

Submission

By

Business|NZ

To

Ministry of Foreign Affairs and Trade

On the

**New Zealand – Malaysian and ASEAN Free
Trade Agreements Consultation Document**

17 December 2004

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NEW ZEALAND – ASEAN & MALAYSIAN FREE TRADE AGREEMENTS CONSULTATION DOCUMENT

SUBMISSION BY BUSINESS NEW ZEALAND 17 DECEMBER 2004

1. Introduction

- 1.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 54-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.
- 1.2 In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per year would be required to achieve this goal in the medium term.
- 1.5 International trade is critical for economic growth, particularly for small countries with small domestic markets, such as New Zealand. However, many countries impose significant tariff and non-tariff barriers to trade, which harm the competitiveness of New Zealand exporters. Trade liberalisation is therefore very important for gaining improved access and higher returns for New Zealand goods and services in overseas markets, and so increasing New Zealand's rate of sustainable economic growth.
- 1.6 Business New Zealand welcomes the opportunity to comment on the New Zealand-Malaysia and New Zealand-Australia-ASEAN Free Trade Consultation Documents. We believe that there will be economic benefits for New Zealand from establishing a Free Trade Agreement (FTA) with Malaysia and ASEAN, with the latter providing an ideal opportunity to strengthen and deepen trade ties within the larger Asian region over the longer term. While we have some issues about the FTAs that are discussed below, we are in favour of FTA talks proceeding.
- 1.7 Business New Zealand's submission is broken into two parts. The first investigates a proposed FTA with Malaysia, while the second looks at an FTA with the ASEAN Region. Given Malaysia is a member of ASEAN, we

considered it rational to provide one submission covering both discussion pieces.

2. Business New Zealand's Position on Free Trade Agreements

- 2.1 Business New Zealand is generally supportive of trade liberalisation policies. Reducing the tariff and non-tariff barriers faced by New Zealand exporters and those wishing to do business offshore is likely to result in significant gains in competitiveness, higher incomes for firms and improved living standards and quality of life for all New Zealanders.
- 2.2 Business New Zealand's first preference is for trade liberalisation to take place at a multilateral level, such as through the WTO process. A positive, comprehensive outcome to the WTO Doha Round would deliver far greater benefit for New Zealand than putting in the effort to firstly attract potential bilateral partners (no easy feat for a small country) and then undertake separate negotiations with them, with the time and energy that goes into such a process.
- 2.3 However, the WTO process is a slow one and partially as a result of a perceived lack of progress there has been a proliferation of regional and bilateral trade agreements concluded over the past decade. Business New Zealand's view is that the term 'free trade agreement' is somewhat misleading. A true free trade agreement would effectively create a single economic market between the participants and would also reduce trade barriers with the outside world. In reality most 'free trade agreements' are 'preferential trade agreements', in that they may confer improved market access (but by no means completely open access) for the parties. Providing that the principle of Most Favoured Nation is not compromised, these agreements are usually endorsed as 'WTO-consistent' even when the outside world is excluded from the improvements negotiated by the parties.
- 2.4 For the purposes of this submission, Business New Zealand will use the term officially adopted for the New Zealand-Malaysia and New Zealand-ASEAN negotiations, 'free trade agreements'. However, we consider the term 'closer economic partnership' to be a more accurate representation.
- 2.5 Business New Zealand agrees that a free trade agreement with both Malaysia and ASEAN should be deemed important in terms of furthering trade relations, but we continue to consider progress in achieving a positive and comprehensive WTO Doha Round outcome to be of greatest importance. Also, New Zealand should not in its enthusiasm for Asian countries lose sight of the importance of fostering the development of a single economic market with Australia, nor the importance of negotiating of a free trade agreement with the United States.
- 2.6 *Recommendation: Business New Zealand recommends that negotiations for a free trade agreement with Malaysia and ASEAN should be deemed to be important but should not overshadow other high trade policy priorities, such as the:*
 - (a) *WTO Doha Round;*

- (b) *Development of single economic market with Australia; and*
- (c) *Negotiation of a free trade agreement with the United States.*

