access for such products. Thus New Zealand is a member of the Cairn's group of agricultural exporters who are attempting to push for agricultural reform. Unfortunately it now seems clear that the major developed economies have little or no intention of allowing major reforms to their protective regimes during the Doha Round – although this has not stopped these same economies asserting considerable pressure on other, usually developing, economies to provide open access for agricultural trade! New Zealand is therefore forced to look outside the multinational context and in particular to seek bi-lateral arrangements with trading partners who are not tied into unjustifiable agricultural subsidisation policies.

### ***New Zealand's Approach to FTAs***

New Zealand has therefore increasingly turned to the negotiation of FTAs as a second strategy in advancing its trade interests. New Zealand's preference is for broad, comprehensive agreements To again quote from MFAT:

In its bilateral and plurilateral negotiations New Zealand seeks the removal of tariffs on all goods, the liberalisation of services trade and provisions to encourage investment. New Zealand also seeks measures to remove other barriers to trade - such as restrictions on government procurement - and provisions relating to competition policy, intellectual property, e-commerce, labour, environment, and dispute settlement. Given that trade flows can be affected as much by internal regulatory and administrative barriers as by tariffs and quotas, New Zealand also seeks to address ways of facilitating trade through cooperation in areas such as standards and conformance and customs procedures. Furthermore, New Zealand seeks to harmonise its objectives for trade with the protection of the environment. New Zealand also seeks to ensure that labour issues are better integrated with trade agreements

In sum, New Zealand expects that its agreements will be comprehensive, consistent with World Trade Organisation (WTO) provisions and APEC goals and principles, and open to other economies to join. New Zealand believes that less than comprehensive agreements can pose a threat to multilateral liberalisation by enabling countries to achieve their key market access objectives without liberalising sensitive sectors.

Given New Zealand's relatively small economy and limited political importance it has focused on negotiating a limited number of high quality FTAs with the objectives of strengthening economic and political links and improving and securing market access within the APEC grouping but particularly within the Asian region.

New Zealand currently is a partner in or negotiating the following FTAs.

### **Agreements in Force**

- Australia and New Zealand Closer Economic Relations (CER) - 1983
- New Zealand and Singapore Closer Economic Partnership (NZSCEP) - 2001
- Trans-Pacific Strategic Economic Partnership (Trans-Pacific SEP) – 2005 Brunei/Chile/New Zealand/Singapore
- New Zealand and Thailand Closer Economic Partnership (NZTCEP) - 2005

#### **Agreements under Negotiation**

- New Zealand-Gulf Cooperation Council Free Trade Agreement
- New Zealand and China Free Trade Agreement
- ASEAN-Australia/NZ Free Trade Agreement
- New Zealand and Malaysia Free Trade Agreement
- New Zealand and Hong Kong Closer Economic Partnership

As to the future, the New Zealand Prime Minister recently confirmed that it is a priority for the government to advance the trade relationships with Korea and Japan and that a study on a closer economic partnership with India is about to commence.<sup>25</sup>

---

<sup>25</sup> Press Release 24 October 2007.



### *Existing FTAs*

*Australia and New Zealand Closer Economic Relations 1983 (CER)*: This agreement came into force in 1983 and remains New Zealand's most important FTA. The agreement was negotiated in the years following the United Kingdom's accession to the EEC and a major objective was to create an economic relationship that would assist both economies in adjusting to the new trading regime and the loss of United Kingdom markets. While the economic benefit of the large Australian market to New Zealand is fairly obvious the arrangement opened a significant new market for Australia, the New Zealand population being 20 percent of that of Australia. Equally importantly CER provided both countries with new markets for manufactured products at a time both countries were attempting to diversify their economic base. CER has been spectacularly successful and the current aim of the two governments is to continue moves, already well advanced, towards a single economic market

