



HONG KONG/NEW ZEALAND
NEGOTIATIONS ON A CLOSER ECONOMIC
PARTNERSHIP AGREEMENT. SUMMARY OF
SUBMISSIONS RECEIVED IN RESPONSE TO THE
DISCUSSION DOCUMENT.

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INTRODUCTION

This document summarises the written submissions received to date in response to the Government's discussion paper "Hong Kong and New Zealand: Initial Analysis of the Bilateral Trade and Economic Relationship as Background to a Possible Closer Economic Partnership Agreement" released by the Minister for Trade Negotiations in April 2001. Also included is a note on key comments and issues raised during public consultation meetings in the five main centres held during May and early June. This consultation is continuing.

DISCLAIMER

In view of the number and length of submissions received, this summary has been prepared to assist interested parties. Every effort has been made to record accurately the views of submitters. Any errors (eg of emphasis) or omissions are unintentional. Submissions or comments which the submitters asked be treated as 'commercial in confidence' are omitted from this summary. Readers are referred to the actual written submissions for the authoritative version of submitters' views. A copy of all submissions received can be obtained from the Ministry of Foreign Affairs and Trade, contact: Suzanne Weaver (tel 04-4732030) or e-mail: 'suzanne.weaver@mfat.govt.nz'.

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THE NEW ZEALAND COUNCIL OF TRADE UNIONS

The New Zealand Council of Trade Unions (CTU) represents 22 affiliated unions with a membership of approximately 225,000.

Pending further information and analysis, the CTU has not taken a position for or against the proposed CEP. It says there may be little to gain by a CEP with Hong Kong and notes several issues of concern. It seeks active engagement in more detailed discussion before taking a position on the substantive issues. Such a process needs to be extensive and occur across the whole of Government.

The NZCTU supports a trade policy that will assist in the creation of quality export jobs, provided there is a balance of advantage, and specific recognition of employment, economic sovereignty and adjustment issues. We support the new emphasis on reciprocity in place of unilateralism, and are more attracted to what could be described as “fair trade” agreements in the context of a rules-based trading system, than “free trade” per se.

For trade arrangements to be seen as a positive force there needs to be greater transparency and participation in their development. For an organisation like the NZCTU, that must include the opportunity for informed analysis and discussion within both the peak body and constituent unions. Those discussions need to take place at a time when it is still possible to influence the outcome of negotiations. Informed analysis will be greatly assisted by the timely release of draft text, as appropriate, during the course of the negotiations.

The NZCTU supports the expansion of export markets consistent with the “high road” economic development approach. Key elements include: investment in skills; value-added quality exports; new employment opportunities, and; sustainable jobs on high wages. The NZCTU therefore wants to see expanded market access that will lead to quality jobs in New Zealand.

For the NZCTU, any analysis of the relative merits of a trade agreement or closer economic partnership must be based on empirically sound research, properly conducted net benefit analysis, and include consideration of:

- employment effects in New Zealand;
- adherence to core labour standards;
- the contribution any proposed agreement will make to sustainable economic development in NZ;
- the impact on public and social services provided by our members unions
- the extent to which the agreement is based on principles which will advance equitable trading relations between countries

In respect of economic development such agreements/negotiations may make, the NZCTU’s assessment will be on an overall, rather than a sectoral, basis.

Key Issues

The NZCTU is very concerned about the exploitative labour conditions in Guangdong. The main impact on New Zealand under a CEP in terms of goods trade would be on the TCF sector in New Zealand. About 58% of Hong Kong's domestic exports are apparel, clothing and textiles. These must involve some change to the permanent shape, nature, form or utility of the basic materials used in manufacture. But use of sub-contractors in China means local content can be minimal and rules of origin are very hard to police.

The NZCTU notes with concern the results of a number of U.S. investigations into transshipment of (mainly) garments from China to avoid quota limitations. Every six months, U.S. Customs publishes a list of "Foreign entities violating textile transshipment and country of origin rules". For the six months ended 30 March 2001, it listed 23 companies. All but three were from Hong Kong (the remaining three were from Macau). A report from U.S. Customs based on two visits to Hong Kong in 1999 noted that the first visit found 27 of the 55 factories visited suspected of being involved in transshipment, or close to a 50% suspicion rate. The second visit found 24 of the 51 factories visited suspected of being involved in transshipment, again close to a 50% suspicion rate.

The further removal of tariffs on TCF during the period of the "tariff freeze" is contradictory. Zero tariffs on TCF will mean a significant increase in imports from Hong Kong/China, closure of more factories and loss of more jobs, especially for Maori and Pacific Islands women workers in the regions, and could even result in the total collapse of the industry. If this trend continues the government's freeze on TCF tariffs becomes meaningless.

The NZCTU says it would be helpful if there had been much more detail on the implications of such tariff elimination and the associated adjustment costs. If workers in the TCF sector lose their jobs as a direct result of a change in policy on the tariff freeze, then there is an obligation on the Government to compensate those workers and fund adequate retraining and relocation packages in addition to providing assistance to affected communities.

Labour Standards

The NZCTU is seeking the inclusion of a specific "core labour" clause in the Hong Kong CEP.

In essence, such a labour clause would mean that there is verification and inspection of the quality of the labour input (conditions under which the work is done) alongside any checking of the content of the labour.

The CTU is concerned to note that it is proposed that there should be a trade and environment clause in the NZ/HKCEP but not a trade and labour clause. Why should human rights issues take second place to environmental concerns?

A "separate but parallel" labour standards process could lack integrity, and might not be feasible, as there are labour-related issues that directly impact on ROOs and other aspects of the agreement and therefore should not be part of a separate process because they would arise directly from the trade negotiations. The NZCTU believes there needs to be some enforcement mechanism if such a side agreement is to be credible.

There is perhaps little to gain by a CEP with Hong Kong, which is already very open in relation to services and investment. There are no tariff barriers in Hong Kong and there is already an investment agreement between New Zealand and Hong Kong. An alternative approach could be to seek particular negotiations on issues where progress could be made (such as mutual recognition of qualifications where appropriate) and focus resources more on marketing New Zealand exports.

Investment

The “signalling effect” of a CEP in attracting increased investment flows from Hong Kong and other APEC economies is unproven, and is of concern when put against the likely loss of jobs in the TCF sector. There are also questions about the quality of foreign investment in New Zealand.

There is some concern that the expropriation and disputes procedures under the 1995 IPPA could lead to some of the damages claims experienced under NAFTA. This could create a restriction on the ability of the New Zealand Government to regulate where necessary, including to remove the distortionary effects of speculative or “hot money” flows.

Services

The CTU is worried key elements of the service sector in New Zealand (such as health and education) could end up with extensive commercialisation cemented in place, making it very difficult for the Government to reinstate a more vigorous public aspect in these sectors.

In addition the CTU does not support the requirement in relation to Government procurement which could allow equal consideration of Hong Kong investment/tendering for Government/local Government goods and services worth over \$125,000. In addition, the CTU would like to discuss the feasibility of offset arrangements in relation to investment.

Finally, it is crucial that no concessions are made on anti-dumping mechanisms or safeguards.

BUSINESS NEW ZEALAND

Representing some 76,000 enterprises, Business New Zealand is the leading national organisation representing the interests of New Zealand’s business and employing sectors.

Overall, Business New Zealand is broadly supportive of the intention of New Zealand and Hong Kong to negotiate a CEP. However, this support is predicated on assurances that:

- A robust rules-of-origin regime can be designed and implemented that would prevent circumvention of tariff preferences by goods that are in reality Chinese;
- Constraints on the level of financial assistance available for businesses in each country are put in place;
- Labour and Environmental standards are not included in the CEP; and

- An appropriate and adequate competition framework and disputes resolution process is developed.

Business New Zealand also encourages the Government to consider pursuing a CEP with the People's Republic of China.

General Comment

Business New Zealand believes the proposed CEP would complement similar existing agreements with Australia and Singapore and would be consistent with the ambition to engage other significant trading partners, such as the United States, and perhaps eventually China.

In the case of Hong Kong a CEP could help to:

- strengthen and deepen its relationship with an important trading partner, including raising New Zealand's profile in Hong Kong;
- position New Zealand businesses to take advantage of new and emerging opportunities in North Asia, also reflecting the need for leveraging opportunities off New Zealand's skills base; and
- provide an opportunity to promote quality trade rules at a time when progress on trade liberalisation in the WTO is uncertain.

Rules of Origin

There is a risk Chinese-made goods will be routed through Hong Kong to New Zealand to qualify for duty free entry. There is also concern about the added pressure duty-free entry of Hong Kong goods would bring to bear on directly competing manufactures of still protected sectors like TCF, automotive parts and machinery.

Unlike the US or EU, New Zealand has no quotas, and the only constraint on Chinese imports is price. Penetration by Chinese goods is roughly nine times the EU and US levels per capita. Given this, widespread anecdotal evidence that the China-Hong Kong border is "porous" and discrepancies between the Hong Kong and New Zealand origin records, effective rules of origin will be particularly important: The rules developed for Singapore will not be appropriate for Hong Kong. The rules must be transparent, easy to use and backed by severe penalties for breaches.

Government subsidies

A key issue in any free trade agreement is whether there are any constraints on the level of government financial assistance that is provided to business, and which could provide an unfair competitive advantage to recipient businesses. The CEP agreement should require a limit on the level of financial assistance or tax credits the Hong Kong Government may provide to businesses in Hong Kong.

Non Tariff Barriers

Business New Zealand supports efforts to reduce non-tariff barriers, but would be wary about a CEP agreement that would compromise our ability to maintain in place a robust biosecurity regime.

Services

Hong Kong is a significant global player in the services sector, so there is potential for New Zealand to benefit from a CEP agreement that comprehensively liberalises services.

New Zealand's own services market is already open and largely deregulated and our WTO commitments on services are more extensive than Hong Kong's. Therefore, a CEP agreement would go some way to level the services playing field between the two parties and provide equal opportunities to each side's businesses. The air transport sector is particularly important because of the role Hong Kong plays as an entry point to China and beyond. Business New Zealand notes pleasing recent progress in this area.

Investment

Business New Zealand would support a CEP agreement that would help stimulate greater two-way flows of productive new investment.

Treaty of Waitangi

Business New Zealand is "uncomfortable" with this clause being written into a CEP agreement with Hong Kong. They would not support any measures that would allow the Government to give any special interest group preferential treatment. This could be construed to be protectionism by another name, and there is a risk NZ negotiators could find themselves having to make important concessions in other areas.

Labour and Environment Standards

Business New Zealand is concerned opponents of free trade have used labour and environmental standards as a smokescreen to mask their inherent protectionism. Both Hong Kong and New Zealand apply a number of ILO conventions and the ILO has disputes mechanisms in place to resolve complaints over how these conventions are being implemented. The ILO - and not a duplicate structure under the CEP - is the place to investigate or consider labour market issues

On environmental standards, there is widespread debate on how environment conventions are to be applied in a domestic environment so it seems very premature to begin to link them into trade agreements.

