

# KEY OUTCOMES:

## Malaysia-New Zealand Free Trade Agreement

### Summary

The *Malaysia-New Zealand Free Trade Agreement* (“the MNZFTA”) provides New Zealand exporters, services providers, and investors with new market access opportunities and greater certainty and transparency in Malaysia.

The MNZFTA builds significantly on the platform provided by the recently signed Agreement Establishing the *ASEAN-Australia-New Zealand Free Trade Area* (“the AANZFTA”).

Malaysia is New Zealand’s eight largest export market - currently more important to New Zealand exporters than, for instance, Germany, India or Canada.

The commercial significance of the MNZFTA is underlined by the robust and growing trade relationship between New Zealand and Malaysia. Between 2004-2008 New Zealand’s goods exports to Malaysia grew by over 80% – more than double the rate of New Zealand’s export growth to the world over the same period – and in 2008 New Zealand exports were worth almost one billion dollars. New Zealand services exports to Malaysia have continued to grow in a range of sectors including private education, Information and Computer Technology (ICT) and engineering. At the same time, New Zealand investment in Malaysia has grown, albeit off a relatively low base, by an annual rate of 77% since 2003 to almost half a billion dollars in 2008.

The MNZFTA builds on the AANZFTA outcome to provide new and additional benefits to New Zealand through:

- elimination of more Malaysian tariffs faster than was possible in AANZFTA, ie within seven years of entry-into-force 99.5% of New Zealand’s exports will be duty free (compared with 99.4% within twelve years under AANZFTA);
- facilitation of bilateral trade through 48 hour customs clearance and self-declaration of origin for New Zealand exports;
- flexible and trade facilitating rules of origin
- improved market access for New Zealand services providers in key areas of commercial interest, including education, environmental, management consulting and veterinary services;
- ‘future proofing’ New Zealand’s investment and key services interests through the provision of Most Favoured Nation (MFN) treatment; requiring Malaysia to automatically provide New Zealand with any better treatment it provides its future FTA partners;
- provision of robust investment protection provisions that improve on those secured under the AANZFTA thereby creating a more predictable and transparent investment climate for New Zealand investors and their investments in Malaysia. This is supported through access to binding investor-state arbitration procedures;
- enhanced facilitation of the movement of New Zealand business persons into Malaysia to ensure they are able to make the most of the MNZFTA’s trade and investment opportunities;



- provision of greater certainty and transparency for New Zealand businesses operating in Malaysia by the establishment of a framework through which regulatory cooperation can proceed including around non-tariff barriers such as sanitary and phytosanitary (SPS) measures, technical barriers to trade (TBT) as well as intellectual property and competition policy;
- inclusion of a robust dispute settlement framework allowing New Zealand to resolve any trade-related disputes that arise; and,
- raising New Zealand businesses' profile in Malaysia.

New Zealand has also agreed legally binding trade and labour as well as trade and environment agreements with Malaysia. These agreements supplement MNZFTA and will allow for more effective engagement on these matters in line with New Zealand's broader objectives for sustainable development

As well as the immediate commercial benefits, the MNZFTA provides New Zealand with important strategic benefits by:

- broadening and deepening New Zealand's bilateral relationship with Malaysia;
- building on the AANZFTA platform to further integrate New Zealand's into the rapidly evolving regional economic architecture; and,
- signalling New Zealand's commitment to 'staying open for business' and a liberal global trading environment at a time when the threat of rising protectionism is a concern.

## Key Outcomes for New Zealand

### Trade in Goods

The MNZFTA secures tariff elimination for more of New Zealand's exports to Malaysia faster. It eliminates Malaysia's tariffs on 99.5% of New Zealand's current exports within seven years (by 2016) of entry-into-force – five years earlier than provided for under the AANZFTA. On full implementation, this tariff elimination will amount to duty-savings of over \$10 million per annum for New Zealand exporters.<sup>1</sup>

More generally, the percentage of estimated duties that would have been paid by New Zealand exporters is reduced more quickly under MNZFTA compared with AANZFTA. Under the MNZFTA, for instance, duties eliminated reach 46% by 2012 rising to 52% in 2013 and then to 86% in 2016. Under AANZFTA, the percentage of Malaysian duties eliminated on New Zealand's exports only reaches 46% in 2015 and there is no further increase until 2020 when 83% of estimated duties will have been eliminated.