PART 1: FREE TRADE AGREEMENT WITH MALAYSIA

3. Summary of Recommendations

3.1 Business New Zealand recommends that:

- (a) Talks for an FTA with Malaysia should proceed;
- (b) The emphasis on FTA talks should be on complementarity and cooperation rather than competition in third-country markets;
- (c) Robust and enforceable rules of origin should be included in any FTA agreement with Malaysia;
- (d) An FTA with Malaysia should be comprehensive, and that efforts should be focused on ensuring that any sensitive areas are satisfactorily addressed over time without resorting to exclusions;
- (e) A chapter on technical barriers to trade/sanitary and phytosanitary/standards and conformance should be included in an FTA and that it should be modeled on the existing chapter in the NZ/Singapore CEP agreement;
- (f) An FTA with Malaysia should comprehensively cover trade in services;
- (g) An FTA with Malaysia should comprehensively cover customs procedures;
- (h) An FTA with Malaysia should cover government procurement;
- (i) Labour and environmental standards should **not** be covered in an FTA agreement with Malaysia;
- (j) An FTA with Malaysia should include an anti-dumping clause similar to that of the New Zealand-China FTA;
- (k) An FTA with Malaysia should seek to encourage and promote greater investment flows;
- (l) An FTA with Malaysia should include provisions on a disputes resolution process; and
- (m) An FTA agreement with Malaysia should **not** include a provision on the Treaty of Waitangi.

4. New Zealand and Malaysia as Global Traders

- 4.1 Table 1 shows a time series of New Zealand's exports and imports relating to Malaysia from 1995-2004. For the year ending September 1995, Malaysia took around 1.9% of New Zealand's exports, and provided 1.5% of imports. However, by 2004 exports to Malaysia had fallen as an overall percentage of all exports to 1.7%, while imports from Malaysia had risen to 2.3%.

Table 1: Total Merchandise Trade with Malaysia, years ending September 1995-2004

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Exports	394.7	500.9	490.2	422.9	428.0	538.4	705.2	617.6	558.8	510.3
% Change		+26.9	-2.1	-13.7	+1.2	+25.8	+31.0	-12.4	-9.5	-8.7
Imports	312.7	448.3	382.3	458.4	579.6	760.0	980.3	764.8	864.6	794.6
% Change		+43.4	-14.7	+19.9	+26.4	+31.1	+29.0	-22.0	+13.1	-8.1

Source: Business NZ/Statistics NZ

- 4.2 Malaysia is an export-oriented economy. Over the past 25 years, it has developed from an agriculture-based economy to one that is dominated by intermediate manufacturing. The bulk of Malaysia's exports to all countries involve electronic equipment, petroleum and liquefied natural gas, wood & wood products, palm oil, rubber, textiles and chemicals. In contrast, New Zealand's main exports involve dairy products, meat and wood.
- 4.3 Table 2 and 3 show New Zealand's principle merchandise exports to Malaysia as well as Malaysia's imports to New Zealand for 2002-2004. There is little cross-over between the two countries in terms of trade, with the strongest being Machinery and Mechanical Appliances, which is the highest import to New Zealand from Malaysia in terms of dollar value (\$200 million, or 25.2% of total imports from Malaysia), compared with the 5th highest New Zealand export to Malaysia in terms of dollar value (\$13.1 million, or 2.6% of total imports from New Zealand). However, there is a clear difference in values between the two countries regarding this category, as New Zealand's imports of Machinery & Mechanical Appliances is substantial compared with its exports of such products to Malaysia. Malaysia is New Zealand's 8th largest goods trading partner¹, comprising \$1,305 million for the year ending September 2004. It is also New Zealand's largest trading partner in the ASEAN region.
- 4.4 Malaysia mainly exports to the U.S.A (20.2%), followed by Singapore (17.1%), Japan (11.3%) and Hong Kong (5.7%). Overall, its exports are mainly concentrated in the Asian region, although Europe and the America are also represented.
- 4.5 New Zealand imported \$795 million worth of goods from Malaysia for the September 2004 year, representing 2.3% of total imports. Over a quarter of New Zealand's imports from Malaysia are Machinery & Mechanical Appliances (25.2%), followed by Mineral Fuels, Oils etc (18.4%) and Electrical Machinery & Equipment (17.7%).
- 4.6 In terms of total imports, Malaysia receives around \$105 billion annually. The largest amount of imports into Malaysia come from Japan (17.8%) followed by

¹ This is the total of New Zealand exports to Malaysia and imports from Malaysia.

the USA (16.5%), Singapore (12%) and China (7.7%). During the September 2004 year, New Zealand exported \$510 million worth of merchandise to Malaysia, representing 1.7% of total New Zealand exports. A large proportion of these exports were in dairy produce (50.4%), followed by Meat & Edible Meat Offal (14.0%).