Competition Policy

Both Australia and Singapore offer significant financial incentives to domestic industry, especially for the manufacturing sector. In the case of Hong Kong, we believe the best way to address these concerns is through the development of a suitable general competition framework, which is able to recognise the range of factors which impact on competitiveness rather than focus on narrow concerns. If this competition framework is to be effective a disputes resolution framework is also needed where these concerns can be resolved, rather than remain stalled, as we have seen under the CER agreement with Australia.

FEDERATED FARMERS

Federated Farmers is an industry organisation that represents approximately 17,000 members throughout New Zealand.

While the short term benefits of a CEP may not be significant to the New Zealand economy, the importance of showing commitment to free trade arrangements is fundamental.

The WTO and regional groupings such as APEC, combined with bi-lateral agreements are New Zealand's best hope of influencing further reforms to the world's trading system.

Federated Farmers strongly supports the move towards a CEP with Hong Kong.

Rules of Origin

The Federation does not have a particular preference as to the most effective and efficient means of assessing origin, so long as economic efficiency is not unduly compromised.

Given the extent to which Hong Kong is a distribution centre or staging post for exports of goods and services from other places, there is a need to ensure, from a biosecurity perspective, that New Zealand is aware of the origin of the goods.

While Federated Farmers strongly supports measures to remove technical barriers to trade, it says it is important that any measures adopted should not affect New Zealand's ability to maintain in place a robust biosecurity regime.

Competition Policy

It is important that no unnecessary barriers are placed on new entrants beyond the obvious one that they need to be competitive to survive and prosper in a competitive market. An agreement with Hong Kong could seek to promote transparency and discipline in competition law.

Federated Farmers opposes inserting a Treaty of Waitangi Clause within a CEP agreement with Hong Kong. The Federation considers that the Government should refrain from inserting clauses such as this where the purpose and legal ramifications are unclear. It could create uncertainty for business in a free trade environment and would be open to various interpretations.

Labour and Environmental Standards

The Federation opposes the possible inclusion of labour and environmental standards within any CEP between New Zealand and Hong Kong.

The Federation agrees with the Hong Kong position in respect of labour and environmental standards, this being that it is inappropriate to link such issues to trade negotiations and agreements, as they might be used as a mechanism to restrict competition between countries, and particularly competition from developing countries.

The International Labour Organisation (ILO) provides the more appropriate mechanism to address labour standard issue on an international level. The obvious danger of including ILO conventions within trade agreements is that such agreements could involve action, possibly trade sanctions, being taken against the country which is considered to be breaching an ILO convention.

AUCKLAND REGIONAL CHAMBER OF COMMERCE AND INDUSTRY (ARCCI), THE HONG KONG NEW ZEALAND BUSINESS ASSOCIATION (HKNZBA) AND THE NEW ZEALAND CHINA TRADE ASSOCIATION (NZCTA)

The ARCCI, HKNZBA and NZCTA support the negotiation of the Hong/Kong/New Zealand Closer Economic Partnership agreement (the CEP). It could be expected to generate material gains, particularly in services exports and inward investment. A CEP would also be significant in a strategic sense, building an important link with North Asia and possibly paving the way for a trade agreement with China.

Specific issues include:

- Rules of origin in the CEP for items subject to tariff into New Zealand should be well understood and policed, to maintain the integrity of the Customs enforcement system for the tariffs that still apply to a minority of imports. They should not however be so complex that their administration will impose a major cost and time constraint. Significant transformation is one way to measure origin; another is ex-factory content. The ARCCI, HKNZBA and NZCTA have no preference, other than to say that it is desirable for the ROO to be consistent across all trade liberalisation agreements to which New Zealand is a party, to minimise administration costs and confusion among companies subject to the rules. Hong Kong's policing of its TCL export certificates, production licences and content standards is already very robust. It is considered that Hong Kong enforcement of whatever ROO are in place for the CEP will stand up to scrutiny.
- Services sector coverage in the CEP should be at least as comprehensive as the coverage in the Singapore CEP. The CEP is a major opportunity to widen the scope of traditional trade liberalisation agreements to take into account rapidly growing international business in the service sectors, widening access to the Hong Kong services market, and through Hong Kong building expertise in China and other north Asian markets. No services should be excluded from the CEP. The ARCCI, HKNZBA and NZCTA recommend that an overall framework be agreed in the CEP that then allows each service sector to be dealt with in a separate protocol, with input from the relevant New Zealand service sector.
- Immigration protocols should be negotiated in the CEP allowing the free movement of residents and business people between New Zealand and Hong Kong. Investment from Hong Kong is often introduced to New Zealand on the back of family emigration from that country to New

Zealand. New Zealand service providers building a business in Hong Kong need also to dwell in Hong Kong for a significant period of time. Consideration of reciprocal immigration as a protocol to the CEP may set a precedent for other innovative solutions to immigration, business investment and settlement of migrants issues in New Zealand.

- A double tax agreement with Hong Kong should be negotiated as a protocol to the CEP. There is currently no double taxation treaty between New Zealand and Hong Kong. A double tax agreement with Hong Kong, as a protocol to the CEP - at least on the same basis as the New Zealand double tax agreement with China - would remove a number of these obstacles on New Zealand's part and would generate considerable publicity for potential investment from Hong Kong into New Zealand.
- The CEP should be used to stimulate inward investment to/from Hong Kong. New Zealand is a small country with scarce investment capital. In contrast, Hong Kong's private sector generates very large capital resources. The CEP should be an instrument to attract Hong Kong capital to New Zealand, initially through a marketing campaign in Hong Kong. At a minimum, both sides should agree to bind their current inward investment rules to ensure transparency and consistency for business planning.
- Labour and the environment are issues that may well be used as non tariff barriers to New Zealand trade and inward investment and should be kept separate from the main CEP negotiation.
- Chinese trade access to/through Hong Kong should not negatively impact on the conclusion of the CEP with Hong Kong so long as the rules of origin principles noted above are in place. As almost all products other than TCF already enter New Zealand from China tariff free, this issue will not materially arise. However, a significant level of confidence will still need to be generated in the business community with regard to the ROO and their administration both in New Zealand and Hong Kong.

A CEP with Hong Kong strategically positions New Zealand for a possible trade agreement with China. As most imports from China are already tariff free. The advantage from such an agreement would therefore flow significantly in New Zealand's direction. China does not currently have any free trade agreements in place. However, New Zealand has already created precedents in this area.

RETAIL MERCHANTS ASSOCIATION, BARRY HELLBERG, GOVERNMENT RELATIONS CONSULTANT

The association, which represents the retail and wholesale trade sector, supports the proposed agreement as a matter of principle, consistent with a free and competitive market place.

Mr Hellberg says most consumer goods sold in New Zealand general merchandise stores are sourced from China, with some shipped from Hong Kong. For this reason Mr Hellberg recommended organising a half-day forum in Christchurch and Auckland so that manufacturers, exporters, importers and retailers could discuss rules of origin (these were held 5/6 July).

EMPLOYERS AND MANUFACTURERS ASSOCIATION (NORTHERN)

Represents about 5000 members north of Lake Taupo, including about 1000 manufacturing enterprises. It is a party to the submission of Business New Zealand. EMA supports the pursuit of “free and fair” trade and accepts that a CEP with Hong Kong would help to lift New Zealand’s trade profile in North Asia and could improve the prospects for forging closer partnerships with other economies in the region, including China and Taiwan.

EMA is concerned at the risk of a NZ-HK CEP providing a “back door” for duty-free entry to New Zealand of imports from China, without any reciprocal benefits accruing to New Zealand exporters. Critical to controlling this will be:

- Reliable rules of origin that might combine New Zealand’s added-value system with Hong Kong’s substantial transformation formula. This might also include some differentiation of rules of origin among different sections of the tariff.
- Enforcement. Given scepticism about the “porous” nature of the China-Hong Kong border, the New Zealand Government will need to ensure adequate resources for NZ Customs to investigate and police “origin and value” invoice inquiries in Hong Kong.
- Trade remedies. Safeguards and anti-dumping procedures must be incorporated in a CEP because, while rarely used, they provide a significant discipline.

EMA also favours a renewed look by officials at country of origin labelling.

EMA opposes inclusion of trade and environment standards and a Treaty of Waitangi exemption, all of which it says may complicate negotiations at the cost of the eventual outcome.

FOOTWEAR INDUSTRY ASSOCIATION

The FIA asks that the following be included with its submission:

“The NZFIA has made a submission dated 31 May 2001 on the discussion paper circulated by the Ministry of Foreign Affairs and Trade. It should be

clearly understood that this submission is a preliminary document and does not set out the final position of the NZFIA. Prior to establishing a final position we must take into account further consultations with officials which are expected to take place over the next few weeks. We are also concerned that information is appearing which relates to the apparently common practice, in related industries, of Hong Kong firms being used as a front for goods from China to achieve preferential access into the US market.”

General Comment

The NZFIC queries the reason for entering into CEP negotiations, arguing the likely tangible gains appear slight. It has grave doubts about New Zealand’s ability to police its borders against third-country imports claiming Hong Kong preference, and asks whether the consultations between New Zealand officials and industry might conceivably question the *raison d’être* of a CEP, or whether they are designed purely to address rules of origin.

NZFIC seeks an indication that the government is willing to abandon efforts towards a CEP if the requirements of interested parties, including the TCF sectors, are not able to be satisfied.

Rules of Origin

More information and analysis is needed by the NZFIC to help it to a firm position on the best formula, but a mixture of local content threshold and change-of-tariff heading appears necessary to ensure a robust regime.

The NZFIA questions whether different local content thresholds between Singapore and Hong Kong would be compatible with APEC (the threshold applied under CER to Australia differs from that for Singapore’s), and queries what Hong Kong authorities actually count as the “transformed” portion when assessing tariff changes. NZFIA also questions whether the export control system Hong Kong applies for products sent to the US and EU would be applicable to the New Zealand footwear sector.

For these reasons, all the existing procedures used by the Hong Kong authorities should be very closely examined by New Zealand officials by way of establishing an ongoing regime.

Customs Control

Given the risk of Chinese goods entering New Zealand via Hong Kong, the government must give an assurance NZ Customs will be adequately resourced to police rules of origin under a CEP.

Co-operative relations with Hong Kong Customs and Excise is not enough, and the CEP must be sufficiently robust to be enforceable entirely by NZ Customs. This is due to the “anomalous position of Hong Kong vis-a-vis China”, and weaker incentives for Hong Kong to control Chinese goods than it demonstrates vis-a-vis the US and the EU.