Since 1990 all tariffs and quantitative restrictions have been eliminated, a goal that was reached five years ahead of schedule. In 1989 CER was extended to include free trade in most services and subsequently most inscribed exceptions have been eliminated. CER has had a major impact on the flow of trade between the countries and created one of the world's most open and successful free trade agreements. Two-way trans-Tasman trade has increased at an average annual rate of around 9 percent following its adoption. New Zealand is now Australia's sixth largest market and Australia New Zealand's largest trading partner. The CER relationship has also had a significant impact

on trans-Tasman investment. New Zealand is the seventh largest foreign investor in Australia while New Zealand is Australia's third largest market for investment and it is the largest investor in New Zealand.

These figures reflect the high level of economic integration between the two countries. This integration is supported by two further arrangements. First an agreement for mutual recognition of goods and occupations so that a good that can legally be sold in one country can also be sold in the other, and a person who is registered to practise an occupation in one country entitled to practise the equivalent occupation in the other. The second is a free labour market which allows citizens of each country to visit, reside and work in each other's country without restriction..

Progress towards a single economic market is being progressed through a number of other initiatives and proposals including joint regulatory bodies such as the establishment of a joint Australia New Zealand Food Authority (ANZFA) now renamed Food Standards Australia and New Zealand (FSANZ). The policy focus is on identifying, developing and implementing further initiatives to create a seamless trans-Tasman business environment including efforts to reduce the costs of regulatory compliance for trans-Tasman businesses.

CER has been a trend-setter in the realm of bilateral trade relationships, and has apparently been described by the WTO as "the world's most comprehensive, effective and mutually compatible free trade agreement".<sup>26</sup> From the perspective of

---

<sup>26</sup> This claim is commonly made in official speeches although the original source is more difficult to identify.

trade policy formation in New Zealand it provided first the experience of negotiating and putting in place a highly sophisticated, comprehensive and deep bilateral relationship at both the economic and political level. Admittedly this was done with a country with which New Zealand already had strong political and cultural links and in an environment where each saw major economic gains.

Following the negotiation of CER, which is a continuing process, New Zealand did not enter further negotiations until the commencement of negotiations with Singapore in 1999. The period between the mid-1980s and the mid-1990s was of course dominated by the Uruguay Round negotiations leading to the establishment of the WTO. New Zealand's negotiating priorities were dominated by those negotiations and particularly by efforts to liberalise agricultural trade.

Since the end of the Uruguay Round New Zealand's focus for the negotiation of FTAs has centred on the APEC economies and in particular on establishing economic partnerships within Asia.

*New Zealand and Singapore Closer Economic Partnership 2001 (NZSCEP):* This agreement must come close to a record for bilateral FTA negotiations. The two governments announced their intention to negotiate an agreement in September 1999 and negotiations were completed within one year, the two Prime Ministers signing the agreement in November 2000.

NZSCEP is a comprehensive agreement covering goods, services, investment and technical barriers to trade in goods. It complies fully with WTO requirements and goes significantly

beyond WTO provisions by eliminating all tariffs, prohibiting export subsidies for all goods, including agricultural products, and expanding services commitments. From a New Zealand perspective the agreement advances the government's trade liberalisation policy within a framework that provides for direct reciprocal benefits and because it is seen as "encouraging closer trade and economic linkages between New Zealand and ASEAN generally as well as advancing the achievement of the APEC vision of free and open trade and investment in the APEC region." It also meets the New Zealand objective of achieving free trade "within a meaningful commercial period.