#### *First Mover Advantage*

AANZFTA already provides New Zealand and Australian goods traders with some of the best commercial access possible to the Malaysian market. The MNZFTA provides a range of enhancements which are available to New Zealand only. This will give New Zealand exporters a competitive advantage over international competitors that do not enjoy similar preferential access in the Malaysian market.

#### **Key outcomes for major goods exports to Malaysia**

**Kiwifruit:** despite Malaysia's current applied 15% tariff on kiwifruit imports, over the past three years, New Zealand exports of kiwifruit to Malaysia have grown by 123%. Under the AANZFTA agreement kiwifruit exports to Malaysia will be duty-free by 2012. The Malaysian FTA improves on this already useful outcome by providing for duty-free access for New Zealand kiwifruit upon entry into force of the Agreement.

**Meat, Wool, Dairy, Fish and Forestry products:** the MNZFTA 'binds in' the existing duty-free access for New Zealand dairy (except liquid milk) meat, wool, fish and forestry product exports. In practice, this means Malaysia cannot reapply tariffs on New Zealand agricultural exports giving New Zealand exporters added certainty that many of their competitors do not enjoy.

**Liquid Milk:** New Zealand has secured commercially significant improvements on liquid milk tariff rate quota access upon entry-into-force. These improvements include the elimination of the in-quota duties and an increase in the in-quota volumes to a sum of 2.1 million litres growing by up to five percent per annum. This represents an improvement on the AANZFTA outcome which provided for the elimination of the in-quota 20% tariff by 2013 (three years later than the MNZFTA outcome) and in-quota liquid milk access to a total sum of 550,000 litres growing by one percent per annum.

**Manufactured Goods:** the MNZFTA improves on the AANZFTA outcome for a number of manufactured product exports. Examples of manufactured products subject to earlier elimination include:

- a number of steel lines (in which New Zealand exports and currently face a 50% tariff) are eliminated by 2016 at the latest (reduced to 10% in 2020 in AANZFTA);
- various paints and varnishes lines (currently facing a 25% tariff) are eliminated in 2016 (not until 2020 in the AANZFTA); and,
- a number of plastic product lines (currently facing tariffs as high as 30%) are eliminated in 2012 (as opposed to 2020 in the AANZFTA).

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<sup>1</sup> This is a conservative estimate of the full implementation duty-savings based on current trade. Should trade between New Zealand and Malaysia continue to expand the quantum of duties-saved is likely to be greater.

### **Non-elimination Outcomes**

Like a number of New Zealand's existing FTAs (the Trans-Pacific Strategic Economic Partnership Agreement (alcohol with Brunei) and AANZFTA), MNZFTA does not provide for tariff elimination on a relatively small set of items of religious or environmental sensitivity.

In the case of MNZFTA, items not subject to tariff elimination include alcoholic beverages, firearms and some tyres. These items were excluded by Malaysia on religious, safety or environmental grounds. Of the products excluded under MNZFTA, only alcoholic beverages are of global export interest to New Zealand with exports to Malaysia worth \$1.6 million in 2008.

MNZFTA provides the opportunity for a formal review of the treatment of alcoholic beverages two years after the FTA enters-into-force. This provision is operationalised through an exchange of Ministerial letters which themselves form an integral part of the MNZFTA.

Malaysia has also maintained its Tariff Rate Quota (TRQ) system on a range of domestically sensitive products.<sup>2</sup> Of these, liquid milk is the only item of substantive export interest subject to TRQs. As noted above, however, New Zealand has secured commercially significant improvements to these liquid milk TRQs.

### **Other Key Goods Outcomes**

New Zealand has also secured a bilateral notification and consultation mechanism in the goods chapter of the MNZFTA. This legally binding and enforceable mechanism allows New Zealand to seek 'technical discussions' with Malaysia on any matter affecting trade in goods between the Parties. Under the MNZFTA, Malaysia is obliged to engage in such discussions within 30 days. This may assist New Zealand in addressing a range of non-tariff barriers, such as import licensing and halal certification amongst other issues. In this context, this mechanism is a very useful outcome and builds significantly upon the AANZFTA.