Trade Remedies

Access to remedial action should be retained and, further, if a surge of imports reaches a certain trigger level, all imports should be charged duty until their eligibility for duty-free access is proven.

APPAREL AND TEXTILE FEDERATION

The Federation appreciates the consultative process and the opportunity to provide input at an early stage. It believes it unlikely there would be any benefit to the apparel and textile industry from the agreement, and some degree of risk.

The Federation continues to doubt the commercial and trade benefits accruing from agreement with free trade areas, and believes most of the service gains discussed will arise without the agreement.

The potential for Chinese goods to be routed through a duty free port is a major risk to the industry and an economic benefit some importers will not be able to resist if the level of compliance checking is not adequate.

The Federation's specific areas of concern are:

Proximity to China

- China dominates the world trade in clothing and textiles. Its exports to the two main trading blocks, USA and EU, are constrained by fixed-volume quotas as well as tariffs. Per capita imports of apparel from China are nine times greater in New Zealand and Australia - where there are no quotas - than to the USA and EU.
- Hong Kong manufacturers have permanent quota volumes and are to sell into quota countries based on their costs compared with domestic sourced goods rather than on world competitiveness. Hong Kong also tends towards better end product. In open markets China dominates low to middle class product.
- While domestic and re exports attract the same duty there is no gain from falsified origin documentation. If the 19% tariff were removed from Hong Kong products under a CEP, it would create a huge temptation to cheat.

Rules of Origin

The industry did not support the content reduction (from 50% under CER with Australia to 40% with Singapore) in the Singapore CEP on the assumption that it would become a precedent. While deflection of origin is possible via Singapore it is a clear reality with Hong Kong. We are not convinced that the Hong Kong/China land and sea borders can be adequately screened or that documentation can easily be controlled once the goods enter Hong Kong territory.

USA and EU use substantial transformation normally change of tariff heading, as the determinant for origin. The Federation has been interested in using this as the prime criteria for some time rather than domestic added value as per our other existing trade treaties.

The ATF understands from officials that factories need registration, are visited regularly and have documentation certified by government approved bodies. If we could be assured of the same level of outward checking the industry would feel that there were manageable controls at that end.

Federation representatives would like to continue to consult with official on this option, rather than on the basis of value added, as the negotiations progress.

We see transformation taking place where the final product is manufactured from the constituent raw materials and would include all the operations which produce that final product, i.e. cut, make, trim and adorn an apparel garment.

Import Monitoring

Regardless of the rules of origin used and the regulated standards of documentation a higher level of policing and compliance checking will be required in New Zealand by Customs. China is such a dominant world force in our industry that any, partial backdoor duty-free entry into New Zealand could well kill off the remaining domestic industry infrastructure very quickly.

Given the major importance that we place on this issue, the Federation was pleased to see the recognition of the issue by Customs and their confirmation that government also understood the risks.

The federation would expect to see public acknowledgement of the issue and adequate funding provided before any agreement was signed.

Safeguards

The federation believes the only real safeguard is the ability to take anti dumping action and require this right to be maintained.

While the ability to take action exists it provides a deterrent and helps ensure it will not need to be used.

PLASTICS INSTITUTE OF NEW ZEALAND

PINZ identifies no concerns to the NZ plastics industry at this stage but, as with the TCF sectors, emphasises the need for a robust rules of origin regime. PINZ suggests rules of origin based on substantial transformation.

One issue is polymers used to make plastics. Plastics raw materials (polymers), in resin or primary form, are manufactured in a range of countries and are internationally traded commodities for which a world price is known at any time. It is often the case in the plastics industry that raw material content represents more than 50 percent of the factory cost of a finished product.

For Hong Kong production, most are imported from China, so under a CEP the way they are factored into treatment of Hong Kong-manufactured goods exported to New Zealand will be important. PINZ suggests rules of origin based on substantial transformation, as most plastics industry manufacturing processes involve a change in tariff heading where the primary form polymer is transformed into another product. The only exception PINZ notes is in the production of flexible films by the laminating process.

HOROWHENUA TEXTILE AND APPAREL CLUSTER GROUP

The group recommends no variation on New Zealand's current value added rules of origin formula, used with Australia and Singapore.

The group questions the reasoning behind the negotiations and believes the New Zealand textile and apparel sectors will be the big losers. It says textile and apparel imports from Hong Kong account for 15.83% of that economy's total exports to NZ, and the only products that attract duty. With New Zealand exports to Hong Kong already entering that market free of duty, and Hong Kong importing no such items from New Zealand, free access under a CEP would benefit only Hong Kong.

The group believes NZ Customs struggle to control imports now, let alone coping with the additional demands of determining which imports from Hong Kong were made there and which simply re-labelled. It believes Customs will merely rubber stamp imports from Hong Kong as duty free.

The submission says the textile and apparel industries were assured by this Government tariff rates would be frozen till 2005, and made significant investments on that basis.

MEAT INDUSTRY ASSOCIATION

The MIA represents the interests of New Zealand's beef and sheepmeat processors and exporters.

The MIA endorses the concept of a CEP with Hong Kong.

Hong Kong is a valuable third-tier market for New Zealand meat products, and one of the best returning on a per unit basis. The Hong Kong economy as a whole has demonstrated its robustness and ability to recover from temporary setbacks. Its main export products do not clash with New Zealand's. Despite the healthy trade surplus in New Zealand's favour the impression is of potential yet hardly tapped. Assurance of continued tariff-free access for New Zealand products to Hong Kong under a CEP would be welcome.

Issues the MIA identifies as requiring particular attention are:

- Enforceable rules of origin.
- Continued secure border controls.
- Closer harmonisation and facilitation of sanitary and phytosanitary procedures and specifications.
- The desirability of additional safeguards in the exchange of services exports.
- The desirability of increased Hong Kong investment in New Zealand.
- The risk that Treaty of Waitangi exemption under a CEP - by seeking preferential treatment for a particular New Zealand interest group - could undermine the wider gains to New Zealand achievable under a CEP.

- The potential for a debate on labour and environmental standards to distract from the opportunities in a deeper New Zealand-Hong Kong relationship.

MEAT NEW ZEALAND

Meat New Zealand supports the concept of negotiating a CEP with Hong Kong. It endorses the consultation process and its continuation throughout the negotiations.

For meat exporters, a CEP could help to set a precedent in other Asian markets, most of which are considerably less open than Hong Kong or Singapore. A web of such free trade agreements could extend liberal agricultural trade in the region and mitigate the risks of New Zealand being disadvantaged by other agreements from which it was excluded.

Hong Kong's deepening economic relationship with China means Hong Kong can play an important exemplary role within the group of Chinese economies. The closer New Zealand is to Hong Kong, the more substantial and more secure Meat New Zealand would expect its meat trade with China to become.

More specific gains might come in reducing compliance costs and harmonising technical and sanitary regulations.

WELLINGTON REGIONAL CHAMBER OF COMMERCE

The Wellington chamber supports the CEP negotiations as offering an exciting opportunity for the region's exporters, but says the benefits must be significant and demonstrable and must be clearly seen to outweigh the downside.

The chamber sees particular potential to be gained in services, including engineering, telecommunications, film, software development, education, legal and environmental services. Greater access for New Zealand services to the Hong Kong market must be a mainstream priority, and this will require Hong Kong to make commitments over and above those it signed up to under the GATS.

In the area of goods trade, any CEP must be underpinned by credible application of rules of origin, and this will require NZ Customs to be adequately resourced.

The Wellington Chamber of Commerce also endorses the consultation between MFAT and exporters, both as a means of feeding market access information to the negotiators and to raise consciousness among services exporters, in particular. MFAT needs to be adequately resourced to liaise with industry about the discrete set of features relevant to each sector.

NEW ZEALAND BUSINESS ROUNDTABLE

NZBR favours a CEP that is as liberal and uncomplicated as possible. It would stimulate improvements in efficiency, would secure access to Hong Kong's

markets and would have strategic value to New Zealand's future trading relationship with China and the region.

As a bilateral agreement it would not be as advantageous as a move to full free trade, which would remove the problems associated with rules of origin and the costs of customs administration they impose. The benefits of a CEP would include facilitating the removal of non-tariff barriers to goods trade and liberalising trade in services, including by promoting mutual recognition of standards and qualifications. A CEP would also raise awareness of New Zealand in Hong Kong and promote investment, immigration and other business links.

NZBR does not believe there is a need for labour or environmental provisions in the CEP, as no practical issues arise on these in trade with Hong Kong. Such provisions are likely to impede multilateral trade initiatives that would benefit New Zealand, so should be dealt with in other forums.

NEW ZEALAND COMMITTEE OF THE PACIFIC ECONOMIC CO-OPERATION COUNCIL (PECC)

PECC was established twenty years ago as an international organisation involving research, business and official interests throughout the Asia-Pacific Region.

PECC supports the NZ-HK CEP initiative as a means to greater openness between the two economies. PECC says it is critical such a CEP serves to promote an open regional regime for goods and services trade and investment, consistent with APEC and WTO goals.

PECC believes the CEP must:

- be open to accession by additional members.
- be genuinely comprehensive, embracing all sectors and addressing all non-tariff barriers or restrictive measures affecting cross-border transactions and commercial presence.
- extend to economic integration - including open dialogue, transparency and pursuit of mutual interest - and not be confined to just trade and trade-specific topics.
- reflect agreed APEC standards and principles, recognising that sub-regional agreements in the Asia-Pacific region make it even more important APEC's voice is heard in wider forums, particularly the WTO.

PECC calls specifically for:

- 'state-of-the-art' rules of origin that reflect how trade between New Zealand and Hong Kong will be conducted in future.
- broad coverage of services negotiated to an agreed timetable, with an ambitious agenda including air, financial and postal services.
- progress under a CEP towards a double taxation agreement.

BILL ROSENBERG

On behalf of Action, Research and Education Network of Aotearoa (ARENA.)

Dr Rosenberg opposes a CEP. He argues that there are more dangers than benefits for New Zealand. It conflicts with the government's economic and social development policies, and its rejection of priorities being determined by the free market.

Benefits claimed are not substantiated through rigorous analysis. He calls for a public inquiry into the social, environmental and economic effects of previous trade and investment liberalisation before proceeding with further agreements.

Of specific concern:

- In goods trade, it amounts to unilateral tariff reduction. He argues that any likely rules of origin risk being ineffective or almost impossible to enforce. There is no analysis of the costs to industries, workers and communities, or how new industries will be created to replace those destroyed, or of wider effects.
- His analysis of existing Hong Kong investment indicates that it is principally in areas that do not further government development objectives. He presents evidence of large scale "hot money" transactions for tax advantage. A CEP would heighten the risks already existing under the 1995 bilateral investment agreement of compensation claims from corporations affected by environmental regulation or economic development programmes. It further limits options for capital and exchange controls, and for favouring locals in economic development.
- In services, a CEP extending the GATS rules into further services, or deeper into existing ones, will further erode core public services at central and local government levels.
- In government procurement, restrictions on the ability to require local content or favour local suppliers will erode central and local governments' ability to pursue national and regional development by nurturing local industry.
- If Government decides to pursue these negotiations, it should periodically release draft texts for public comment.

