

This Ministry of Foreign Affairs and Trade publication gives an overview of the New Zealand – Korea Free Trade Agreement.

A full copy of the Agreement's text and associated documents can be found at www.korea.FTA.govt.nz

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NEW ZEALAND - KOREA *FTA GUIDE*



Opening from Trade Minister Tim Groser



The New Zealand-Korea Free Trade Agreement marks a significant milestone in our two countries' relationship.

New Zealand and Korea have a long history of working together, dating back to the Korean War. Since then, Korea has also become a key trading partner for New Zealand, with total two-way trade worth \$4 billion in the year ending June 2014. Korea is now New Zealand's sixth-largest export destination for goods and services and eighth-largest import source of goods and services.

A stylized, handwritten signature in black ink, likely belonging to Tim Groser.

There is potential for this trade to grow even more, to both countries' benefit, especially now that we have concluded a Free Trade Agreement. Korea has already negotiated FTAs with a number of other countries, and our Agreement will put New Zealand exporters back on a more level playing field with competitors such as the United States, Chile and the European Union.

The Agreement means significant savings on New Zealand exports. Approximately \$229 million a year is paid in duties on New Zealand exports. Duty savings in the first year alone will be in the vicinity of \$65 million.

But the Agreement goes far beyond tariff reductions. Like New Zealand's other FTAs, it provides protection for investors, and enhances co-operation in areas such as customs, sanitary and phytosanitary measures, temporary entry for business persons and intellectual property. The FTA also provides a platform for further co-operation in the areas of agriculture, education, trade facilitation, science and technology, and film and television.

The Agreement includes chapters on Labour and Environment; only the second time New Zealand has included these in the body of a trade agreement. The Labour Chapter promotes labour rights and co-operation on labour issues, while the Environment Chapter encourages sound environmental policies.

The signing of this Agreement supports the Government's Business Growth Agenda. Helping New Zealand's exporters is crucial to creating new jobs and boosting incomes for New Zealanders. Breaking down trade barriers to exports means working to lower tariffs and reduce restrictions that our exporters face in key offshore markets. Reducing these barriers puts dollars directly in the pockets of our exporters, allowing them to price their products more competitively and invest in growth.

The FTA creates the groundwork for an even closer relationship between New Zealand and Korea into the future. It will deliver real economic benefits for both New Zealand and Korea. For both countries, the Agreement will create more opportunities for businesses and will deliver cheaper products to consumers. It's a win-win agreement.

 **31%**
Industrial goods


 **28%**
Forestry

 **17%**
Dairy



 **11%**
Meat and
meat products

 **5%**
Horticulture

 **8%**
Other (including
seafood, skins and
hides, and other
food products)

\$4 billion

There was a total of \$4 billion in two-way trade between New Zealand and Korea in the year ending June 2014.

sixth-largest

Korea is New Zealand's sixth-largest export destination, taking more than \$2 billion of New Zealand exported goods and services in the year to June 2014.

\$2 billion

The value of New Zealand imports from Korea was also about \$2 billion in the year to June 2014, making Korea New Zealand's eighth-largest source of goods and services imports. The vast majority consisted of oil, vehicles, heavy machinery, plastics, electrical goods and iron and steel.

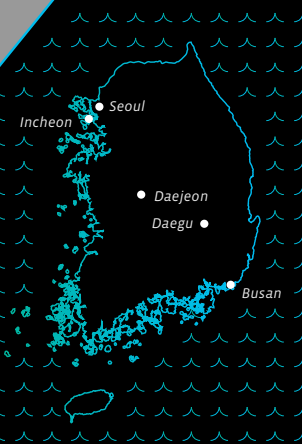


4.471 million
(POP. 2013)

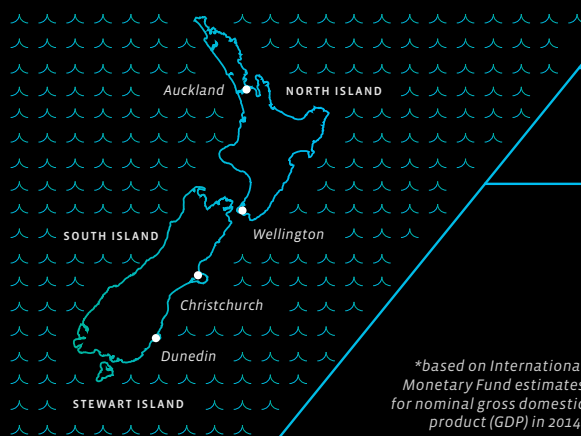


NEW ZEALAND
53rd largest
WORLD ECONOMY*

SNAPSHOT



NEW ZEALAND



*based on International
Monetary Fund estimates
for nominal gross domestic
product (GDP) in 2014.