The MNZFTA also goes further than the AANZFTA in requiring Malaysia to answer all reasonable enquires regarding the criteria employed by licensing authorities that affect New Zealand exporters. This is a helpful outcome for New Zealand exporters given the various import licensing restrictions and requirements that Malaysia currently operates

## **Trade in Services**

Trade in services is already an important element of New Zealand's trade profile with Malaysia and its importance is expected to grow in a range of areas such as information and computer technology and engineering over time. In particular, Malaysia is an important and growing education market for New Zealand providers. Between 2003-2008, the number of fee-paying Malaysian students in New Zealand increased by over 70%, making it New Zealand's third largest source of fee-paying university students and second largest source of PhD students.

The FTA is expected to facilitate the further expansion of services trade between New Zealand and Malaysia by securing greater certainty, 'market access'<sup>3</sup> and 'national treatment'<sup>4</sup> opportunities for New Zealand services providers.

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2 Malaysia's Tariff Rate Quota (TRQ) system applies to, liquid milk, live swine and poultry, hens' and duck eggs and some pork products.

3 Market access refers to the terms under which foreign suppliers and their products may enter a market. Market access conditions for services, are set through regulatory requirements such as limitations on the: number of services providers; total value of service transactions; total number of service operations; number of persons that may be employed; level of foreign equity and entity restrictions or joint-venture requirements.

4 National treatment is a principle that seeks to ensure that service suppliers are treated no worse in the national market than local service suppliers

Malaysia has made new services market access commitments that expand on its previous commitments in the WTO General Agreement on Trade in Services (GATS) and the AANZFTA in the following services sectors:<sup>5</sup>

- Primary and Secondary Education;
- Higher Education;
- ‘Other’ Education (such as language training and tuition);
- Environmental Services (wastewater management, cleaning services of exhaust gases, nature and landscape protection and noise abatement services);
- Tourism services (tourist guide services);
- Veterinary Services (Malaysia’s previous AANZFTA commitment in this area was limited to equine animals in equestrians or turf clubs);
- Management Consulting Services (human resources management consulting and public relations services); and,
- Maritime services (cargo handling).

In addition to its market access commitments, Malaysia has agreed to provide New Zealand with Most Favoured Nation (MFN) treatment in key services sectors of commercial interest. MFN treatment requires Malaysia to automatically provide New Zealand services providers, in specified sectors, with any better treatment extended to a third country in a future. This ensures New Zealand firms in these sectors will not be disadvantaged vis-a-vis their competitors from other countries. The MFN provision applies to the following services sectors:

- Private Education (Primary, Secondary, Higher and ‘Other’ Education),<sup>6</sup>
- Environmental Services (sewage, cleaning services of exhaust gases, noise abatement and nature and landscape protection);
- Engineering and integrated engineering Services;
- Computer and Related Services; and,
- Services Incidental to Mining.

To further ‘future proof’ the overall services outcome, New Zealand and Malaysia have agreed to review the MNZFTA’s services market access commitments, with a view to further services liberalisation, within two years of the Agreement’s entry-into-force. Furthermore, should Malaysia conclude a services agreement in the future using a ‘negative list’<sup>7</sup> approach, it has agreed to likewise re-negotiate its specific commitments with New Zealand in a negative list framework.

The obligations on services do not apply in respect of subsidies or government procurement, although the FTA does allow New Zealand and Malaysia to enter into consultations on subsidies issues.

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5 Malaysia had previously made GATS-plus commitments in the following sectors under the AANZFTA: accounting, taxation, architecture, engineering, urban planning, landscape architecture, computer and related, veterinary, advertising, telecommunications, construction, education, financial, health and tourism services.

6 Malaysia reserves the right to adopt or maintain any measure that accords differential treatment with respect to: Religious Institutions (which are institutions which teach predominantly religious studies); and, Military Institutions.

7 A ‘negative list’ approach means that service sectors are considered free of restrictions unless there is a reservation listed. A negative list generally provides greater legal certainty and transparency about the barriers that exist to services trade and its dynamic nature renders it better capable of capturing changes in the regulatory environment.