Conflict with development

Dr Rosenberg asserts that the free market principles underlying free trade and investment are at odds with the present government's position domestically that the free market cannot be left to determine the nation's priorities. The CEP is designed to reinforce current specialisations - New Zealand in agriculture, Hong Kong in manufactured products. While New Zealand must still rely on agriculture, it must also develop a substantial added value focus. Provisions in a CEP would undermine the latter.

No Obvious Net Benefit

Hong Kong's niche in the world economy is based on its existing openness. CEP commitments binding zero tariffs and liberalized services therefore have

negligible value to New Zealand, while imposing obvious costs. If despite this, the CEP is defended on the basis of global strategic considerations, then a public inquiry and debate becomes even more important.

Closer relationships could be pursued using purpose-designed agreements such as in air services and mutual recognition of qualifications, and stronger marketing.

Goods trade

Dr Rosenberg says the proposal amounts to unilateral tariff reduction, conflicting with the tariff freeze. There has been no study of costs and benefits (economic, social and environmental), nor analysis of how lost jobs will be replaced, and the effects on the balance of payments of increased imports. Dr Rosenberg argues that any likely rules of origin risk being ineffective in protecting New Zealand TCF industries because of the control by Hong Kong trading houses of its internationalised production in factories around the world. There is also evidence from the US government of ongoing difficulties in enforcement.

Investment

Dr Rosenberg analyses eleven years of Hong Kong investment, claiming this analysis shows that its direct investment here is largely in commercial property, construction, retail, importing and distribution. He concludes that little Hong Kong investment is in priority sectors for economic development. Investment has been erratic, with more regularly taken out in dividends than has been earned.

He also points to the discrepancy between New Zealand's figure of Hong Kong investment in New Zealand - NZ\$1.1 billion at March 2000 - and Hong Kong's figure of NZ\$9.2 billion at December 1998. He says Hong Kong authorities attribute the difference to short-term capital movements for tax advantages. This highlights the dangers in the loss of capital controls in a CEP and the existing 1995 Investment Promotion and Protection Agreement (IPPA).

A key concern is that a CEP would make even more acute New Zealand's vulnerability to expropriation clauses and investor-state disputes procedures in the IPPA, which are very similar to those in the North American Free Trade Agreement. Precedents under NAFTA include awards of substantial compensation to corporations against federal and state governments for initiating environmental and other regulatory measures the litigants claimed threatened their profitability. These reduce the scope for local and central government to safeguard the environment or pursue economic and social goals.

A CEP would also prevent government favouring local enterprises in economic and regional development initiatives, and selecting appropriate overseas investment. The Overseas Investment Commission's recently raised NZ\$50 threshold for vetting investment and other screening criteria which would be locked in.

Other

Labour and environmental standards should be upheld through the primacy of strengthened labour, human rights, and international environmental arrangements, over trade and investment arrangements, rather than labour and environmental clauses.

ASSOCIATION OF UNIVERSITY STAFF

AUS represents 6000 academic, administrative and support staff employed by universities and related institutions. AUS re-submitted its submission on the NZ-Singapore CEP, and added comments on the prospect of a CEP with Hong Kong.

AUS strongly opposes the inclusion of tertiary education and R&D services in the proposed agreement...

...on the grounds it would enable Hong Kong education and research contractors to bid for contestable, public funding such as the Marsden Fund. This would have a potentially catastrophic effect on the extremely limited amount of research funds that are available in this country.

THE ROYAL FOREST AND BIRD PROTECTION SOCIETY

The Royal Forest and Bird Protection Society of New Zealand is a large, national environmental group with around 40,000 members.

Forest and Bird's overall position

Forest and Bird will oppose the signing of the Hong Kong-New Zealand Closer Economic Partnership (CEP) unless local and central government environmental decision making is exempt from the provisions of the agreement, environmental services are exempt from the agreement and a not-lowering-standards clause is included.

Forest and Bird is sceptical of government assurances that the agreement will not impact on the environment given that there is a pattern internationally of such assurances proving false, but it will look to see real changes in the manner in which the agreement develops.

Forest and Bird urges the government to renegotiate the present Hong Kong-NZ and other Investment Promotion and Protection Agreements (IPPAs) in order to exempt environmental decision making from any expropriation clause and remove any opportunities for investor-state dispute resolution processes.

Importance of ensuring trade is consistent with environmental goals

Forest and Bird welcomes the intention of the government to negotiate the proposed Hong Kong-New Zealand CEP in a manner that is consistent with the government's environmental goals. This marks a clear change from previous policy and it is important that this change is reflected in the wording of any final agreement. This will require more active involvement from the

Department of Conservation, Ministry for the Environment and Local Government New Zealand.

Forest and Bird welcomes the release of the discussion paper. It says, however, the discussion document's coverage of issues relating to trade and the environment is inadequate. This means that the public will have inadequate information on which to provide meaningful comment to government.

A summary of submissions should be made available to submitters who wish it.

It is important that submitters are advised of the outcomes that result from their submissions and that they receive feedback on how their concerns are being addressed through the negotiations.

To be meaningful, submissions should result in the changes to the negotiating brief of the New Zealand government's negotiators. Drafts of the agreement should be made publicly available, including the initial draft that New Zealand takes to the negotiating table.

Forest and Bird's recommendations

- That submitters be provided with a copy of the summary of submissions prior to going to Cabinet.
- That the summary of submissions be made publicly available and on the MFAT website.
- That drafts of the text be made available during negotiations.

Overall impression of the discussion document

Forest and Bird is disappointed at the level of disclosure about environmental concerns relating to trade. Forest and Bird is unclear whether this is the result of ignorance within MFAT of the environmental consequences of trade and trade agreements or whether this is the result of the withholding of information.

Information that Forest and Bird would like to have seen in the public discussion document includes:

- information on projected increases in trade flows and its implications for biosecurity.
- projections of increased costs of maintaining current or similar levels of biosecurity control and inspection in the face of increased trade flows.
- likely cost and impact of pest establishment.
- what constraints the agreement places on domestic environmental regulation and the kinds of regulation that would not be permitted under the agreement.
- disclosure of existing concerns relating to the implementation of GATT Article XX and its failure to protect environmental regulations.

- disclosure of existing concerns relating to the manner in which investment protection provisions have been used elsewhere to attack environmental regulation.
- disclosure of concerns relating to the difficulty of addressing production process-based environmental issues relating to trade and investment.
- disclosure of concerns relating to the primacy of trade agreements over environmental agreements.
- options for CEP provisions that would provide protection for the environment, the level of protection that these provisions would provide and what the limits would be of such provisions.

Forest and Bird seeks

- That the government seek input from the Ministry for the Environment on the environmental effects of trade and the implications of trade and investment policy for domestic environmental regulation.
- That the government produce a discussion document on the environmental effects of trade and trade and investment agreements with options for inclusion in the Hong Kong CEP.
- That the above information be made publicly available on all future investment agreements being considered by MFAT and government.

Trade Issues

Non-Tariff Measures – Technical Barriers to Trade

- There is a potential conflict in seeking to reduce compliance costs for sanitary and phytosanitary requirements while on the other hand the government appears to want to maintain a ‘robust biosecurity regime’.

Nothing in the agreement should prevent improvements in biosecurity controls in the future.

Forest and Bird Seeks

- Any changes to the biosecurity regime for New Zealand as a result of this agreement should improve and not weaken biosecurity in New Zealand and any harmonisation of standards should be towards the highest standards, not the lowest common denominator.
- Forest and Bird wishes to be consulted on any proposed changes to New Zealand’s biosecurity regime, as should other stakeholders, including Federated Farmers, Forest Owners’ Association, Greenpeace and the Regional Authorities and the Department of Conservation.

Non Tariff Measures – Intellectual Property

Forest and Bird notes that the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS) formed the basis of the regime in the Singapore-NZ CEP. Last year, TRIPS was criticised by the United Nations Subcommission for the Promotion and Protection of Human Rights for being in breach of

human rights conventions. These concerns have significant implications for intellectual property rights relating to indigenous biodiversity.

Forest and Bird considers that it would be premature and inappropriate for the government to include intellectual property rights to indigenous biodiversity in the agreement, particularly given the outstanding WAI262 claim before the Waitangi Tribunal. Indigenous biodiversity should not be able to be owned by private firms and individuals particularly where such ownership includes the ability to control the reproduction and distribution of indigenous biodiversity.

Any intellectual property rights regime should also not impede in any way the ability of central and local government to act for reasons of biosecurity even when such actions result in the destruction of investments in genetic material.

Forest and Bird seeks

- That the use and ownership of indigenous biodiversity be excluded from intellectual property rights under the CEP.
- That actions deemed necessary by either party to maintain biosecurity be excluded from the agreement and that such decisions not be subject to any form of dispute resolution process.

Services Trade – Tourism

MFAT should disclose the environmental consequences of increased tourism as a result of the agreement. The Department of Conservation, local authorities and the public should be consulted on the impacts of this.

It is also unclear what this would mean in terms of market restrictions applied by the Department of Conservation to manage tourism and its impacts on conservation lands. It is unclear where government provided semi-commercial services such as huts and tracks would fit within this agreement.

Forest and Bird seeks

- That the impact of increased tourism and the risks to conservation legislation and concession processes under this agreement should be assessed and then released for public comment.
- That the public provision of recreation and tourism facilities should be exempt from this agreement.
- That Market restrictions for the purposes of managing the effects of tourism and recreation should be exempt from this agreement.

Services Trade – Environmental Services

Forest and Bird is concerned that the agreement could:

- Open or create markets in essential environmental services such as water reticulation. Some environmental services such as the provision of ecological and landscape advice require good local and professional knowledge, including in some cases a high level of understanding of New Zealand cultural norms and the contribution of indigenous biodiversity to

landscape values. Yet such requirements could be seen as a disguised restriction on trade. It would appear that there are few restrictions to the formation of mutual partnerships at present.

- That environmental services be excluded from the agreement.

Investment Issues

The experience of regulators under the North American Free Trade Agreement, indicate New Zealand, under the 1995 Investment Promotion and Protection Act, may be vulnerable to similar actions, where investors can seek compensation by arguing that environmental regulation amounts to expropriation.

As the table below shows, the problematic expropriation provision of NAFTA is comparable to the expropriation provision of the Hong Kong-New Zealand IPPA. These provisions appear to be largely standard in investment agreements.

