



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

**Submission to the Ministry of Foreign
Affairs and Trade**

**Two-year Review of the New Zealand-China Free
Trade Agreement**

1 October 2010

1. Introduction

- 1.1 The New Zealand Council of Trade Unions – Te Kauae Kaimahi (CTU) is the internationally recognised trade union body in New Zealand. The CTU represents 39 affiliated trade unions with a membership of over 350,000 workers.
- 1.2 The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Runanga o Nga Kaimahi Māori o Aotearoa (Te Runanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 1.3 The CTU welcomes this opportunity to make a submission, though regrets the short time available and lack of clarity of the terms of reference for the review.

2. Background

- 2.1 The CTU has consistently raised the risks of a free trade agreement with China. However we have also recognised that the overwhelming majority of the countries in the world are negotiating free trade agreements and already some 2000 have been signed. The CTU has opposed unilateral reductions in tariffs. Given the huge reductions in tariffs as a result of prior unilateral reductions, we have acknowledged that a managed and mutual reduction in tariffs in a bilateral context can result in benefits in some sectors alongside disadvantages in others.
- 2.2 The CTU is opposed to a neoliberal approach to free trade that seeks to break down any barriers to the unfettered access by multinational corporations to land, resources, workers, culture, plant life and so on. We oppose a globalisation agenda that treats labour as a commodity,

weakens food security and prohibits nations from controlling their economies in the interests of their people.

- 2.3 The CTU has been actively engaged throughout the NZ-China FTA negotiation process. This has included a submission in 2004, many meetings with government officials, a fact-finding delegation to China, promotion of a manufacturing strategy for New Zealand in the context of the FTA, and many meetings of unions to discuss the issues raised by the FTA negotiations. In addition, many union members have raised the issue of the China free trade agreement at meetings.
- 2.4 The CTU has called for a review of the Trade and Labour Framework and has questioned how effective the Labour MOU will be when complaints about labour standards are raised.
- 2.5 We have opposed in principle the inclusion of temporary migration as part of a trade agreement. That is not because the numbers cause much concern but because we do not support bound commitments on migration which should remain more flexible so it can adjust to current labour market conditions. We have suggested ways that the temporary migration under the FTA could be implemented.
- 2.6 The CTU has called for a reinvigoration of industry strategies in manufacturing as well as support for workers disadvantaged by the tariff phase down.
- 2.7 We have raised concerns about the Investor/State arbitration provisions in the Treaty.
- 2.8 We have also raised questions about the impact of further services liberalisation on the ability for New Zealand to regulate in the public interest.

3. The Review

- 3.1 We have consistently supported transparency and comprehensive cost-benefit analyses in relation to any trade agreement. We seek rigorous social and economic analysis of trade agreements so that the benefits or otherwise can be determined. We therefore support this review in principle, but regret that it is not more transparent and that sufficient time has not been given for us to consult fully with our affiliates. This submission is therefore limited in scope. We refer you to our earlier submissions regarding details of our concerns outlined above.
- 3.2 We urge publication of the results of the surveys undertaken for this review, and of the report of the review itself.
- 3.3 We also note that it is early in the life of the FTA, and many trends will not have become apparent, and there will be ambiguity as to the role of the FTA in trends that do exist. Tariff reductions have barely taken effect, and many previous patterns of activity have been overwhelmed by the consequences of the Global Financial Crisis in which the response of China has been a crucial element both internationally and with regard to its relationship with New Zealand.

4. Labour Memorandum of Understanding

4.1 We note that:

The MoU is to improve dialogue and conduct cooperative activities on labour matters, including in the following areas:

- Labour laws, policies and practices, including social dialogue, and raising the awareness of the legal rights and obligations of employers and employees, to realise decent work;
- Compliance and enforcement systems and labour inspection;
- Sound labour relations, including management labour consultation, cooperation and labour dispute settlement;
- Working conditions;

- Human capital development, training and employability: and
- Promotion and protection of the employment rights and obligations of migrant workers.