### **Other Key Services Outcomes**

The MNZFTA expands on the AANZFTA's scope by:

- ensuring that a wider range of business types and structures (including branches) will benefit from the MNZFTA's services provisions. As long as the business has substantive business operations in New Zealand, it can benefit from Malaysia's services commitments in the FTA; and,
- making sure domestic regulation disciplines apply to all services sectors. This means the regulations relating to authorisation, licensing, standards, and qualifications for all services sectors must meet certain standards of transparency, objectivity and be no more burdensome than necessary.

New Zealand and Malaysia have also agreed to establish a mechanism that allows for recognition of the equivalency of each others' qualifications. Qualifications recognition is an important factor in growing New Zealand's education exports to Malaysia and it will improve the ability of New Zealand professional service suppliers (such as engineers, architects, accountants) to deliver their services in Malaysia.

## **Movement of Business Persons**

The MNZFTA movement of business persons outcome builds on the AANZFTA outcome through the broadening of the scope of the definition of 'business visitors' beyond simply service providers to include all legitimate business visitors, i.e. business people seeking to trade in goods and services and investors.

The FTA also allows New Zealand business people or services suppliers in financial services to visit Malaysia for a period of up to ten years – five years longer than under the AANZFTA.

Importantly, both countries have agreed to facilitate the movement of business persons by committing to make a decision on temporary entry applications within 40 working days of receipt. There are no such timeframes in the AANZFTA.

## **Investment**

Cross-border investment is an important aspect of modern trading relationships. The investment relationship between Malaysia and New Zealand has also been growing rapidly in recent years – albeit off a relatively low base. Between 2003-2008 March years, New Zealand's total investment in Malaysia increased by an annual average growth rate of 77% to over \$450 million.

Most Favoured Nation (MFN) treatment for investment is the key benefit of the FTA for New Zealand investors. MFN means that any better investment-related treatment Malaysia extends to third-parties in future investment agreements will be automatically extended to New Zealand. In practice, this means that New Zealand investors and investments in Malaysia cannot be disadvantaged vis-à-vis Malaysia's future FTA partners.

In addition the FTA reconfirms 'national treatment' for New Zealand investors in Malaysia. That is, Malaysia has undertaken to treat New Zealand investors no worse than their own.

The national treatment and MFN obligations will become operational once New Zealand and Malaysia have brought into effect a set of schedules of non-conforming measures.<sup>8</sup> The schedules are to be agreed within six months of the entry-into-force of the FTA.

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<sup>8</sup> A non-conforming measure is any law, regulation, procedure, requirement or practice which violates certain articles of the investment agreement.

The FTA also reconfirms AANZFTA investor protections against arbitrary expropriation and secures obligations around compensation, the free transfers of funds related to investments and the incorporation of minimum international law standards of fair and equitable treatment and full protection and security. Taken together, these protection provisions help mitigate the risk of arbitrary government action to expropriate established investments and ensure that any expropriation actions are appropriately compensated in the event that they occur.<sup>9</sup>

As with New Zealand's other recent FTAs, the MNZFTA's investment protections are supported by providing New Zealand investors with recourse to Compulsory Investor-State Dispute Settlement (CISDS), or international arbitration procedures, beyond Malaysia's domestic legal system.

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<sup>9</sup> The MNZFTA investment protection provisions also apply to (mode 3) commercial presence in services, but do not apply in respect to subsidies or government procurement.

# New Zealand's Commitments to Malaysia

## Trade in Goods

New Zealand will eliminate tariffs on all products of Malaysian origin by 2016 – the same date at which Malaysia eliminates tariffs on New Zealand products. While some New Zealand tariffs are eliminated on entry-into-force, longer transition periods of up to seven years have been secured for import sensitive products including margarine, clothing, footwear, carpets, some textiles and some manufactured products such as some steel products, plasterboard and most wooden furniture.

The additional adjustment costs for import sensitive sectors are not expected to be significant as the AANZFTA already provides for the reduction of tariffs on Malaysian imports in these sensitive areas – albeit over a longer period in most instances.

New Zealand already provides duty-free access for 72.1% of imports from Malaysia. Under the FTA, this will increase to 90.8% in 2010, 94.6% in 2012, 95% in 2014 and 100% by 2016.