Table 1: Comparison of NAFTA with the HK-NZ IPPA

Provision	NAFTA (Chapter 11)	HK-NZ IPPA (Article 6)
Expropriation.	No Party may directly or indirectly expropriate an investment of an investor of another Party in its territory or take a measure tantamount to expropriation of such an investment	Investors of either Contracting Party shall not be deprived of their investments nor subjected to measures having effect equivalent to such deprivation.
Exceptions	a public purpose, on a non-discriminatory basis, in accordance with due process of law and Article 1105(1) and on payment of compensation.	for a public purpose related to the internal needs of that Party, on a non-discriminatory basis, and against compensation.

The clauses, although they use different language, have effectively the same meaning.

The approach of the IPPA with respect to “indirect expropriation” is also contrary to New Zealand law which generally excludes compensation for the consequences of government decisions, except where this is outright taking of property (as per the Public Works Act).

The approach of the Resource Management Act is essential to the proper functioning of the New Zealand economy as it ensures that externalities are addressed. If corporates are to be compensated by New Zealand decision makers for addressing externalities, then there is no incentive on those corporates to minimise the costs of activities on the environment. Indeed the reverse is the case. As the experience under NAFTA demonstrates, the approach of the IPPA is likely to lead to:

- A chilling effect on central government decisions when governments are faced with the possibility of having to compensate or face international litigation.
- A significant fiscal risk from local and central government decision-making on environmental matters leading to compensation claims against central government.

- Pressure from local investors for the same rights as foreign investors including a more compensatory regulatory environment, undermining the polluter pays principle.

A significant cause of added risk to New Zealand is the investor-state dispute settlement procedures in Article 9 of the IPPA. This clause enables an overseas investor to take action against the government, rather than leaving dispute settlement as a matter between states.

Forest and Bird seeks

- That the government renegotiate the Hong Kong-New Zealand IPPA to ensure that the agreement includes a clear and unambiguous provision to exempt all forms of environmental regulation from the provisions of Article 6(1) and removes any opportunity for investor-state dispute resolution.
- Proposed Exceptions to the CEP.

GATT is an inappropriate framework

Forest and Bird is concerned that MFAT plans to model the exceptions in the CEP on the GATT Article XX exceptions. Such an approach is unacceptable given the failure of the GATT Article XX to provide protection for even GATT-compliant environmental regulation. The Chapter XX exemptions are so conditional as to make them largely irrelevant. The hurdles established by WTO decisions on environmental regulation make it almost impossible to sustain environmental regulation in the face of attack in the WTO.

GATT exceptions have proved incapable of protecting environmental regulation. Better exceptions must be developed if trade agreements are to meet the government's environmental goals.

Need for robust exceptions in bilateral agreements

It is important that the government looks to bilateral agreements to go further than the WTO in meeting the New Zealand's environmental standards.

Forest and Bird argues that New Zealand should not risk its own environmental decision making by relying on ineffective exemptions. A noteworthy comparison can be made between military and environmental exceptions under the Singapore Agreement. In this agreement the military exception is unconditional whereas the environmental exceptions are highly conditional.

Environmental exemptions should be given the same standing as defence exemptions.

Forest and Bird seeks

- That environmental decision making be given an unconstrained exemption in the CEP.
- That a not-lowering-standards-clause also be inserted into the agreement to prevent race-to-the-bottom environmental decision making.

- Forest and Bird be consulted over appropriate wording for environmental exemptions in the agreement.

CHRISTCHURCH CITY COUNCIL

The council questions the assumed benefits of the trade agreement, draws attention to those provisions that could have an adverse impact on local government and local industry, and proposes safeguards if the Government decides to pursue the agreement.

It welcomes the extent and quality of this consultation as being in marked contrast with that of previous arrangements. Although the consultation timeframe is tight for an organisation such as the Council, it welcomed the opportunity to comment in the earlier stages of negotiations.

On consultation, the Council requests:

- further consultation at other stages during the negotiations and sufficient time for appropriate input.
- drafts of the text be released during the negotiations

Benefits of the investment and trade agreement

The Council cannot identify any great benefits from the proposed agreement with Hong Kong, and believes Hong Kong may set a high price in terms of further commercialisation of our social and environmental services or further tariff cuts in our textile, clothing and footwear industries, in return for any concessions it makes in services.

The agreement would open New Zealand to risk of litigation by corporations which dislike environmental, economic, and social policies that adversely affect them. It may restrict local governments social and economic development policies.

Hong Kong's geographical situation and the extent of re-exports of traded items via Hong Kong means that rules of origin should to be a central issue in a CEP negotiations. However, it will be exceptionally difficult to define rules of origin that are enforceable and distinguish domestic products from those made elsewhere. Therefore, the agreement may have a major impact on our textile, clothing and footwear sector.

Under a CEP, New Zealand's public education and health systems could be forced to compete with companies based in Hong Kong. That would undermine the Government's intention to restore the public dimension to these systems and would increase pressure to further commercialise our social services.

It is proposed that the CEP would set in place a process to reduce compliance costs for business through the elimination or reduction of technical or sanitary/phytosanitary barriers to trade. The Council notes that "the level of [biosecurity] protection is lagging behind the growth in trade" (Minister for Biosecurity, Hon Marion Hobbs 28/11/00).

Accordingly, the Council requests:

- the Government not proceed with the negotiations until it has undertaken a detailed evaluation of the economic, social and environmental impacts, including whether the agreement will help achieve its economic, social, environmental and cultural objectives.

If the negotiations proceed the Council also makes the following recommendations:

- The Council believes that it is inappropriate that local authorities are constrained by an agreement to which local government is not a party, and therefore requests that if an agreement is signed, local government be exempt from all measures.
- The policy commitment to “freeze remaining tariffs at year 2000 levels for at least five years” be applied to this agreement, noting the move to zero tariffs on the grounds that it would impact severely on the Canterbury region, which still has some dependence on the fragile textiles, clothing and footwear (TCF) industries.
- Moves under a CEP to reduce compliance costs for business through the elimination or reduction of technical or sanitary/phytosanitary barriers to trade must not affect the council’s ability to maintain a robust biosecurity regime.

The exclusion from this agreement is sought of any extension of services beyond those already included in WTO General Agreement on Trade in Services (GATS), and that Government seek to withdraw from commitments to free trade in social service (including those in GATS) rather than further cementing them.

The Council recommends that

- Government investigates the feasibility of specialised agreements on mutual recognition of qualifications outside a CEP Agreement.
- no restrictions be placed on local government’s rights regarding achieving social ends in procurement, and that Central Government will not take legal, legislative or use financial leverage to stop it acting in a particular way which is claimed to be in breach of the agreement. The Council recommends the removal of the requirement that contracts are awarded on the basis of “value for money” alone.

Investment

The Council is concerned that under the 1995 IPPA with Hong Kong any change in environmental regulations by central or local governments that reduced the profitability of an enterprise could result in awards of compensation and perhaps reversal of a change in law or regulation. Even the threat of such costly actions is a brake on actions a government would otherwise have taken in the interests of its citizens.

The Council therefore requests

- the Government ensure that the agreement require that, in the case of disputes, arbitrators explicitly incorporate environmental, social, or political concerns.
- the Government ensure that the agreement require that arbitrations are open to the public and that interested third parties have standing within the arbitration process.
- the Government withdraw from the Investment Promotion and Protection Agreement (IPPA).
- assurances that nothing in the CEP strengthen the Investment Promotion and Protection Agreement (IPPA).
- there will be no restrictions on central and local government's right to favour local investors over Hong Kong investors under a CEP.

THE GREEN PARTY

The Green Party of Aotearoa New Zealand opposes the negotiation. It believes that further trade and investment liberalisation with Hong Kong is not necessary to realise New Zealand's economic potential in the North Asia region. Further, it would distract and detract from positive economic initiatives in the region, and weaken rather than strengthen New Zealand's economy. It also has the potential to inflict significant negative economic, social and political consequences on New Zealand. These could include:

- further worsening of New Zealand's balance of payments deficit
- the destruction of what remains of our textile, clothing and footwear industry
- further loss of control over capital movements and foreign investment
- increased vulnerability to the commercialisation and privatisation of essential public services such as health, education, broadcasting, water and waste disposal
- more constraints on the ability of local and central government to encourage economic development through the use of local procurement policies
- loss of sovereignty, democracy, public funds and the capacity to protect our environment through legitimising the use of private, secret tribunals to make trade and investment decisions and require compensation payments and policy changes from government.

The Green Party therefore opposes the negotiation of a CEP and calls for a much more informed, more consultative and more democratic process of negotiating and ratifying trade agreements.

Consultation

The Green Party believes the focus of the discussion document is excessively narrow, with preference given to technically-oriented feedback from traders and investors, who have private and specific interests, at the expense of wide-

ranging and general debate on the role of trade agreements in influencing and determining economic policy in New Zealand.

The Greens want the Government to release the full draft text of the proposed agreement for proper public examination and parliamentary scrutiny and ratification before they are entered into.

Trade Balance and Profile

Given the current trade balance in New Zealand's favour, and low likelihood of Hong Kong re-applying tariffs in the future, there is no benefit from the proposed removal of New Zealand tariffs. A CEP would nullify the Government's decision to freeze tariffs until 2005, and this could put up to 20,000 jobs at risk in the TCF industries, with the consequent undermining of the clothing manufacturing sector's transition to specialising in skills-rich, high-value, fashion garments. It is naive to believe rules of origin can prevent this.

In services trade, Hong Kong's surplus with New Zealand means Hong Kong is more likely than New Zealand to benefit from a liberalisation of services access under a CEP. The net effect of further liberalising trade with Hong Kong, therefore, will be to exacerbate New Zealand's balance of payments deficit. To negotiate a free trade deal with Hong Kong that left Hong Kong free to continue its own protections and also free to corner the New Zealand market in services would be the height of stupidity.

Labour standards

The Greens believe that most of the manufactures that would come into New Zealand tariff-free under the proposed agreement would have been made in China, under more oppressive conditions. The Greens believe it is not in New Zealand's interests to facilitate a backdoor form of trade with China, which effectively condones the labour and human rights abuses occurring in that country.

Environmental standards and biosecurity issues

Hong Kong is a small island state under extreme environmental pressure. However, given the fact that most of 'Hong Kong's' manufactures are not made there but in China and other Asian cheap labour areas, the environmental standards and treaties adhered to by Hong Kong are almost irrelevant. Hence any environmental provisions in a free trade agreement with Hong Kong would be of little use in stopping environmental damage at source.

Increased trade with Asia heightens New Zealand's exposure to imported pests and diseases, with the biggest risk from Asia coming in containers. At present it is estimated that around 15% of contaminated containers escape inspection, which is an unacceptably high level of risk exposure that will cost millions to combat.