REPUBLIC OF KOREA



13th largest
WORLD ECONOMY*

50.22 million
(POP. 2013)



40%
Refined Oil



19%
Vehicles



7%
Machinery



6%
Electrical goods



6%
Plastic and rubber



22%
Other (including
paper, iron and
steel and railways)

\$229 million

Korea is a high tariff market for New Zealand. It is estimated that New Zealand exporters currently pay \$229 million in duties per year for product entering Korea.

48.3% of exports

On entry into force, current duty-free access will be "bound in" and existing tariffs will be eliminated on \$793.7 million - or 48.3 percent of exports.

\$65 million

This will lead to an estimated duty saving of \$65 million in the first year.

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What is the New Zealand-Korea Free Trade Agreement?



The New Zealand-Korea Free Trade Agreement (FTA) is a high quality agreement covering both goods and services traded between the two countries.

The FTA will boost bilateral trade and investment links and provide benefits to exporters and consumers in both countries.

Key elements of the FTA, which are explored in more detail in this guide, include:

- Trade in goods and services
- Measures to improve the business environment
- Investment
- Government procurement
- General exceptions
- Agriculture, forestry and fisheries co-operation
- Labour and environment
- Audio-visual co-production

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The strategic importance of the Agreement

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.

New Zealand exports to Korea currently attract \$229 million a year in duties. The FTA will save an estimated \$65 million in duties in the first year alone. This will help New Zealand compete with exporters from other countries that already have preferential tariff access for their goods into Korea.

Korea's tariffs range from duty free to as high as 887 percent, with an average Most-Favoured-Nation (MFN) tariff rate on agricultural goods of 52.7 percent and 6.8 percent across non-agricultural goods. Overall Korea's average MFN tariff rate is 13.3 percent.

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 World Trade Organization (WTO).

Trade reform and liberalisation through negotiations at the WTO remains New Zealand's primary trade policy objective. Entering into an 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.

It represents an important political and economic statement on the value New Zealand places on its relationship with Korea. It is likely to lift 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.

The FTA also provides further mechanisms and avenues for government officials to take up trade issues encountered by business where this might be necessary and to work with counterparts to improve conditions for trade and investment over time.

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Trade in goods

Benefits for New Zealand goods exporters

Under the FTA, New Zealand exporters will gain improved access to Korea, which has a population of 50 million people and is already our sixth-largest goods export market.

The FTA achieves significant outcomes across a range of sectors, allowing New Zealand exporters to maintain and grow their presence in the Korean market.

Market access for goods

A major outcome of this FTA is keeping New Zealand exporters competitive in the Korean market.

Korea's average Most-Favoured Nation (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 \$229 million in duties each year to Korean authorities. 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 entry into force (EIF), tariffs will be progressively phased out through linear reductions.¹

Benefits for New Zealand businesses and consumers

The FTA will provide New Zealand businesses and consumers with greater access to high quality Korean consumer goods and manufactured products. 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 will benefit directly from cheaper products.

Remaining tariffs on Korean imports will be eliminated over seven years on fuels, motor homes and transport vehicles, heavy machinery, iron and steel, and home appliances.

¹ Year One of phasing is EIF, Year 2 is 1 January of the year following EIF, Year 3 is 1 January of the next year and so on.

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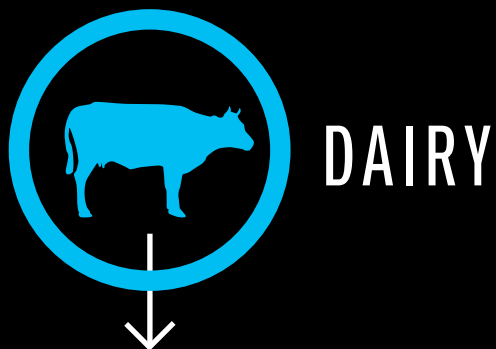
Trade in goods

Staged tariff elimination will deliver exporters the following outcomes:

- On EIF, current duty-free access will be “bound in” and existing tariffs will be eliminated on \$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 a further \$312.7 million (or 19 percent) of exports including kiwifruit, buttercup squash (in-season), methanol, some food preparations, some fisheries, dairy spreads, milk albumins, racehorses and aluminium. Five 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 a further \$195.0 million (or 11.9 percent) of exports including cheddar cheese, timber, butter, sheepmeat, caseinates, avocados, apple juice, beer and some fisheries. Ten 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 a further \$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. Fifteen years after EIF, 97.8 percent of New Zealand’s total current exports to Korea will enter duty and quota free.
- Between 16 and 20 years after EIF, tariffs will be eliminated on a further \$1.8 million (or 0.1 percent) of exports including liquid milk and sheep offal. Twenty years after EIF, 97.9 percent of New Zealand’s total current exports to Korea will enter duty and quota free.

Full details of the changes to the tariffs and the phasing of these changes are set out in the tariff schedules. The tariff schedules and a tariff finder tool can be found at www.korea.FTA.govt.nz.

Key outcomes for major goods exports to Korea



CURRENT TRADE

New Zealand exported \$220 million of dairy products to Korea in the year ending June 2014, with dairy accounting for an average of 17 percent of New Zealand's total exports to Korea.

While New Zealand dairy products are highly valued in Korea, dairy tariffs are high. Tariffs range from 36 percent to 176 percent and it is estimated that New Zealand dairy exports to Korea currently incur duties worth \$89 million per year.

The FTA will address these high barriers and provide new market opportunities over time for products such as cheese, butter and milk powder.

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 tariff rate quotas (TRQs) with zero in-quota duty for cheese, butter and infant formula, as well as a permanent TRQ on milk powder.



CHEESE

- Korea is the fourth-largest export market for New Zealand cheese, with New Zealand exporters sending \$78.3 million of product in the year ending June 2014.
- Korea's current tariff on cheese is 36 percent.
- Under the FTA, tariffs will be eliminated for New Zealand's main cheese export lines in Year 7 and Year 12.
- In addition, New Zealand exporters will have access to a zero-duty TRQ, starting at 7,000 tonnes with a 3 percent annual growth rate (unlimited in Year 15 when all cheese tariffs are eliminated).



INFANT FORMULA

- Korea's current tariff on infant formula is 36 percent.
- Under the FTA, the tariff will be eliminated in Year 13 for New Zealand's main export line.
- In addition, New Zealand exporters will have access to a zero-duty TRQ, starting at 230 tonnes with a 2 percent annual growth rate (unlimited in Year 15 when all tariffs on infant formula are eliminated).



BUTTER

- Korea's current tariff on butter is 89 percent.
- Under the FTA, the tariff will be progressively phased out, becoming duty-free in Year 10.
- In addition, New Zealand exporters will also have access to a zero-duty TRQ, starting at 800 tonnes with a 3 percent annual growth rate (unlimited in Year 10 when all butter tariffs are eliminated).



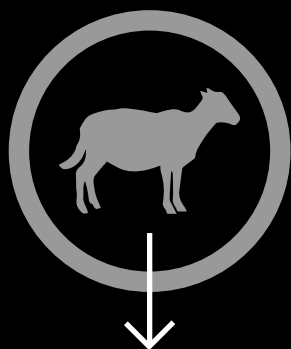
MILK POWDER

- Korea's current tariff on whole milk powder and skim milk powder is 176 percent.
- New Zealand has secured a country specific permanent zero-duty TRQ, starting at 1500 tonnes with a 3 percent annual growth rate, capped at 1957 tonnes in Year 10.
- Although the TRQ is limited, this is also the case for other trade partners of Korea, such as the European Union.

OTHER DAIRY PRODUCTS

All other dairy products will have their tariffs progressively eliminated between EIF and Year 20, with the majority of traded lines becoming duty free within 12 years of EIF.

Key outcomes for major goods exports to Korea



MEAT AND MEAT PRODUCTS

CURRENT TRADE

New Zealand exported \$175 million worth of meat and meat products to Korea in the year ending June 2014, accounting for 11 percent of New Zealand's total exports to Korea.

It is estimated that New Zealand meat exports to Korea currently incur duties worth around \$70 million per year.

New Zealand beef exporters are currently competing with the United States, Australia and Canada, which have already had their FTAs with Korea enter into force. The FTA will provide duty free access over time for New Zealand beef, lamb and other meat products.