In fact the agreement provides for the elimination of all tariffs on goods originating in the other country as of the date of entry into force of the agreement and for the liberalisation of services on a progressive basis at least every two years with an agreement to meet by 1 January 2008 to draw up a list of those services sectors and measures which remain to be liberalised by 2010. Although NZSCEP is not as comprehensive as CER it does have some important features including:

- attempts to draft the Rules of Origin in the Agreement to recognise that manufacturers draw on input materials from the most cost effective sources and locate aspects of their business in different places. Interestingly it also provides that transshipment costs in Australia (a common practice for trade between the two countries) is excluded in the calculations of origin.
- A competition based approach to anti-dumping measures. While it continues to provide for safeguard action, unlike

CER, which relies purely on mutual trade practices regimes, Singapore and New Zealand have moved beyond WTO anti-dumping provisions by raising the threshold at which the level of dumping is seen as de minimis, raising the threshold at which dumped imports would normally be determined negligible, and reducing the period for review and/or termination of anti-dumping duties. The intention is to limit the arbitrary and protectionist use of trade remedies.

- The Agreement includes ways to reduce compliance costs associated with the need to meet different technical, sanitary and phytosanitary regulatory requirements including a mutual recognition conformity assessment agreement covering electrical and electronic equipment

A major factor assisting progress with this agreement was of course that Singapore is not a major agricultural producer, unlike most other Asian economies.

*Trans-Pacific Strategic Economic Partnership 2005 (Trans-Pacific SEP):* This agreement between Brunei, Chile, New Zealand and Singapore is the first free trade agreement between four individual countries spanning the Asia-Pacific region, with all four participants being APEC member economies and is New Zealand's first agreement with a Latin American country. Negotiations commenced in 2002 and it came into force in 2006. As part of the overall package, Ministers also announced the

conclusion of negotiations on a binding Environment Cooperation Agreement and a binding Labour Cooperation Memorandum of Understanding. New Zealand policy is to include these topics in agreements where possible.

Apart from its trade aspects, this agreement is seen as the basis for developing cooperation across a broad spectrum of interests, and from New Zealand's perspective, with Chile in particular. For example in 2006 the Chilean President and New Zealand Prime Minister announced a "Strategic Alliance" between New Zealand Trade and Enterprise and the Chilean Economic Development Agency with the aim of promoting investment, joint ventures and licensing agreements.

The Agreement provides for comprehensive tariff elimination among all four countries. There are no quotas and only very limited use of special transitional safeguards. When tariff elimination is subject to phasing, there is also scope within the Agreement to accelerate tariff reductions in the future. For example Chile will immediately eliminate tariffs on almost 90 percent of imports from New Zealand and all remaining tariffs (mainly on dairy products) will be eliminated by 2017. After implementation New Zealand will provide duty free access for 96 percent of imports from Chile and 99 percent from Brunei Darussalam with all tariffs to be phased out by 2015.

The services section of the Agreement is less comprehensive than other FTAs, including that with Singapore, so that full liberalisation of services with Chile has yet to be agreed. The underlying principles are those of market access and national treatment and mfn protection. The agreement uses a negative

list approach to scheduling services commitments so that if a service sector is not included in the services schedules then it is bound by the national treatment, market access and mfn obligations.

Parties retain their existing WTO rights and obligations on anti-dumping and countervailing duties procedures and the use of global safeguard measures.

This agreement is not as developed as both CER and NZSCEP. It contains a range of issues to be further developed and in this respect has a strong aspirational aspect. Nevertheless the Agreement is an important first step in multi-economy, cross-regional FTAs within APEC and has achieved considerable benefits for the parties. From a New Zealand perspective it represents an initial negotiating foray into South America where among other things the existence of FTAs with the United States is and will continue to be an important environmental factor in trade negotiations.

*New Zealand and Thailand Closer Economic Partnership 2005 (NZTCEP):* NZTCEP was negotiated over a six month period in 2004 and came into force in July 2005. This agreement is less comprehensive than other FTAs negotiated by New Zealand and has a much longer implementation period. From New Zealand's strategic perspective this Agreement has a strong defensive objective. Thailand is one of Asia's fastest growing economies but also has high trade barriers, particularly barriers that significantly impede trade in those products central to New Zealand's export profile. Moreover New Zealand was concerned to ensure that its market access was not further

disadvantaged by preferential access given under Thailand's other FTAs – China, Australia, ASEAN and possible future agreements with Japan and the United States. The Agreement also indicates the sensitivity of dairy and meat trade as these products have the longest phase out period.