Government role in economic development

The Greens consider the signing away of such rights, as in the Singapore agreement, constitutes an abrogation of the government's responsibility to promote economic development. With regard to intellectual property rights,

national treatment and repatriation and convertibility the Singapore agreement puts the interests of foreign nationals and corporations before those of New Zealand nationals and companies.

The Green Party seeks reassurance that the government is not seeking to sign away these rights and responsibilities in any future trade agreements.

Investment

The imbalance in investment between Hong Kong and New Zealand is extreme, and shows how vulnerable the New Zealand economy already is to speculative and non-productive investment. The 1995 Investment Promotion and Protection Agreement (IPPA) contains expropriation provisions, investor-state disputes procedures and locks New Zealand into what may be extremely unfavourable investments for up to thirty years.

The expropriation provision - modelled on the one in the North American Free Trade Agreement (NAFTA) - could lead to disaster if the provision were applied here.

Similarly, the disputes procedure in NAFTA and IPPA is a disaster waiting to happen. This provision gives multinational corporations greater rights and powers than supposedly sovereign states, and certainly far greater rights and powers than the citizens in any state who are affected by their (secret) activities. The Greens want to see the IPPA terminated, and a moratorium put on any further such agreements.

ECOACTION, VICTORIA UNIVERSITY

Ecoaction is a Victoria University based action group. It opposes the negotiation of a CEP.

The CEP would threaten New Zealand's ability to make and uphold regulations that protect our environment, because of the risk of private companies seeking compensations or the removal of any environmental regulations that may adversely affect their profits.

The encouragement under a CEP of trade in goods that could otherwise be manufactured in New Zealand is unnecessary and contributes to carbon dioxide emissions through both air and sea transport. Therefore the government should be promoting policies to reduce unnecessary trade.

New Zealand's sovereignty is threatened by the possible private overseas ownership of environmental services (such as water services and waste disposal). The control should be with the citizens of local communities rather than overseas owners operating with commercial aims.

The CEP is an agreement with far-reaching consequences and a long-term time frame that limits New Zealand's policy options in the future. Therefore, a consultation and education process of the general populace is essential. The lack of public awareness surrounding the CEP is indicative of the Ministry's narrow focus upon business and commercial interests.

NEW ZEALAND UNIVERSITY STUDENTS' ASSOCIATION

The New Zealand University Students Association (NZUSA) is a federation of university associations representing students at five universities and one college of education.

NZUSA opposes the negotiation of a further free trade and investment agreement (FTIA) between Hong Kong and New Zealand. It is particularly concerned that education should not be included in any such agreement as the continued liberalisation of education undermines the state's ability to provide a comprehensive public education for its citizens. As well as education, however, NZUSA is strongly opposed to the potential damage to the environment, human rights and industrial relations that such a FTIA could cause. NZUSA advocates that New Zealand does not enter a further free trade agreement with Hong Kong. Indeed the soonest possible opportunity should be taken to lessen the scope of the existing trade agreement so as not to endanger the public provision of important services such as education.

Education

NZUSA is concerned at the prospect of a CEP opening up our services (including important areas of public provision) in return for other trading markets. The CEP appears to contradict the work presently being done by the Tertiary Education Advisory Commission (TEAC) in that it could lead to less planning and greater competition in the education sector.

Government subsidies that favour local providers over Hong Kong entities could potentially be in breach the CEP and be subject to the disputes clause. Theoretically the government may have to pay compensation to Hong Kong suppliers who suffer from this 'trade barrier'.

Any relationship with Hong Kong entails a relationship with China, given that 88% of Hong Kong's exports are re-exports. It will be virtually impossible to police which goods are directly from Hong Kong and which are re-imports from China (even with Rules of Origin). New Zealand will be required to remove tariffs unilaterally, as Hong Kong has no tariffs at present.

Because New Zealand has little left to offer in terms of services and education, (due to our extensive GATS commitments,) our concessions are likely to be particularly extensive.

There has been inadequate analysis by MFAT of the economic effects of further liberalisation on the imports-substitution sectors under a CEP (except to term the potential unemployment as an adjustment cost). Likewise they have not considered the domestic impacts upon labour, the environment or education practices for example. MFAT's lack of analysis of all these issues except for the export effect for NZ means that everybody is working in an information vacuum.

The present investment agreement (IPPA) with Hong Kong and the one that is being negotiated both have a 15 year termination clause meaning it stays in force for 15 years after one side initiates termination. This seems a particularly

undemocratic sort of bind to be placing on a future government that wants to exercise greater control over either its public sector or its economy. The disputes and government procurement concessions could also be particularly onerous.

VICTORIA EDUCATION ACTION GROUP

The EAG opposes the CEP. It opposes New Zealand's accession to any international agreement likely to lessen New Zealand control of its education system, increase pressures for privatisation or reduce its funding. EAG believes the GATS treats tertiary education purely as a commodity, and believes the CEP does the same, and will constrain options for reform in the future.

The EAG believes the Government should not be negotiating any agreements that limit sovereignty without extensive consultation with Maori, particularly over how such agreements affect the Treaty of Waitangi.

The EAG is concerned at long-term commitments under the IPPA because they limit local and regional decision-making power. It calls for:

- A moratorium on any commitments to the liberalisation of trade in education services.

The removal of core public services, including education, from the coverage of all international agreements.

VICTORIA UNIVERSITY OF WELLINGTON STUDENTS' ASSOCIATION

VUWSA represents 14,000 students at Victoria. It opposes a CEP with Hong Kong and advocates withdrawing from the IPPA. The focus of VUWSA's submission is mainly on education. Specifically, it argues:

- New Zealand prime focus in encouraging international students to this country should be development assistance, particularly to the Pacific.
- Granting open access to Hong Kong education providers under a CEP would entrench the current policy of providing state funding to private institutions, by making it potentially more costly - under compensation provisions in the existing IPPA - for future governments to refocus education spending on public institutions.
- Entering into a CEP will increase awareness in Hong Kong about the applicability of the IPPA. This - by giving Hong Kong providers recourse to legal action and compensation claims - puts New Zealand providers at a competitive disadvantage.
- The ability to maintain and enhance interests intrinsic to New Zealand through the education system would be undermined by a CEP, eg Maori content within universities, 'nation-building' goals, relevance and usefulness of research and teaching to the New Zealand context and the importance of universities - as 'critic and conscience of society' to be grounded in that society.

Further, the VUWSA submission says education should reflect cooperation between institutions and disciplines, not competition, and that public providers are more accountable and responsive to the taxpayers who provide most of their money.

RADICAL SOCIETY OF AOTEAROA

Radical Society of Aotearoa is a universities campus-based organisation of students that supports tino rangatiratanga and is opposed to capitalism and imperialism. It opposes a CEP with Hong Kong and advocates New Zealand withdrawing from the IPPAs with Hong Kong and China, and from commitments made under the GATS of the WTO.

Radical Society of Aotearoa's specific concerns about a CEP are:

- Any clauses on labour standards agreed with Hong Kong would not apply to factories in China “actually producing the goods.”
- A CEP would negate New Zealand's tariff freeze, and would spell the death of the TCF industries.
- It would reinforce a pattern of Hong Kong investment damaging to New Zealand's economic interests under the 1995 IPPA. “Any extension...will guarantee Hong Kong investors the right to continue strip mining our economy, jobs and communities in pursuit of short term profits with no long term responsibilities.”
- Free trade in services and government procurement would enable Hong Kong suppliers to demand equal treatment in bidding for government purchasing contracts and would commit New Zealand to contract out essential services, promoting their privatisation.

Radical Society of Aotearoa is concerned a CEP would bind both Treaty of Waitangi partners without adequate consultation with Maori. A series of hui nationwide should be organised to address this.

ANNETTE HAMBLETT, CHRISTCHURCH

Annette Hamblett opposes pursuing a CEP with Hong Kong. She believes it would widen wealth disparities in New Zealand by raising living standards of a few at the expense of many others who would lose their jobs with the influx of competing foreign goods. She believes the exercise is too narrowly focused on exporters' interests, and there needs to be a full debate to give voice to “an increasing number of New Zealanders...uneasy about free trade.”

The large trade surplus in New Zealand's favour and the openness of both economies means a CEP would benefit Hong Kong overwhelmingly, while New Zealand would be negating its tariff freeze with no reciprocal gain. Furthermore, national treatment of Hong Kong bids for local government contracts would prevent councils achieving social goals through supporting local businesses.

A CEP might build on the 1995 IPPA and expose New Zealand to even greater risk of expropriation provisions similar to those experienced under the NAFTA.

MICHAEL HAMBLETT, CHRISTCHURCH

Michael Hamblett does not support New Zealand pursuing CEPs. The likely benefits are arguable and the risks to New Zealand's economic and democratic autonomy are too great.

Extensive public discussion of the merits of CEPs compared to other strategies is needed.

Such a CEP would undermine the Coalition Government's commitment to foster local business, industry and services and would renege on its promise to freeze tariffs until 2005. This would mean further decline in clothing manufacturing, with job losses falling most heavily among Maori and Pacific Island women.

It would be likely to diminish the ability of central and local government to pursue policies consistent with the Treaty of Waitangi, social, environmental, health, employment and economic goals and to nurture local businesses through contracts to local suppliers.

Central and local government's ability to control overseas investment would be weakened

SIR FRANK HOLMES

Such an arrangement would make a positive contribution towards the important national objectives of continuing to increase the earning and saving of foreign exchange. The most important direct gains are likely to be in services such as education, engineering and construction, aviation and air transport services and consultancies in a variety of fields, such as the environment and public administration. Sir Frank Holmes sees a CEP with Hong Kong as a very important element of the kind of trade and investment strategy New Zealand must pursue if it is to sustain and improve opportunities for its industries and services and those they employ in the years ahead.

Perceived benefits would include:

- Most importantly, its strategic importance in paving the way for New Zealand to be included in other arrangements to reduce barriers to trade and investment. Indirectly a CEP with Hong Kong would greatly strengthen New Zealand's position in developing our already important trade and investment relationships with China. Hong Kong also has important linkages with Taiwan and other significant economies in north-east Asia. Joint ventures by New Zealand enterprises with Hong Kong partners could therefore open up opportunities in this important part of the world. New Zealand's existing CEP with Singapore can be expected to improve our prospects for later inclusion in a partnership between CER and

ASEAN, and in a P5 free trade arrangement among the United States, Chile, Australia, Singapore and ourselves.

- Investment in foreign exchange- earning and exchange-saving activities, which would be further facilitated by mutual recognition of standards and qualifications and the reduction or elimination of administrative or technical barriers to imports of goods and services by Hong Kong.