Korea is New Zealand's fifth-largest beef export market with exports of \$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-free in Year 15. Other meat products such as offal and meat preparations will see tariffs as high as 72 percent eliminated in the same timeframe. The 22.5 percent tariff on sheepmeat will be eliminated in Year 10.



FROZEN/FRESH BEEF

- Korea's current tariff on beef is 40 percent.
- Under the FTA, the tariff will be eliminated in Year 15.
- A product specific safeguard² will also apply over the 15 year tariff reduction period.
- The outcome for beef is in line with the outcomes Korea agreed with the United States, the European Union, Canada and Australia.



MEAT OFFAL

- Korea's current tariff on offal is 18 percent.
- Under the FTA, the tariff will be eliminated in Year 15.



SHEEP MEAT

- Korea's current tariff on sheepmeat is 22.5 percent.
- Under the FTA, the tariff will be eliminated in Year 10.



MEAT PREPARATIONS (INCLUDING MEAT EXTRACTS)

- Korea's tariffs on meat preparations currently range from 30 percent to 72 percent.
- Under the FTA, the tariff will be eliminated in Year 15.

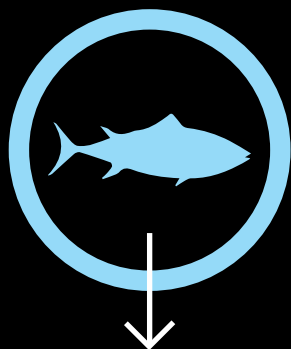


DEER VELVET

The 20 percent tariff for processed/dried deer velvet will be progressively phased out, becoming duty free in Year 15. However, the tariff will remain for unprocessed velvet.

² 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.

Key outcomes for major goods exports to Korea



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 a zero in-quota tariff rate for the main traded line. Volumes start at 1600 tonnes with a 6 percent annual growth rate capped at 3999 tonnes in Year 16. All other mussel tariff lines will have the tariff eliminated by Year 3.

Other fish lines (livers, roe and frozen fish including fillets) will have the 10 percent tariff eliminated in 10 years or less. The 20 percent tariff on salmon will be eliminated in Year 3. Live eels with a 27 percent tariff will receive tariff elimination in Year 10. Frozen squid and live abalone were excluded from tariff elimination.



FORESTRY

New Zealand exported \$503 million of forestry products to Korea in the year ending June 2014. Over 99 percent of New Zealand's current 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).

Key outcomes for major goods exports to Korea



HORTICULTURE

The FTA will reduce tariff disadvantages that New Zealand exporters currently face in Korea's competitive horticulture market.



KIWIFRUIT

New Zealand's main horticulture export to Korea currently faces a 45 percent tariff. In the year ending June 2014, New Zealand exported \$44.3 million worth of kiwifruit to Korea. Under the FTA, New Zealand kiwifruit exporters will have duty-free access to the Korean market effectively five years after EIF.³

CURRENT TRADE

Kiwifruit accounts for on average four percent of New Zealand's total exports to Korea.

- It is estimated that New Zealand kiwifruit exporters to Korea paid over \$20 million in duties in the last year.
- The FTA will phase out the 45 percent tariff in Year 6.

³ Tariffs are eliminated in Year 6, which because of the structure of the tariff phasing is five years after EIF. Year 1 of phasing is EIF, Year 2 is 1 January of the year following EIF, Year 3 is 1 January of the next year and so on.



BUTTERCUP SQUASH

New Zealand is the largest exporter of buttercup squash to Korea with exports worth \$11 million in the year ending June 2014. Under the FTA the 27 percent tariff will be eliminated in Year 5 for New Zealand's export season (December through May). The out-of-season period will remain at 27 percent.



EXCLUDED

Some horticultural products were excluded by Korea from the benefits of the Agreement due to their domestic sensitivity⁴:

- Honey
- Onions
- Apples
- Pears
- Capsicums
- Persimmons

⁴For technical reasons related to plant health, Korea does not currently allow the import of apples, pears and capsicums from New Zealand and many other countries.



TARIFF ELIMINATION OUTCOMES

Other products with tariff elimination outcomes include:

- Cherries: The 24 percent tariff will be removed on EIF.
- Avocados: The 30 percent tariff will be eliminated in Year 10.
- Apple juice: The 45 percent tariff will be eliminated in Year 7.