## Trade in Services

New Zealand's services commitments in the FTA comprise its existing WTO GATS commitments, the commitments it has already made to Malaysia and other ASEANs in the context of the AANZFTA and commitments that go beyond these for Malaysia only. The GATS and AANZFTA-plus commitments (across Modes 1-3) are in the following sectors:

- Services Incidental to Animal Husbandry (revised restriction regarding access to the National Dairy Herd Testing database);
- Services Incidental to Mining;
- Mailing List Compilation Services;
- Commission Agent Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Wholesale Trade Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Non-Life Insurance Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Insurance Intermediation (reduction in the scope of the restriction relating to agriculture and food related services);
- Maritime Transport Services (reduction in the scope of the restriction relating to agriculture and food related services);
- Air Transport Services (reduction in the scope of the restriction relating to agriculture and food related services); and,
- Washing Cleaning and Dying Services.

None of these commitments go beyond New Zealand's existing regulatory environment or policy settings in any respect.

New Zealand and Malaysia's agreement to reciprocal MFN for key sectors of commercial interest require New Zealand to extend to Malaysia any better treatment relating to those services New Zealand extends third countries in the future.



## Movement of Business Persons

New Zealand has reconfirmed its AANZFTA movement of business persons commitments to Malaysia.<sup>10</sup>

The FTA's provisions on publication, fees for processing immigration formalities, timeliness, and making information available to applicants for temporary entry are all consistent with existing New Zealand immigration practice.

## Investment

New Zealand has agreed to extend to Malaysian investors any better treatment it agrees in future investment agreements through the reciprocal MFN provision. The MFN commitment will not be operationalised until six months after the FTA's entry-into-force when both countries have brought into effect a set of schedules of non-conforming measures.

## Other Key FTA Provisions

### Rules of Origin

The FTA's Rules of Origin (ROO) determine whether goods traded between Malaysia and New Zealand qualify for bilateral tariff preferences. The MNZFTA ROO represent the most liberal ROO New Zealand has secured in any of its recent FTA's and will ensure that New Zealand exporters will be able to take advantage of the MNZFTA's tariff reductions, with the minimum compliance cost.

This outcome was achieved through the application of a Change in Tariff Classification (CTC) approach across all product lines. In addition the more stringent rules under AANZFTA for iron and steel products, manufactured mechanical and electrical goods, and chemical products have been replaced with rules that will allow New Zealand exporters significant freedom in their supply arrangements.

Compliance costs are also kept to a minimum through the FTA's provision for 'self-declaration of origin' for New Zealand exports to Malaysia.<sup>11</sup> This means that, unlike with AANZFTA (or the FTA with China) New Zealand exporters will not need to obtain a certificate of origin for goods in order to gain the benefits of the FTA tariff preference.

### Customs Procedures

Customs clearance for New Zealand exports are expedited through Malaysia's agreement to clear New Zealand exports through customs within 48 hours of the submission of all relevant documentation. Malaysia has never before agreed to such a provision, giving New Zealand exporters a potential edge over other foreign competitors in terms of the timeliness and certainty of delivery in the Malaysian market.

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<sup>10</sup> New Zealand's AANZFTA movement of business persons commitments included providing for the entry of Malaysian business visitors and installers/servicers for up to three months in any calendar year. Executives, managers and specialists, as intra-corporate transferees, are permitted to enter for up to three years. Malaysian Independent Professional Service Suppliers, in specified service sectors, are permitted entry for up to one year, subject to qualifications requirements and labour market tests.

<sup>11</sup> While Malaysia agreed to allow New Zealand exporters to self-declare, Malaysia will continue to require Malaysian exporters to obtain formal certificates of origin in accordance with its domestic laws and regulations.

## Trade Remedies

The FTA preserves the ability of either Party to take anti-dumping, countervailing, and global safeguard actions under WTO rules. Significantly, the FTA also provides for the possibility of excluding New Zealand imports from a Malaysian WTO global safeguard action if such imports are non-injurious. This 'non-injury' exemption clause, if invoked by Malaysia, will mean that New Zealand exporters are not needlessly caught by a Malaysian WTO global safeguard measure where their exports have not been a cause of the action. No such flexibility is afforded for under the AANZFTA.