Issues to be addressed include:

- Transition of Protected Industries: New Zealand's barriers to competition from imports are now generally low in most cases. Given a sensible set of arrangements on phasing out tariffs, on safeguards and on rules of origin, Sir Frank would not expect a CEP with Hong Kong to accelerate greatly the adjustments that will be needed in the few highly protected areas such as textiles and clothing. Continued close cooperation between the regulatory authorities in the two economies would facilitate enforcement.
- Labour standards: The path of wisdom here, as it will be in the WTO negotiations, will be to try to negotiate a separate understanding on labour policies. The ILO is the appropriate international agency in which to debate the principles that should apply and whether particular agreements such as this projected one with Hong Kong conform with such principles.

TOBY HEALE

(expatriate Briton with extensive experience as an investor in Hong Kong, now living in New Zealand. His submission was sought on the advice of the Canterbury Development Council.)

Hong Kong's current account surplus, rapid economic growth and low unemployment raise issues about why it wants to do a deal with New Zealand, where the economic performance has been poor. Mr Heale says New Zealand could stimulate the growth of its own capital base and reduce its level of foreign currency debt through relatively minor changes to regulation and taxation. Mr Heale recommends a Royal Commission into taxation.

In the meantime NZ must be clear on what Hong Kong hopes to gain from a CEP and should proceed cautiously, as Hong Kong has shown great aptitude for coming out on top in the face of major challenges.

TIMOTHY BREARS

(a New Zealand commercial lawyer with experience living and working in both Hong Kong and New Zealand.)

Mr Brears believes there is every advantage in New Zealand having a special trading and economic relationship with a city state which is still the gateway to China and the second largest financial and securities market in Asia. Hong Kong has few trade barriers, is an entrepot and a free port. It has the best legal and tax system in Asia. Its access to business and contacts in China is unequalled.

Areas of Co-operation

Issues such as the rules of origin of materials have already been discussed and I do not wish to comment further on this except to repeat what I said at the meeting; Hong Kong has a vast hinterland of factories which it owns and operates in Southern China, and the coastal cities, and the Special Economic Zones in these parts of China supply the labour and very often the materials for goods that are then finished in Hong Kong and exported. Indeed, re- exports from the container port of Kwai Chung, the largest in the world, mostly comprise re- exports.

In that I believe that no significant quantities of goods will come from Hong Kong under a CEP agreement, the real benefits of a CEP will lie in other sectors, and I wish to mention these and refer to the issues which I feel need to be addressed before real benefits will flow to New Zealand or Hong Kong.

Investment and Immigration to New Zealand

New Zealand is a small country with little excess investment capital. It needs to tap into Hong Kong's huge capital resources. That, and other types of investment, including immigration, can be achieved if New Zealand not only adopts more enlightened tax and investment policies but is seen to be welcoming Hong Kong people and investment.

Tax

While tax issues are not necessarily determinative of whether the CEP should proceed or not, or whether it will be successful, if the aim is to look for a long term relationship with Hong Kong and Asia generally, there are pressing tax issues the resolution of which would ensure that the CEP would have appeal for Hong Kong business generally and give much initial publicity to a CEP.

The New Zealand End

If Hong Kong investors and migrants are to be attracted to New Zealand something must be done about New Zealand's appalling international and domestic tax system.

The following matters need urgent attention.

- Non Resident Withholding tax on dividends on investments in a New Zealand Company, are as high as 30% because there is no double tax treaty between New Zealand and Hong Kong. The Hong Kong investor faces no tax on dividends in Hong Kong, so it is a deterrent to investment in New Zealand.
- New Zealand has some draconian thin capitalisation rules.
- New Zealand imposes a world wide tax system on individuals and New Zealand companies which are tax resident or incorporated in New Zealand.
- A Hong Kong company that proposed to establish a holding Company in New Zealand for its worldwide operations would be startled to find that the company and its subsidiaries outside New Zealand would suffer taxes on accrued income from operations outside its own borders.

- No “grey list” status for Hong Kong: An individual from Hong Kong who becomes a tax resident in New Zealand faces an accrual tax on investments in a Foreign Investment Fund (FIF) based in Hong Kong, as opposed to being taxed on income already received. This is a brain dead policy. This treats all investors outside New Zealand as unusual, potential tax evaders, and up to no good.
- Similarly, for the Hong Kong migrant who has substantial interests in companies in Hong Kong, and who becomes a tax resident in New Zealand, must declare income under New Zealand tax rules and the income is then taxed as if it was in New Zealand. This system imposes very high compliance costs. New Zealand based operators are therefore at a substantial disadvantage to overseas companies.
- Migrants who hold tax residency status in New Zealand must pay interest tax imposed on bank deposits. Hong Kong has no interest tax. This tax means that hundreds of millions of dollars - probably billions- is kept outside New Zealand to avoid it. New Zealand banks and businesses lose out on the money.
- Further, there is a differentiation between a zero rated tax on interest lent by non residents, as opposed to high withholding taxes on pure investment funds invested into Zealand listed companies. Surely it is best to give the incentives for Hong Kong investors to invest in New Zealand companies rather than to seek interest bearing deposits. The two forms of investment should be on an equal footing.

By contrast, in Hong Kong:

- Taxes are low: 15% on personal income and 16% on company profits.
- There are no taxes on dividends or interest.
- There is no tax on income earned from operations outside Hong Kong’s borders.
- There are no thin capitalisation rules, no GST and no FBT as in New Zealand.
- There are substantial free allowances and non taxable perquisites.
- Hong Kong has a de facto type of double tax treaty with China so that income and profits arising in Hong Kong or China cannot be taxed twice.

In summary, for the New Zealand company or individual who wishes to invest in Hong Kong, there are no tax disincentives at the Hong Kong end.

Mr Brears believes the following improvements could be made to attract investment, trade and immigration between the two economies.

- Abolish dividend and interest taxes for non-resident Hong Kong companies and individuals investing in New Zealand from Hong Kong, or at least abolish the interest tax.
- Immediately classify Hong Kong as a “ grey” list country.

- Give consideration to a double tax treaty with Hong Kong.
- Provide incentives for both New Zealand and Hong Kong business to set up in each other territory with some tax incentives.
- Provide incentives for a Hong Kong business to base itself in New Zealand so as to operate its worldwide business from a New Zealand base, for example by giving automatic work visas or immigration status to the staff of such companies, together with an exemption from tax for say 5 years or perhaps tax at say 5% for a limited period.

Stock Exchange Co-operation

There are some compelling reasons for New Zealand seeking a closer association with the Stock Exchange of Hong Kong.

New Zealand could ask Hong Kong for:

- Confirmation that a New Zealand company would be accepted as a special category company for listing in Hong Kong. Bermuda has that qualification. However tax issues for a New Zealand company would arise and changes at the NZ end would be required. The effect would be that many international business companies would use New Zealand companies.
- The Hong Kong Stock Exchange could be asked to relax its listing criteria for New Zealand companies.
- For smaller companies, allow NZ companies to list on the GEM- a secondary market in Hong Kong for smaller Hong Kong companies.

Hong Kong might ask New Zealand for:

- A similar relaxation for New Zealand listed companies in which Hong Kong interests held over a 60% stake- there is interest in HK investors listing here as costs are much cheaper.
- Establish special categories allowing Joint Ventures between NZ and HK investors - for example in forestry or biotechnology - to list on the main board in NZ without large capital or past trading history.

Immigration

The policies of the NZIS are seen as harsh, difficult and arbitrary by some would-be Hong Kong migrants. There is an urgent need to focus on attracting business migrants, particularly the very wealthy, who, if they can be attracted to live here, will likely be more inclined to base their businesses in New Zealand.

THE NEW ZEALAND STOCK EXCHANGE

The NZSE supports New Zealand pursuing the CEP.

The key issue on which the NZSE seeks progress would be in mutual recognition of professional qualifications, without the need for licensing, accreditation or other acceptance, and then subsequent monitoring and supervision.

It would help substantially if brokers in New Zealand who are members of the NZSE were able to offer services in Hong Kong and vice versa, without the need for separate licensing and approval in the other jurisdiction.

TRANSEND WORLDWIDE LIMITED

Transend has its headquarters in Wellington, with subsidiaries in the United Kingdom, branch offices in Spain and South Africa, and staff deployed in a range of countries. As an exporter of services from New Zealand, Transend has been active in more than forty countries.

In summary, Transend is supportive of trade liberalisation initiatives such as this which have the potential to lead to new or improved opportunities for either itself or its parent company, New Zealand Post Limited, to serve clients in New Zealand or internationally.

Previous bilateral trade agreements, and multilateral services negotiations, have not been able to impart impetus to postal reform and liberalisation, focusing much more on financial services, insurance, professional services, transport services, telecommunications and so on. We think that the upcoming Hong Kong/New Zealand CEP negotiations provide a good opportunity to redress this state of affairs.

Attitudes shown by some governments towards postal services and postal services negotiations are far from competitive or commercial. They reflect a strong public service mindset, and the ownership interest governments worldwide have had in this sector.

New Zealand's postal market was completely deregulated on 1 April 1998. The courier market has long been liberalised. Thus, a Hong Kong company, or any other, could today register to offer postal services in our market. Unfortunately however, New Zealand Post - and its international subsidiary Transend - is prevented from offering a range of core mail services in almost every external market, including Hong Kong.

Currently, Hong Kong Post has the status of a trading fund. It is not yet corporatised. Employees are public servants, and management is constrained in several basic commercial respects, including setting prices and service offerings. There is formal monopoly protection in the letters market, though informal competition already exists. Transend and New Zealand Post would like to be in a position where it could offer competing services in the Hong Kong market for domestic and international postal services.

Accordingly, Transend seeks:

- the full and early liberalisation of all postal services in the proposed CEP agreement, as part of a wider and robust services accord. Hong Kong has not made commitments in the WTO on a number of services in which New Zealand has significant trade interests, including postal services. We hope that that situation can be rectified through this bilateral negotiation. Transend seeks, as a minimum, that postal services not remain outside services commitments negotiated with Hong Kong.

- a defined timetable for the full and, hopefully, early liberalisation of postal services. Certainly, we would not wish liberalisation of those services to be deferred beyond the date set for other services sectors, or worse still, not addressed specifically at all.

UNIVERSITY OF AUCKLAND MASTER OF INTERNATIONAL BUSINESS STUDENTS

This collective submission from 22 students on this course - most from APEC economies - lists what it sees as the potential benefits and risks of such a CEP.

It supports the need to diversify the economic relationship between New Zealand and Hong Kong, particularly in services, but notes the link between investment and immigration - though immigration is not addressed in the discussion document.

On services, the submission raises concerns that Hong Kong's lack of commitments under the WTO GATS might be a barrier to concessions under a CEP. It queries whether Hong Kong's intellectual property regime is effective for protecting New Zealand's interests.