WINE

New Zealand wine producers currently face a 15 percent tariff. Under the FTA, wine will become duty-free on EIF, placing New Zealand exporters on a level playing field with international competitors in the market such as the United States, the European Union, Chile and Australia.

4

How to qualify for tariff preferences

Rules of origin

The Rules of Origin 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:

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

This Chapter uses a change of tariff classification (CTC) approach to determine origin. Under the CTC approach, a product will qualify for preferential tariff treatment if all inputs from third parties used in its production have undergone a specified change of tariff classification. Annex 3-A of the FTA details the precise form of CTC that will apply to each 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 to 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 product 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. Where any maintenance or supplementary work is required on the goods, this must be carried out in an area under customs control.

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

- 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 Appendix of this guide sets out the examples of declarations of origin, provided in Annex 3-C of the Agreement.

4

How to qualify for tariff preferences



HS codes

Both the tariff and the CTC based ROO for each product ultimately depends upon the tariff classification of the product. The international tariff classification system, administered by customs services around the world, is called the Harmonised Commodity Description and Coding System (HS). It uses a common customs classification made up of six digits. Most customs services then add a further two digits, which are unique to that administration. The result is an eight-digit number referred to as the tariff code.

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

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

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

The ROO provisions are outlined in the Product Specific Rules (PSR) Schedule (Annex 3-A of the Agreement) The text of the Agreement, including the PSR Schedule and examples of declarations of origin, can be found at

www.korea.FTA.govt.nz. The website also includes a tariff finder tool that allows importers and exporters to identify the tariff and ROO provisions applying to their specific product

5

Measures to improve the business environment

Customs procedures and trade facilitation

The Customs Chapter involves a range of commitments on trade facilitation and customs co-operation. These commitments 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);
- encouraging the use of international customs best practice;
- facilitating the use of automated systems and express consignments;
- providing for the electronic submission of import requirements in advance of the arrival of the goods;
- ensuring that in the normal course of events, customs administrations in both Parties release originating products within 48 hours of arrival;
- encouraging customs co-operation and providing for contact points and consultations to discuss any issues which might arise; and
- publishing customs laws and administrative procedures.

Sanitary and phytosanitary measures

Sanitary and phytosanitary (SPS) measures are used to protect human, animal or plant life or health by preventing the introduction of pests and diseases, and to help ensure food is safe for consumption. 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.

Technical barriers to trade

Standards, regulations and conformity assessment procedures can act as technical barriers to trade (TBT). The FTA aims to reduce unnecessary TBTs between New Zealand and Korea by establishing a framework of provisions and mechanisms to enable the resolution of issues as and when they arise. These include:

- International standards, guidelines and recommendations are to be used as the basis for technical regulations whenever possible;
- The Parties are encouraged to accept each other's technical regulations as being equivalent, so that satisfying one set is equivalent to satisfying the other;

5

Measures to improve the business environment

- The Parties are encouraged to use a broad range of mechanisms to facilitate the acceptance of conformity assessment procedures conducted in the area of the other Party; and
- Regulatory co-operation is encouraged in recognition of the fundamental link between good regulatory practices and the removal of trade barriers.

There are also provisions for greater transparency, co-operation and information sharing. These include the establishment of a TBT Committee that has responsibility for monitoring the implementation and administration of the Chapter. More specifically, the TBT Committee is responsible for ensuring steps are taken to address any TBT issues or concerns and for developing work programmes where a Party proposes an arrangement in a specific sector.

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. 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 trade agreements.

The FTA also establishes a bilateral transitional safeguard mechanism, which is available to both New Zealand and Korea. 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 way of a temporary pause or claw-back of tariff reductions.

Competition and consumer policy

The Competition and Consumer Policy Chapter takes a similar principles-based approach to competition chapters in New Zealand's other trade agreements and is consistent with New Zealand law, policy and practice. The Chapter supports New Zealand's and Korea's objective of creating and maintaining open and competitive markets that promote economic efficiency and consumer welfare. New Zealand and Korea have committed to applying their competition laws to all forms of business activity. They 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.

New Zealand and Korea have agreed to co-operate in the enforcement of their respective competition laws and policy, including through notification and information exchange. The Parties are, at the request of either Party, can consult on any competition-related issue affecting trade or investment and will also co-operate in the enforcement of their consumer protection laws and to provide protection from deceptive practices or the use of false or misleading descriptions in trade.