Each country is required to appoint a coordinator to facilitate communication between the two countries and to seek funding for cooperation activities. There will be regular meetings between senior officials and the two countries to meet within 90 days to "assist in the resolution" of any issues that arise.

The MOU provides opportunities for governments to seek input on implementation from union representatives and non-government organisations and make provision for public participation in cooperation activities.

- 4.2 The CTU accepts that the basic requirements of coordination and meetings have been addressed.
- 4.3 There is however a need for meaningful cooperative activities. We recognise that there is potentially a very wide scope of activities, and that such activities should build not only understanding, but also trust and working relationships.
- 4.4 While there is value for instance in an activity on labour market statistics, forecasting and matching, this does not go to the heart of the areas above on decent work, promotion of employment rights, working conditions, and so forth.
- 4.5 We also note the paradoxical situation that China's labour environment is showing a number of signs of improvement, while the New Zealand government has either legislated for or put in place a package of measures that attack labour conditions and rights in this country.

5. Temporary Migration

- 5.1 The CTU opposes binding commitments on migration being made in the context of a free trade agreement as a matter of principle. That is because we believe that migration policy and practice should be more flexible and able to respond to labour market conditions rather than being locked into a Treaty. The CTU also believes that pressure will mount from other countries for temporary migration (movement of natural persons) to be agreed in trade agreements.
- 5.2 However, we do acknowledge that concerns we raised about temporary migration in construction and maritime services were taken on board and excluded from the specified skill occupations in the FTA. In addition, the system of caps with 1000 overall and 100 within each of 20 identified sectors ensures minimal overall impact on the NZ labour market.
- 5.3 We have not opposed either the working holiday scheme or the temporary migration in areas such as Mandarin teachers, tour guides traditional Chinese medicine, Chinese chefs and martial arts coaches. Our concerns have been in relation to bound commitments in respect of skilled workers to work in specified skilled occupations.
- 5.4 It is difficult to see how such an isolated and unilateral approach to skilled migration can link migration to a broad skill development strategy. While the numbers are small, they are large enough to impact on individual employers and distort their approach to longer-term training.
- 5.5 We understand from the Department of Labour that the uptake of the provisions in the FTA have been limited, so do not raise concerns at this point. We expect and urge that monitoring continues and the data on these movements is publicly available.

5.6 We note that there will be a review five years from the initiation of the FTA, and would expect to be consulted at that point, but also at an earlier stage if changes are proposed or temporary movements are greater than expected. A tripartite approach is essential.

6. Tariff Phase Down

6.1 The CTU pushed for the longest phase down possible in respect of remaining tariffs on whiteware, textiles, clothing, footwear and carpets. We believe that the phase down is over a reasonable period and is much preferred to unilateral tariff reductions to achieve APEC goals.

6.2 Following the launch of the NZ-China Free Trade Negotiations, the CTU and several unions called for greater action to support manufacturing. While that initially resulted in a combined process with the Government, manufacturers and unions to look at the basis for a modern and sustainable manufacturing sector, this has not continued under the present government.

6.3 We have expressed hope that some parts of manufacturing, including TCFC, would be able to increase exports into China. However, the reality is that the phase down of remaining tariffs will make it more difficult for New Zealand firms to compete in the domestic market with imports from China. The CTU wants to see a reinvigoration of the TCFC industry strategy initially launched in 2002. In the context of the NZ-China FTA, it is important that the aims and aspirations of the TCFC Partnership are critically examined to see what further steps are needed, including Government assistance as appropriate.

6.4 There has been a very large increase in goods trade with China since the FTA took effect on 1 October 2008. Exports from New Zealand to China increased by 43.2 percent in the calendar year 2009 compared

with the previous year, but imports fell by 5.9 percent¹. However this is not necessarily a result of the FTA.