Other concerns include:

- Whether rules of origin can be effectively enforced, particularly given the existing level of counterfeiting.
- Whether New Zealand's biosecurity regime would be negotiable.
- The need to ensure Hong Kong understands the rationale for the Treaty of Waitangi exemption.

The submission calls for more information on some issues, including possible policy changes with respect to investment.

GEOFF KEY, CHRISTCHURCH

Geoff Keey argues a human rights clause should be a prerequisite for New Zealand signing a CEP with Hong Kong. He believes human rights should take precedence over trade liberalisation, and negotiations on the CEP should not begin until a full human rights assessment is made on the proposed agreement and on the implications of the TRIPS (WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.)

HEATHER J MCNAUGHTON, CHRISTCHURCH

Heather McNaughton argues that under a CEP, New Zealand will come under added pressure to import more from Hong Kong, and increased investment flows will work to this country's disadvantage, because she claims it would lead to a net outflow of capital from Hong Kong investors. She believes a more beneficial approach would be to promote New Zealand goods and services, to reduce this country's dependence on imports. "Free trade gives transnationals free reign to exploit people and the environment whilst putting New Zealand

companies and workers out of business,” including up to 20,000 employed in the TCF industries.

SINCLAIR KNIGHT MERZ

Sinclair Knight Merz is a member of the Association of Consulting Engineers of NZ. This submission was solicited following comments contributed at a sector group briefing in Wellington in late May.

Hong Kong is an extremely demanding market in world terms for consulting engineers. Obtaining permits or approvals takes up to four times what would be required in New Zealand, due largely to the numerous and often conflicting requirements of the concerned authorities. Regulatory agencies are rigid in applying the letter of the law, allowing little or no flexibility of interpretation often needed to achieve best engineering outcomes. Furthermore, it is impractical to do business without working in conjunction with a local partner.

Despite these impediments, Sinclair Knight Merz does not believe they amount to active discrimination against any foreign company. While onerous enough to favour local companies, they face similar obstacles, and it is more their local knowledge that gives them the inside track.

In respect of offshore parties bidding for consultancy and construction contracts with the Hong Kong government, there appear to be restrictions on the basis of residency and local experience requirements. There also appear to be approved lists.

NELSON AND JUDITH BELL, MT MAUNGANUI

Nelson and Judith Bell oppose a CEP.

As fifty percent of all exports from China are distributed via Hong Kong, they believe it will be impossible to police product origin rules because Hong Kong trade officials will have very little interest in doing so, and products made with substantially imported components will be indistinguishable from genuine Hong Kong made products.

A CEP with Hong Kong would put 20,000 New Zealand jobs in the clothing and textile industry at risk.

New Zealand manufacturers would find it very hard to compete with “Hong Kong” products benefiting from subsidies from mainland China.

On investment, expropriation clauses in the proposed Hong Kong/New Zealand accord could expose local government to potentially huge claims from companies from anywhere in the world who have offices in Hong Kong, if they seek to control environmentally damaging processes in New Zealand.

JANE KELSEY

Jane Kelsey opposes negotiations of a CEP with Hong Kong. She re-submitted a detailed analysis she prepared for the Parliamentary Select Committee on Foreign Affairs, Defence and Trade in 2000 at the time it

considered the Singapore/NZ CEP Agreement. This document is already in the public domain.

ADDITIONAL ISSUES RAISED DURING PUBLIC CONSULTATIONS

This summarises some of the key messages from the public consultations based on the discussion paper.

Lack of Cost-Benefit Analysis

Concern has been expressed that the negotiations are proceeding without rigorous CBA, particularly which sectors bear the costs, which gain, and what is the pay-off of the CEP economy-wide.

Professor Nigel Haworth of Auckland University says CBA is integral to building community confidence about outcomes, and should be a priority for government in allocating resources. He says sophisticated economic modelling is now available to examine scenarios in some detail.

Peter Conway, CTU economist, stresses that CBA should be a whole-of-government exercise, as MFAT's focus is necessarily offshore.

Availability of Negotiating Texts

Jane Kelsey of Auckland University and Paul Goulter of CTU say draft texts should be made available to enable quality analysis independent of officials, particularly since stretched government resources truncate the level of CBA.

Meeting with Opponents of the Proposed CEP, Christchurch, June 15

About fifteen people attended a meeting in Christchurch, organised by MFAT to hear further views from some of those whose submissions were most strongly critical of the CEP initiative. They included Dr Bill Rosenberg, the Green Party co-leader, Rod Donald and policy staff of the Christchurch City Council. In addition Christchurch City councillor David Close, a prominent Canterbury environmentalist, Diana Shand, and two representatives of the Engineers' Union were among those who attended.

Diana Shand commented that many NGOs had not attended because they believed the consultation process wasn't genuine.

Several key themes emerged:

- Little, if any, analysis of costs and benefits had been done to determine whether a CEP would be in New Zealand's economic, social or cultural interests.
- Given Hong Kong's zero-tariff, liberal services economy, New Zealand had everything to lose in unilaterally lowering its tariffs in the hope it can capture uncertain gains in services some way down the track. This front-loads demonstrable risks and back-loads speculative benefits.
- New Zealand is vulnerable to compensation claims and investor-state disputes arbitration under the 1995 Investment Promotion and Protection

Agreement. The CEP would simply accentuate that risk by highlighting how “defenceless” New Zealand is in the face of foreign investors, who need only register a Hong Kong shell company to be eligible.

- Services liberalisation stands to entrench the commercialisation of core public services, such as education and environmental services, by removing governments’ ability to move to more of a ‘national interest’ focus in future. Furthermore, the CEP would afford equal access to Hong Kong services providers for local procurement contracts, thus negating a ‘buy New Zealand’ or ‘source locally’ policy.
- There is no basis for confidence that Customs either here or in Hong Kong would be able to police cross-border trade of Chinese products destined for on-shipment to New Zealand under preference. The extent of ‘leakage’ would simply be a cost borne by the New Zealand garment, textiles and footwear industries and the wider economy.
- The increased Customs and MAF resourcing that will be required to cope with the increased volume of trade stimulated by the CEP will be met by the taxpayer, not the importers.

Issues for Manufacturers Under a Possible CEP

The Canterbury Manufacturers’ Association favours a Rules of Origin model based on substantial transformation, and emphasises the speed of policing response - not just the robustness - will be crucial to preventing damage to New Zealand industry from any influx of ineligible goods claiming preference under a CEP. The Wellington Regional Chamber of Commerce suggests rules of origin could be developed with reference to the United States, Canada and the EU, to elicit greater scrutiny from a broader audience.

Canterbury Manufacturers’ Association notes that parallel importing also undermines the value of New Zealand brands. It notes that compensating benefits for local industry to offset the increased pressure under a CEP will require aggressive promotion of new opportunities by Trade New Zealand.

One CMA member noted that in the case of Macpac outdoor equipment the concern was not just competition from cheaper products per se, but also from possible copycat products. In this regard a robust intellectual property regime would be of greatest benefit.

CMA warns that labelling requirements, eg for recycling requirements, can create a competitive disadvantage if not imposed on imports as well.

A meeting of the Employers’ and Manufacturers’ Association (Northern) Manufacturing Division also addressed labelling, suggesting labelling of both packaging and product would help industry here to compete. Currently country-of-origin labelling is mandatory only for TCF items.

The meeting registered a strong plea to maintain safeguards and anti-dumping provisions.

The possibility of closer alignment of standards and professional qualifications under a CEP was seen as a major gain, but raised the issue of whether this could be pursued as a triangular exercise with Australia. Similarly, if

New Zealand and Hong Kong could reach a double taxation agreement, not only would this facilitate investment flows, but it could “serve as a stalking horse” for a DTA with Australia.

The Consumers Institute stresses the increasing importance of harmonising consumer law, as imports assume an ever-greater share of the basket of goods bought in New Zealand.

One Dunedin manufacturer of state-of-the-art building maintenance equipment, Farra Engineering, says patenting its designs would be ineffective and too costly, though it does copyright its drawings. Although Farra took a risk and licensed factories to make its designs in Hong Kong - against concerns from its New Zealand workforce that jobs would be lost to Hong Kong - in fact the opposite has happened: With the design team based in Dunedin and the engineering production more efficient than Hong Kong’s - an advantage reinforced by the depreciation of the NZD - most of the high-value work is done in New Zealand.

Working through a Hong Kong agent has proven beneficial, and despite a sharp drop in demand immediately following the Asian financial crisis, Hong Kong is recovering well as a market for Farra. Furthermore, Hong Kong is providing a showcase stimulating increasing interest from the United Kingdom, Singapore and Australia. Farra commented that, in this regard, the media reports of Hong Kong plans to offer aviation beyond rights for Air New Zealand rights to pick up and drop off passengers in Hong Kong en route between New Zealand and Europe were very encouraging, and would boost Farra’s efforts to build its European market.

The NZ Post subsidiary, Transend, stresses the importance of aviation liberalisation to its own air freight.

Consultation with Maori

Initial consultations have identified several consistent themes:

- Endorsement of the commitment to extensive interaction between officials and Maori during the course of the negotiations.
- The need for Maori input into various options under the CEP, including ensuring Maori interests, such as in intellectual property, are not compromised.
- The need to address the practical implications of the Treaty of Waitangi exemption from a CEP.
- The awareness that a CEP could provide considerable commercial opportunities for Maori, for example in education and tourism.
- Concern that Maori are over-represented in the industries and communities likely to come under most acute pressure if tariffs protecting the TCF sectors are significantly reduced.

While the tenor of Maori responses so far has been positive - focusing on economic opportunities expected to arise from more liberal trade and investment with Hong Kong - there is also an acute awareness that the CEP

initiative could backfire if Maori interests are not treated as integral to the process. Shane Solomon of Tainui commented: “This CEP introduces another entity Maori have to deal with. The negotiations could either disenfranchise us further or provide more opportunities.” Anita Stowers and Teresa Tepania-Ashton, of the Manukau Enterprise and Employment Trust, strongly criticised the lack of Maori representation on the New Zealand negotiating delegation.

Services Exports

Canterbury Development Corporation investment advisory staff suggested New Zealand might benefit from a CEP in gaining preferential access to an economy they described as “a hunting ground for IT experts.” If a CEP facilitated further investment, New Zealand’s ability to attract some of the international pool of IT experts operating out of Hong Kong, or to market New Zealand’s own IT services, could be enhanced.

One representative of a New Zealand engineering consultancy that does all of its business overseas - most of it in Asia - says reciprocity of services access is crucial. He says the barrier to this in engineering consultancy - as in other professions - is just as likely to come from New Zealand professional bodies’ resistance to opening the market here as it is from professional bodies in Hong Kong guarding their patch. He says in New Zealand’s case, it will be important to distinguish between closed-shop practices and legitimate grounds for acknowledging local protection - such as consumer protection and earthquake expertise.