5

Measures to improve the business environment



Intellectual property

The Intellectual Property Rights 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). Included in the Chapter are specific commitments concerning protection for 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 in this Chapter all fall within current New Zealand regulatory settings and are in line with previous trade agreements.

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. Each Party commits to providing impartial administrative proceedings, reviews and appeals in accordance with its law. 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.

6

Services and investment

Cross-border trade in services

The FTA will mean greater services and investment opportunities in both countries. Across a range of sectors, New Zealand service suppliers will benefit from improved commitments on services market access over and above the commitments Korea has made through the World Trade Organisation.

Market access

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 guide 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 not be disadvantaged in these areas relative to 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.

Non conforming measures

The first part of the Cross-Border Trade in Services and Investment joint schedule (Annex I) sets out existing measures (laws, regulations, decisions, practices and procedures) that restrict the access of foreign service suppliers and investors and do not conform with the obligations of particular provisions. For example, by imposing quotas that restrict market access and/or caveat national treatment and which each Party wishes to maintain. These reservations are subject to the so-called 'ratchet' clause. This means that Korea is required to automatically extend the benefit of any future liberalisation of a measure listed in Annex I to New Zealand, and vice versa.

The liberalisation becomes the new level of commitment in the FTA and cannot be taken away from service suppliers – even if the measure is repealed or made more restrictive in the future. Unless specifically reserved against, Annex I reservations are also subject to the Most-Favoured-Nation (MFN) obligation.

The second part of the schedule (Annex II) lists sectors and activities that are exempted from any or all of the Chapter. The 'ratchet' clause does not apply to any measure captured by one of these reservations.

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Services and investment

The list of exempted Annex II measures includes: social services 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; protected areas (including land and water) set up for heritage management purposes, public recreation, and scenery preservation, and cultural heritage of national value. For the full list of exempted measures, please visit www.korea.fta.govt.nz.

The Four Modes of Supply

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

MODE 1: CROSS-BORDER TRADE

The service is supplied by a provider physically located in one economy, to a customer in another economy (for example, over the internet).

MODE 2: CONSUMPTION ABROAD

A customer travels to another economy to consume a service (for example, a student travels abroad to study).

MODE 3: COMMERCIAL PRESENCE

A foreign service supplier establishes a legal presence in another economy to provide a service (for example, a company opens an office or enters into a joint venture in another economy).

MODE 4: MOVEMENT OF NATURAL PERSONS

A person travels temporarily to another economy in order to supply a service directly. Commitments on the temporary entry of business people are included in a separate chapter (see following section).

Temporary entry of business persons

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 temporarily 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;
- 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); and
- Contractual Service Suppliers, in certain sectors, for up to one year.

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

6

Services and investment

Investment

Korea is New Zealand's sixth-largest goods export market, but is only the sixteenth-largest investor in this country in terms of foreign direct investment. The FTA will offer improved protections and certainty for New Zealand investors in the Korean market (and equally for Korean investors in New Zealand), and will reinforce the attractiveness of New Zealand as a stable investment destination. New Zealand's investment commitments are consistent with current policy settings and follow a similar approach to those secured in past FTAs.

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 modern, high quality rules-based framework that will facilitate free and open flows of investment between New Zealand and Korea. This includes 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. 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. Of the rules established under the Agreement, commitments concerning 'national treatment' and 'MFN treatment' are particularly important for New Zealand. The 'National Treatment' provision requires Korea to accord to New Zealanders investing in Korea treatment no less favourable than that accorded to Korean investors in 'like circumstances' (subject to any exceptions). Under the 'MFN treatment' provision any better treatment relating to market access 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 trade agreements and for specific sectors such as maritime, fisheries and aviation where specific international treaty frameworks exist. Aside from these exceptions, the MFN provision futureproofs 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 other countries.

6

Services and investment

Both New Zealand and Korea have exceptions from these obligations as set out in a schedule of investment 'nonconforming measures' (Annexes I and II). These exceptions either preserve existing discriminatory laws and regulations that do not conform to the obligations of particular provisions (Annex I) or reserve policy space to allow the introduction of such measures in the future (Annex II). 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 that is broadly in line with Korea's commitments to other FTA partners, save for investment in certain service sectors (such as postal services), for which access is subject to equivalent exceptions retained by New Zealand. Korea has retained policy flexibility around investment in farmland, consistent with Korea's established approach under past agreements with the United States and others.