On entry into force Thailand eliminated tariffs and quotas on 52 percent of imports from New Zealand. At that date only 4 percent of imports from New Zealand received duty free access. By 2010, a further 13 percent of trade will be duty free and another 20 percent of trade will have tariffs phased out by 2020. Trade restrictions on the remaining 15 percent of imports (skim milk powder and liquid milk and cream) will be eliminated by 2025. There is scope within the Agreement to accelerate these tariff reductions in the future.

New Zealand provided duty free access for 65 percent of imports from Thailand with tariffs to be eliminated on a further 20 percent of imports on the commencement of the agreement. New Zealand will remove tariffs on further items by 2010, at which point 97 percent of Thailand's current exports will become duty free with the remainder being phased to zero by 2015.

It is notable, however, that Thailand retains the right to apply special safeguards for the most sensitive agricultural products (whole milk powder and a number of other dairy products, beef, beef offal, honey and processed frozen potatoes). Imports of these products benefit from reducing tariffs up to a volume based on historical imports, plus a growth factor but once the volume of imports from New Zealand reaches this level, these



safeguards automatically trigger a snapback to the normal tariff. The same provisions were included in Thailand's Free Trade Agreement with Australia.

### ***Agreements under Negotiation***

As is noted above New Zealand is currently negotiating five FTAs. In this paper only two will be discussed in any detail – those with China and ASEAN. Negotiations with Malaysia, New Zealand's largest trading partner in the ASEAN region and 8th largest trading partner globally are proceeding. While considerable progress has been made over six rounds of negotiations a number of difficult issues remain to be resolved and progress seems to have slowed since the last negotiating round in May 2006.

*ASEAN-Australia/NZ:* The proposed ASEAN-Australia/NZ Free Trade Agreement was launched in 2004 and has now seen ten negotiating rounds and progress remains slow. The Government's report on the most recent round states "There still remains significant work to do in order to bridge difference in the core areas of goods, services and investment negotiations." Negotiations for this FTA were never likely to be easy or quick. While the political relationship between Australia/New Zealand and the ASEAN economies are strong and improving there has been a history of difficulties. The negotiations also involve a range of economies at different stages of development and at a time the ASEAN agreement itself is still bedding down. Clearly negotiations were always likely to be complex and detailed involving not only resolution of issues between the two

negotiating blocs but also within them. While progress is being made it seems likely to be slow.

*China-New Zealand:* New Zealand was the first developed country to begin negotiations for a free trade agreement with China and in many respects it is perhaps surprising that this FTA is even being negotiated. China is one of the world's largest countries and one of the world's largest economies. In all measures it dwarfs New Zealand. The reasons for New Zealand wishing to secure a comprehensive FTA with China are obvious. China is the fastest growing major economy, it is New Zealand's fourth largest trading partner, and China's middle class, now estimated to be more than 100 million people and growing. China is therefore likely to be a major market for New Zealand's agricultural products. New Zealand is also concerned to defend existing market shares – particularly in areas where China is already New Zealand's largest international customer, such as milk powder, wool and education, given other ongoing FTA negotiations.

New Zealand has a strong political relationship with China and a long term and close working relationship in areas of technical co-operation. Indeed China and New Zealand concluded a Trade and Economic Cooperation Framework in May 2004 covering not only the commencement of the FTA study and negotiations but which also outlines the practical steps that New Zealand and China will be taking to strengthen cooperation across a range of economic sectors, and to promote dialogue at the ministerial, business and academic levels. The joint preliminary study for the FTA estimates that between 2007 and 2027 New Zealand exports of goods and services to China would

grow on average between NZ\$260 million and \$400 million a year and Chinese exports of goods and services to New Zealand between NZ\$55 million and \$100 million a year. In percentage terms, this equates to New Zealand's exports to China increasing by between 20 and 39 percent above what would have been achieved if an FTA had not been negotiated and China's exports to New Zealand by between 5 and 11 percent.