- 6.5 Firstly, the global economic crisis affected all trade, leading to huge falls in international trade at the beginning of 2009. China was an exception despite some initial falls. It has greatly expanded its trade internationally, particularly in the import of raw materials, which has been described by some as stockpiling. For example, Australian exports to China grew by 31.5 percent by value over the same period; its imports from China grew by only 1.5 percent. Australia is clearly doing well in its trade with China, without an FTA.
- 6.6 Secondly, there are specific factors that have affected the New Zealand-China trade. We are only two years down the track in the slow removal of dairy tariffs for example. They were not high to start with (10 percent for milk powder), dairy prices are high internationally, and dairy exports to China had risen at an average of 21.0 percent a year between 2000 and 2008 (the year the FTA came into force). The increase in trade has more to do with Chinese consumers' lost trust in their own dairy industry due to the melamine/San Lu scandal, and the hunger for resources by China's rapidly growing economy, than the FTA.
- 6.7 New Zealand's largest exports to China have been logs and milk powder, neither of which are highly processed and with relatively little value added. On the other hand, the export of manufactured goods rose by only 6 percent between 2008 and 2009, compared to an average of 8 percent increase a year in the three years to 2008. Even more concerning, most of the recent increase has been in "simply transformed manufactures", which have increased 21 percent during that year, compared to annual increases averaging 2 percent in the preceding three years. Exports of "elaborately transformed

¹ New Zealand data in this section come from Statistics New Zealand, "Global New Zealand – International Trade, Investment, and Travel Profile: Year ended December 2009". Australian data are from Australian Bureau of Statistics, International Trade in Goods and Services.

manufactures” fell by 13 percent during that year, compared to an average annual increase of 18 percent over the previous three years. On the other hand, New Zealand’s imports from China are dominated by manufactures, and while the total value of those imports fell during the year to December 2009, the greatest fall was in agricultural rather than manufactured goods.

6.8 Trade patterns have been disrupted by the financial crisis and the boom in prices for resources such as minerals, logs and dairy products, so it is too early to draw conclusions from this one year. However these patterns do reinforce concerns both the CTU and many manufacturers have expressed about the effect of the FTA on high-value production in New Zealand. The pattern appears to move further towards New Zealand being predominantly an exporter of raw or lightly processed materials, and an importer of high value manufactured goods, which undermines the creation of a high wage, high value economy.

6.9 The biggest barrier in trade with China is likely to be invisible non-tariff resistance, often more to do with different attitudes, values and culture than legal hurdles. The value of the FTA for New Zealand is likely to be much more in building on the already existing relationship of trust with China (which goes all the way back to Rewi Alley) in order to find ways around this resistance than dismantling the legal barriers. We understand from officials that a significant number of such issues have been resolved under FTA processes.

6.10 The crucial question will be whether there were other ways to build the relationship of trust with China which did not put at risk New Zealand’s own economic development.

7. Investment

7.1 We have expressed concern about the investment sections of the FTA, including its Investor/State arbitration provisions.

- 7.2 The provisions leave open concerns that they can be used to challenge, or make unaffordable, measures taken by New Zealand governments in the interests of New Zealanders.
- 7.3 Recent controversies regarding sales of farms and dairy factories to Chinese interests, while in some cases not directly relevant to the FTA, have highlighted the concerns a broad section of the New Zealand community and the government have regarding foreign direct investment in New Zealand. The recent review of New Zealand's overseas investment regime showed how little room the government has to move to ensure direct investment is well managed from an economic and strategic viewpoint.
- 7.4 This reinforces our misgivings at the loss of policy space that the investment provisions in the FTA have resulted in.
- 7.5 We remain concerned that measures such as the Overseas Investment Regulation extending criteria to Strategic Assets on "sensitive land" and any new measures introduced by the recent review could be challenged by investors based in China.

8. Conclusion

- 8.1 The CTU appreciates the opportunity to comment for this review of the China-New Zealand FTA, but has concerns about its process.
- 8.2 There are concerning elements in trends in trade and investment, and while it may take a little longer before the trade trends can be clarified, it calls for close monitoring of the FTA.