The MNZFTA also establishes a bilateral transitional safeguard mechanism which is available to both New Zealand and Malaysia. Through this mechanism either country can temporarily suspend tariff reductions or increase the tariff rate if there have been increased imports as a result of the tariff reductions under the FTA and such increased imports have caused or threatened to cause serious injury to a domestic industry. A full investigation is required to prove whether serious injury has, or is likely to occur, before the safeguard can be applied.

## Sanitary and Phytosanitary measures

The FTA provides for greater transparency and cooperation to help ensure that any Sanitary and Phytosanitary (SPS) measures are no more restrictive than necessary while preserving New Zealand's existing biosecurity regime.

## Technical Barriers to Trade

The Agreement's Technical Barriers to Trade (TBT) framework will enhance transparency and allow New Zealand and Malaysia to work together to address issues around standards, technical regulations and conformity assessment procedures to help reduce the transaction costs faced by New Zealand exporters to Malaysia.

## Intellectual Property

The FTA helps to ensure that New Zealand Intellectual Property (IP) rights are protected and enforced to international standards. It incorporates the WTO Trade Related Intellectual Property Rights (TRIPS) Agreement, meaning that New Zealand's TRIPS rights and obligations are actionable under the FTA as well as the WTO. The FTA also establishes mechanisms that require Malaysia to keep New Zealand abreast of IP-related initiatives, allow for cooperation in on enforcement and consultations on IP-related issues.

Importantly, the FTA retains the flexibility necessary for New Zealand to deal with issues relating to the protection of traditional knowledge, subject to international obligations. While providing for information sharing and cooperation between both countries on initiatives to better protect traditional knowledge.

## Competition

The FTA supports the development of competition policies and law to complement greater trade between the two countries. In particular, the FTA requires any law aimed at addressing anti-competitive practices be consistent with competition principles, while establishing a framework for discussion and cooperation on the development of measures to combat anti-competitive behaviour.

## Economic Cooperation

The MNZFTA establishes a framework for economic cooperation as a means for expanding and enhancing the commercial benefits of the Agreement for both parties. The objective is to complement the existing economic partnership between New Zealand and Malaysia and to create new trade and investment opportunities in areas of mutual interest. The areas of cooperation focus include: education, forestry, health, biotechnology, agritechology and manufacturing industry cooperation.

## Dispute Settlement

The Agreement includes a consultation and dispute settlement mechanism for the avoidance or settlement of disputes that may arise out of the Agreement. This mechanism is similar to New Zealand's previous FTA precedents, WTO procedures and is expected to allow disputes to be dealt with quickly and effectively. The process is compulsory and the outcomes binding. This ensures that New Zealand is able to pursue a matter to arbitration should Malaysia not act in accordance with its obligations under the Agreement. An AANZFTA plus addition is the inclusion of non-violation complaints whereby New Zealand can pursue a complaint if it considers that a benefit it could have reasonably expected to receive under the FTA is being nullified or impaired, even if this action is not inconsistent with the FTA.

## General Exceptions

### ***Treaty of Waitangi***

Consistent with New Zealand's previous FTAs, the MNZFTA maintains New Zealand's ability to take measures it deems necessary to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi.

### ***Creative Arts***

The FTA does not preclude New Zealand from taking measures necessary to protect national treasures, specific sites of historical or archaeological value or support creative arts of national value.

## Reviews

A general review of the Agreement shall take place within five years of entry-into-force and every three years thereafter. This represents an important opportunity for New Zealand and Malaysia to accelerate, or expand, the commitments under the FTA.

## **KEY OUTCOMES: Environmental Cooperation Agreement**

The *Malaysia-New Zealand Environmental Cooperation Agreement* (“the Environment Agreement”) establishes a set of shared trade and environment principles and a framework for cooperation, consultation and issue resolution. The Environment Agreement aims to promote sound environmental practices and sustainable development through cooperation, consultation and dialogue.

The Environment Agreement represents Malaysia’s first bilateral treaty on environment cooperation negotiated in the context of an FTA.