Table 2: Principle New Zealand Merchandise Exports to Malaysia, years ending September 2002-2004

Description	2002 (\$m)	2003 (\$m)	2004 (\$m)	% Change 2002-04	% of Total Exports 2004
Dairy Produce	302.4	251.3	257.2	-14.9	50.4
Meat & edible meat offal	56.9	55.8	71.6	+25.7	14.0
Wood pulp	27.0	21.6	16.8	-37.8	3.3
Fruit & nuts	21.1	16.8	14.3	-32.3	2.8
Machinery and mechanical appliances	21.0	12.8	13.1	-37.7	2.6
Paper & paperboard	18.3	13.7	12.7	-30.3	2.5
Albuminoidal substances	3.8	7.2	11.1	+191.7	2.2
Electrical machinery and equipment	14.2	6.9	9.7	-32.0	1.9
Iron & steel	0.02	8.0	9.2	+3659	1.8
Vegetables etc	13.7	10.5	9.1	-33.3	1.8
Top 10 sub total	478.5	404.8	424.8	-11.2	83.2
Total Exports	617.6	558.8	510.3	-17.3	100.0

Source: Business NZ/Statistics NZ

Table 3: Principle Malaysian Merchandise Imports to New Zealand, years ending September 2002-2004

Description	2001 (\$m)	2002 (\$m)	2003 (\$m)	% Change 2002-04	% of Total Exports 2004
Machinery & mechanical appliances	162.1	151.4	200.0	+23.4	25.2
Mineral fuels, oils etc	177.8	260.1	146.1	-17.9	18.4
Electrical machinery & equipment	156.8	156.7	140.8	-10.2	17.7
Furniture, bedding, mattresses etc	35.1	40.7	44.5	+26.6	5.6
Plastics & particles thereof	33.4	40.3	41.5	+24.3	5.2
Animal or vegetable fats & oils	30.5	39.9	40.4	+32.7	5.1
Rubber & articles thereof	25.2	24.6	23.6	+6.2	3.0
Paper & paperboard	10.9	14.1	16.9	+54.9	2.1
Fertilisers	13.6	13.6	15.7	+15.7	2.0
Iron or steel articles	6.4	7.9	7.1	+9.6	0.9
Top 10 sub total	651.8	749.3	676.4	+3.8	85.1
Total Exports	764.8	864.6	794.6	+3.9	100.0

Source: Business NZ/Statistics NZ

- 4.7 In terms of specific manufactured items that involve some formal process; New Zealand's exports to Malaysia are relatively small. Table 4 provides a summary of New Zealand's Basic Manufacturing Sector (BMS) that are manufactured items that have been transformed in some way. Around \$102 million worth of BMS was exported to Malaysia for the September 2004 year, which represented 0.8% of total BMS exports from New Zealand. The largest category in terms of its percentage representation were paper and paper products & printing at 2.9%, while both food processing and synthetic resins stood at 2.2%.

Table 4: New Zealand's Basic Manufacturing Sector Exports to Malaysia (Year Ending September 2004)