The current operation of the Overseas Investment Act 2005 is not impacted by the Agreement. New Zealand will continue to screen all inward investment for significant business assets above \$100 million, sensitive land and fishing quota under the Act. New Zealand has made a commitment not to reduce the level of screening threshold below \$50 million.

The FTA also includes a mechanism which can be used by investors for the settlement of disputes arising under the FTA with Korea. The scope of the Investor-State Dispute Settlement provisions does not go beyond that established under New Zealand's previous trade agreements, and standard safeguards and limitations have been built in to preserve the Government's right to regulate for legitimate public policy purposes, such as:

- an investor must firstly enter into consultations with the Government for at least six months before a claim may be brought;
- frivolous claims may be challenged and discarded at an early stage of arbitration;
- an investor may only bring a claim for an alleged breach of the obligations of the FTA's 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 Government to refuse foreign investment may not be challenged;
- the Government may call on the FTA Joint Commission to issue a binding interpretation on any aspect of the Agreement if a tribunal is considered to be applying the Agreement incorrectly; and
- tribunal hearings will be open to the public.

7

Government procurement

The Government Procurement Chapter establishes an agreed framework of rights and obligations relating to government procurement. These are constructed around 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 (GPA) (to which Korea is a party and New Zealand is in the process of acceding) and to New Zealand's government procurement policy and practice.

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 GPA parties, including Australia, Canada and the United States. However, both Korea and New Zealand have committed central government entities only. 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 trade agreements). 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 for goods and services and 5,000,000 SDRs for construction services (including private public partnerships). The Chapter 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 with reciprocal access.

8

Dispute settlement

The Dispute Settlement Chapter provides a mechanism for the resolution of disputes between Korea and New Zealand arising under the FTA. The dispute settlement mechanism provides effective, efficient and transparent processes to settle any disputes. The initial focus is on co-operation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect the operation of the FTA. 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 Korea considers that New Zealand has not fulfilled its obligations.

Each Party must allow adequate opportunity for consultation to resolve any disputes and may agree to alternative dispute resolution through good offices, conciliation or mediation. 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. 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. Parties must comply with the findings and rulings of the arbitration panel and, in cases of non-compliance, the complaining Party will be able to suspend the benefits of the FTA after following the set procedures.

9

General exceptions

General exceptions

The FTA contains a range of exceptions to ensure that each Party retains decision-making powers to take measures in certain circumstances (such as to deal with an emergency or to achieve certain priority policy outcomes). Provided that such measures are not used for trade protectionist purposes, the FTA will not prevent New Zealand from taking measures necessary to:

- protect human, animal or plant life or health;
- protect works or specific sites of historical or archaeological value;
- provide support to creative arts of significant value to New Zealand;
- protect its essential security interests;
- meet its prudential interests; or
- respond to serious balance of payments issues and external financial difficulties.

Taxation measures are also largely excluded from the FTA, except to the extent that they are covered by the WTO. Neither Party to the FTA will be required to disclose information if it considers that the disclosure would:

- be contrary to its domestic laws;
- impede law enforcement;
- be contrary to the public interest;
- prejudice legitimate commercial interests of particular persons; or
- prejudice fair competition between suppliers.

Treaty of Waitangi

New Zealand has maintained a general exception to ensure that New Zealand retains its ability to take measures to accord more favourable treatment to Maori, including in fulfilment of Treaty of Waitangi obligations, as long as such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade.



10

Moving forward

Joint Commission and subcommittees

Moving forward, the FTA establishes a Joint Commission to oversee the implementation of the Agreement. In addition to the Joint Commission, the FTA provides for the establishment of subcommittees under specific chapters. The Joint Commission meetings are an opportunity for either Party to raise issues arising in relation to the FTA. The Joint Commission will also be responsible for establishing any additional committees or working groups as required, and for exploring measures for further expansion of trade and investment between the Parties.

Co-operation in areas of mutual interest

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. These include commitments relating to standards; technical regulations and conformity assessment procedures; education; trade facilitation; customs procedures; competition; intellectual property; and sanitary and phytosanitary measures. The FTA provides for agriculture, forestry and fisheries co-operation, and there is also an undertaking to co-operate on trade and labour issues and trade-related environmental issues.