### **Key Undertakings**

Under the Environment Agreement, Malaysia and New Zealand have agreed the following objectives:

- to reaffirm their intention to continue to pursue high levels of environmental protection and fulfil their international commitments made at the Earth Summit at Rio de Janeiro in 1992, and the World Summit on Sustainable Development in 2002 in Johannesburg, as well as commitments agreed to by the Parties in multilateral environment agreements;
- to endeavour to harmonise environmental laws, regulations, policies and practices with international environmental commitments;
- to respect the other Party’s sovereign right to set their own policies and national priorities and to set, administer and enforce their own environmental laws and regulations;
- to recognise that it is inappropriate to use environmental laws, regulations, policies and practices for trade protectionist purposes; and,
- to recognise that it is inappropriate to seek to encourage or gain trade or investment advantage by weakening or failing to enforce or administer its environment laws, regulations, policies and practices in a manner affecting trade between the Parties.

### **How the Environment Agreement will work**

The Environment Agreement establishes a framework for cooperation to allow New Zealand and Malaysia to work together in areas of common interest such as environmental expertise and technology and natural resource management including: waste management, wetlands management, eco-tourism, water resources/watershed management, environmental remediation, climate change-related technologies, extended producer responsibility, biodiversity conservation, national park/reserve management, sustainable forest management, marine and coastal resources management, public participation in environmental management, environmental education.

The Environment Agreement also establishes mechanisms designed to facilitate the implementation of the Agreement and resolve any issues that may arise.

### **Public Participation**

The bilateral Environment Committee established under the FTA may consult or seek the advice of stakeholders and relevant experts on relevant environmental matters and may invite them to attend meetings of the Committee. This includes the possibility for Non-government sectors to help the Committee identify potential areas for cooperation and be involved in such activities.

The Environment Committee may publicly release a report on its work at the end of each meeting or at the conclusion of any consultations to resolve a dispute.

## Issue resolution

New Zealand and Malaysia may request consultations on any matter arising over the interpretation of operation of the Environment Agreement. A specific timeframe is provided for such consultations and the report of the Environment Committee convened to consider the matter will provide conclusions and recommendations on resolving the issue. This report may be made public.

## **KEY OUTCOMES:**

# **Labour Cooperation Agreement**

The *Malaysia-New Zealand Labour Cooperation Agreement* (“the Labour Agreement”) provides a framework within which both countries can promote sound labour policies and practices through an approach based on shared trade and labour principles, cooperation, consultation and dialogue. This is the first such agreement that Malaysia has negotiated in the context of an FTA.

## **Key Undertakings**

Through the Labour Agreement New Zealand and Malaysia:

- reaffirm their commitment to the principles of the ILO Declaration of Fundamental Principles and Rights at Work and the Follow-Up to the Declaration (1998);
- agree to work to ensure labour laws, regulations, policies and practices are in keeping with their respective international labour commitments;
- recognise that it is inappropriate to set or use labour laws, regulations, policies and practices shall not be used for trade protectionist purposes;
- recognise that it is inappropriate to encourage or gain trade or investment advantage by weakening or failing to enforce or administer its labour laws, regulations, policies and practices in a manner affecting trade between the Parties; and,
- agree to promote public awareness of labour laws, regulations, policies and practices domestically, and endeavour to ensure that the processes and institutions for their operation and enforcement are fair and equitable.

## **How the Labour Agreement will work**

The Labour Agreement provides an opportunity for New Zealand to improve dialogue on labour-related matters and conduct cooperative activities with Malaysia in the following areas:

- labour laws, regulations, policies and best practices in employment relations, including the promotion of labour rights and obligations and decent work;
- compliance and enforcement systems, including management of labour disputes;
- labour management cooperation, including initiatives to foster improved workplace productivity;
- occupational safety and health;
- human capital development, training, and employability; and
- any other cooperative activities agreed to by the Parties.

The Labour Agreement also establishes mechanisms to facilitate implementation and resolve any issues that may arise.

## **Public Participation**

As with the Environment Agreement, the Labour Committee established under the Agreement may invite stakeholders and relevant experts to attend meetings of the Committee or seek their advice on relevant labour matters. The Agreement also allows for Non-government stakeholders to help the Committee identify and implement potential areas for cooperation.

The Labour Committee may also publicly release a report on its work at the end of each meeting.

## Issue resolution

A detailed and transparent process of consultation with Malaysia has been agreed to address issues that may arise which relate to any of the commitments in the treaty. This provides for a timeframe for such consultations and provides for the possibility of Ministerial engagement as required. The report of the Labour Committee convened to consider the matter will provide conclusions and recommendations on resolving the issue. This report may be made public.