Description	\$(m)	% of Total Exports
Food processing	30.0	2.2%
Paper, paper products & printing	12.9	2.9%
Electronic equipment	10.3	1.5%
Iron & steel	9.5	2.0%
Other manufacturing	8.0	0.7%
Electrical equipment	4.6	1.0%
Sawn timber & wood products	4.1	0.3%
Industrial machinery & equipment	4.0	0.6%
Other chemical products	3.9	0.7%
Plastic products	2.8	0.8%
Metal product manufacturing	2.7	0.6%
Textiles (excluding carpets & rugs)	1.2	0.6%
Synthetic resins	1.0	2.2%
Industrial chemicals & petroleum products	0.9	1.1%
Non-ferrous metals	0.8	0.1%
Transport equipment	0.8	0.2%
Household appliances	0.8	0.2%
Beverages & tobacco	0.7	0.1%
Carpets	0.7	0.6%
Leather tanning & fur dressing	0.6	0.2%
Clothing & knitting mill products	0.3	0.1%
Rubber products	0.3	0.2%
Non-metallic products	0.3	0.4%
Agricultural machinery	0.1	0.1%
Furniture	0.07	0.1%
Footwear	0.009	0.0%
TOTAL	101.6	0.8%

Source: Business NZ/Statistics NZ

- 4.8 Table 5 shows that of the \$102 million that is exported to Malaysia, around 65% are elaborately transformed manufacturing (ETM), which are items that have a high value-added element attached to them as they have been transformed in a specific way. These are the type of manufacturing exports that can bring in greater revenue for exporters. In comparison with other countries, Malaysia is 11th in terms of the dollar value sent there, and represents only around 0.8% of all ETMs.

Table 5: New Zealand's Elaborately Transformed Manufacturing Export by Major Markets (Year Ending September 2004)

Country	\$(m)	% of Total ETMs
Australia	3,977.8	45.5%
USA	1,560.9	17.8%
Other Countries Combined	1,135.3	13.0%
Japan	620.3	7.1%
UK	421.7	4.8%
China	172.9	2.0%
Fiji	153.9	1.8%
Hong Kong	127.5	1.5%
Canada	122.9	1.4%
Singapore	107.4	1.2%
South Korea	100.1	1.1%
Malaysia	66.0	0.8%
Thailand	63.4	0.7%
Taiwan	62.0	0.7%
Italy	36.5	0.4%
Indonesia	20.8	0.2%
TOTAL	8,749.5	100.0%

Source: Business NZ/Statistics NZ

4.9 While some level of competition will undoubtedly exist regarding third markets with countries New Zealand pursues an FTA agreement with, there appear to be few areas of sensitivity in merchandise trade with respect to an FTA with Malaysia. An FTA between the two countries would greatly improve collaboration and joint ventures in third-markets, as opportunities for business ventures would be strengthened.

4.10 *Recommendation: Business New Zealand recommends that the emphasis on an FTA talks should be on complementarity and cooperation rather than competition in third-country markets.*

5. New Zealand's Sensitive Sectors and Tariff Rates

5.1 New Zealand retains significant tariff protection only on Textiles, Clothing, and Footwear (TCF). Malaysia does export such items to New Zealand, valued at around \$5.7 million for the September 2004 year. However, this represents only 1.1% of total imports from Malaysia, and only 0.4% of all TCFs that are imported into New Zealand. Malaysia's stance as a 'less developed country' means that it already enjoys a preferential tariff rate for certain goods, including some TCF items it exports to New Zealand.

5.2 In keeping with the wider economic reforms in the 1980s and 1990s, New Zealand tariffs were either eliminated or significantly reduced. By 1999, 95% of imports were entering New Zealand tariff-free and those remaining tariffs were scheduled for removal by 2006. However, in 2000 the incoming Labour-led Government froze tariffs at existing levels pending a review of tariff policy. Following the completion of this review in 2003, a programme of phased tariff reductions was announced as set out in table 6 below.

Table 6: Tariff Reduction Programme 2006-2009*

Current tariff	July 2006	July 2007	July 2008	July 2009
17-19%	17%	15%	12.5%	10%
10-12.5%	10%	7.5%	5%	5%
5-7.5%	5-7.5%	5-7.5%	5%	5%