From China's perspective the reasons for initiating its first comprehensive FTA negotiations with New Zealand are perhaps less obvious. In the trade context New Zealand was the first developed country to sign off on terms for China's accession to the WTO and New Zealand's approach to applying trade remedies treats China as a market economy, and hence not does not apply the "non-market" provisions of China's accession protocol. From a Chinese perspective it is likely that New Zealand's small size offers China an opportunity to negotiate an FTA with a developed OECD economy that while involving a relatively complex negotiation across a range of issues going beyond tariff reductions to encompass services, investment and issues around such matters as rules of origin, trade remedies, sanitary and phytosanitary measures, technical barriers to trade, intellectual property and competition policy, can be done without the same trade volume implications that might dominate negotiations with larger developed economies.

While a considerable volume of work, including the more difficult areas of market access, remains to be completed if the 2008 deadline is to be achieved the high level of political commitment to negotiations and the setting of firm negotiation deadlines by the leaders of both countries would seem to assure

progress. Negotiations were launched by New Zealand's Prime Minister, Helen Clark and President Hu Jintao in November 2004. The visit to New Zealand by Premier Wen Jiabao in 2006 added significant impetus to the negotiating process. During his visit the Premier and Prime Minister agreed that both sides should be aiming for "a comprehensive agreement which was of high quality, balanced and acceptable to both sides". When the two leaders met again in January 2007 they reiterated their commitment to reaching a comprehensive, high quality and balanced FTA before April 2008 and urged negotiators to conclude such an agreement as soon as possible within that timeframe. The same deadline was again affirmed in bilateral meetings between Prime Minister Clark and President Hu in Sydney during the recent APEC meeting. This meeting occurred after the most recent (14<sup>th</sup>) round of negotiations in August.

### **Conclusion**

New Zealand foreign policy over recent decades has focussed on achieving progress through multinational forums be it in trade or other areas. New Zealand's primary goal in trade negotiations and the centre of its trade strategy is to achieve a multilateral solution to the problem of agricultural protectionism. Significant liberalisation of market access in that area would be of major economic benefit. In the real world of course it is unwise to look at only one solution and New Zealand has sought to secure its economic prosperity through bi-lateral economic relations. Its first venture in the area, CER, has proved extremely successful and has given both parties to the agreement important lessons in negotiating and maintaining deep and complex economic partnerships.

This experience, together with the realisation that tariff cuts alone do not make an economic partnership, has shaped New Zealand's preference for FTAs that go beyond purely tariff issues and which contain high quality rules and commitments to provide and promote enhanced access and certainty for New Zealanders doing business. It seeks to negotiate FTAs that include: comprehensive coverage of goods – elimination of all tariffs and removal of unnecessary non-tariff measures: coverage of services and investment and provisions covering areas such as rules of origin, trade remedies, sanitary and phytosanitary measures, technical barriers to trade, intellectual property, government procurement, competition policy and customs cooperation. New Zealand's trade policy, based on its own economic policy, favours open and competitive markets and a minimum of regulation, especially regulation that impacts negatively on trade access.

New Zealand needs to trade if it is to survive and achieve a reasonable level of prosperity. Preferably this would be done in a world committed to trade liberalisation. The political reality is however that such a world does not exist and in the core areas of New Zealand's exports is unlikely to do so for a long time. The developed countries having secured low barriers in manufactured trade show no inclination to open up the more protected sectors of their economies and especially agriculture.

New Zealand therefore seeks to secure such access on a bilateral or plurilateral basis. Its currently extant FTAs indicate that it seeks comprehensive market access within a timeframe that

makes commercial sense and in large measure has negotiated such access with partners that seek similar economic goals.