11

Agriculture, forestry and fisheries co-operation

The Agriculture, Forestry and Fisheries Co-operation Chapter builds on existing co-operation arrangements. It provides a vehicle for ongoing dialogue and information exchange between the Parties 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 co-operation chapters that New Zealand has negotiated, this one envisages a regular Committee meeting between the Parties. It also includes provision for separate consultations if export prohibitions or restrictions cause the importing country food security concerns. Specific co-operative activities will occur in addition to regular dialogue and information sharing between officials. A separate Implementing Arrangement sets out these activities, which 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 in animal and fisheries science.

The activities will foster positive relationships and help to open up future economic opportunities.

12

Labour

The provisions in the Labour Chapter are intended to promote labour rights and through strengthened co-operation and dialogue, to improve working conditions and living standards, and to enhance labour capacity and capability. Each Party will ensure that its labour laws, regulations, policies and practises will not be used for trade protectionist purposes.

The Chapter's obligations ensure that Parties' competitive advantage is not secured or maintained through the convening of labour standards or practices that are inconsistent with internationally recognised labour standards.

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 sharing of best practice in labour administration and labour policy matters.

13

Environment

Under the Environment Chapter, the Parties agree not to use their environmental laws, regulations, policies and practices for trade protectionist purposes. They also agree to effectively enforce their environmental laws, or not to waive or derogate from their laws or regulations, in a manner affecting trade or investment between them.

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.

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. The obligations help ensure 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. Co-operation on environmental issues may also prove beneficial in terms of sharing of best practice in environmental management and environmental policy matters.

14

Audio-visual co-production

The Audio-Visual Co-Production Annex increases the scope for cultural and economic co-operation and collaboration between the New Zealand and Korean screen industries. It builds on the existing Korea-New Zealand Film Co-production Agreement, which covers feature films only.

The Annex includes principles covering: 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.

The Annex states that an audio-visual work (defined widely to include inter alia films, television and animations) 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. The Audio-Visual Co-Production 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.

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Appendix

Examples of declarations of origin

Please note that electronic versions of these templates and the associated guidelines are available at www.korea.FTA.govt.nz.

EXAMPLE A

Origin Declaration

The exporter or producer may certify on the face of the export invoice or other document relating to the goods as follows:

I _____ *[state name and position]*

being the _____ *[exporter] [producer] [producer and exporter]* (insert only that which applies) hereby declare that the goods enumerated on this invoice are originating from *[the Republic of Korea] [New Zealand]* (insert only that which applies) in that they comply with the provisions of Chapter 3 (Rules of Origin and Origin Procedures) of the Korea-New Zealand Free Trade Agreement.

Observations:

Signature _____ Date: _____

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Appendix

ORIGIN DECLARATION KOREA-NEW ZEALAND FREE TRADE AGREEMENT

EXAMPLE B Origin Declaration

Please Print or Type.

(Instructions on reverse)

1. Exporter's Name and Address: Telephone: Fax: E-Mail: Reference No.		2. Blanket Period: YYYY MM DDYYYYMM DD From: _____ / _____ / _____ / To: _____ / _____ / _____ /				
3. Producer's Name and Address: Telephone: Fax: E-Mail: Reference No		4. Importer's Name and Address: Telephone: Fax: E-Mail:				
5. Description of Good(s)	6. HS Tariff Classification #	7. Preference Criterion	8. Producer	9. Value	10. Country of origin	
11. Observations: I certify that: - The information in this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. - I agree to maintain, and present upon request, documentation necessary to support this declaration, and to inform, in writing, all persons to whom the declaration was given of any changes that would affect the accuracy or validity of this declaration. - The goods originate in the territory of one or both of the Parties and comply with the origin requirements specified for those goods in the Korea-New Zealand Free Trade Agreement. This declaration consists of _____ pages, including all attachments.						
12. Authorized signature:		Company:				
Name:		Title:				
YYYY MM DD		Telephone:				
From: _____ / _____ / _____		Fax:				

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Appendix

Contacts

TRADE NEGOTIATIONS DIVISION
Ministry of Foreign Affairs and Trade
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Glossary

CTC - Change of Tariff Classification
EIF - Entry into Force
FTA - Free Trade Agreement
GPA - WTO Agreement on Government Procurement
MFN - Most Favoured Nation
RVC - Regional Value Content
SDR - Special Drawing Rights
SPS - Sanitary and Phytosanitary
TBT - Technical barrier to Trade
TRIPS - WTO Agreement on the Trade Related Aspects of Intellectual Property
TRQ - Tariff Rate Quota
WTO - World Trade Organisation