Source: Ministry of Economic Development

- 5.3 It is Business New Zealand's strong submission that any FTA with Malaysia must include robust rules of origin that will ensure that only goods of New Zealand and Malaysian origin benefit from tariff preferences under an FTA agreement. While Malaysia is not a significant exporter of TCFs, it has begun work on bilateral trade agreements with countries that may be more significant low-cost producers of products sensitive to New Zealand interests, such as China and India.
- 5.4 Also, another important issue would be the percentage of local content required for products to comply with rules-of-origin requirements and the type of costs that may be included in calculations. The bilateral agreements with Australia and Singapore have 50% and 40% local content requirements respectively. There are some differences in definitions of the costs that can be included in these calculations, such as marketing expenses and profits are often explicitly excluded.
- 5.5 A robust rules-of-origin enforcement regime will also be required with severe penalties for those attempting to abuse the tariff preferences, and it will also be very important that rules of origin can be effectively enforced through customs procedures at the Thailand border.
- 5.6 *Recommendation: Business New Zealand recommends that robust and enforceable rules of origin should be included in any FTA agreement with Malaysia.*

6. Malaysia's Sensitive Sectors and Tariff Rates

- 6.1 Malaysia imposes some significant tariffs and other restrictions on a variety of goods covering most commodity groups. Table 7 highlights some of the more pertinent tariffs in place by Malaysia that currently impact on New Zealand exporters. An FTA would take a large step towards dismantling such barriers for New Zealand exporters, as current restrictions include leading commodity exports to Malaysia, such as certain dairy produce (although notably excluding milk), electrical machinery & equipment and particular plastic/chemical/rubber products.
- 6.2 Given the trade restrictions that Malaysia currently has in place, New Zealand should seek the inclusion of all products in an FTA with Malaysia. Ministerial and diplomatic efforts should be focused on ensuring that any sensitive areas, such as dairy, are satisfactorily addressed without resorting to exclusions.
- 6.3 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should be comprehensive, and that efforts should be focused on*

ensuring that any sensitive areas are satisfactorily addressed over time without resorting to exclusions.

Table 7: Principle Tariffs on New Zealand Exports to Malaysia

Description	Tariff Code	Current Tariff Rates	Exports June 2004 Year (\$m)
Yoghurt	0403	25%	29.6
Cheese	0406	5-10%	12.7
Butter	0405	2%	8.4
Plastics	3915-3926	0-30%	2.9
Fibreboard	4411	20%	2.4
Kiwifruit	0810	15%	1.4
Carpets	5701	30%	0.8
Aluminium products	7604-7616	0-30%	0.5
Tyres	4011-4012	30-40%	0.1
Paints and varnishes	3208-3210	25%	0.08
Refrigerators	8418	30%	0.05
Dishwashing machines		25%	

Source: Business NZ/Statistics NZ

7. Non-Tariff Barriers

- 7.1 Business New Zealand strongly supports efforts to reduce non-tariff barriers. Non-tariff barriers impose significant compliance costs on our exporters and can be more of an impediment to free and fair trade than tariffs (which are at least relatively transparent). New Zealand should therefore actively pursue means to reduce and eliminate such barriers to doing business, both multilaterally (for example through the WTO, OECD and APEC) and bilaterally.
- 7.2 New Zealand exporters already face particular non-tariff barriers in Malaysia, such as safety and environmental regulations applying to imports of food products such as chicken, pork, liquid milk and eggs which require sanitary and phytosanitary certification requirements. Business New Zealand agrees that an FTA between the two countries that seeks to address or eliminate non-tariff barriers would be beneficial to New Zealand businesses. A chapter on technical barriers to trade/sanitary and phytosanitary/standards and conformance should be modeled on the existing chapter in the New Zealand-Singapore CEP agreement.
- 7.3 *Recommendation: Business New Zealand recommends that a chapter on technical barriers to trade/sanitary and phytosanitary/standards and conformance should be included in an FTA and that it should be modeled on the existing chapter in the NZ/Singapore CEP agreement.*

8. Services Trade

- 8.1 Business New Zealand recognizes that services are a significant and growing component within our total export and import trade. However, despite the service sector's global and national importance, in many countries it has traditionally been a restricted sector with many institutional and regulatory barriers to access. Only in recent years, has attention turned to opening and deregulating services markets.

8.2 Malaysia is already fairly open in the services trade, which New Zealand has enjoyed the benefits of in recent years. During the December 2003 year, tourists and students from Malaysia contributed more than \$70 million to the New Zealand economy, with exports of other commercial services such as engineering and professional services worth \$8 million for the same time period. A comprehensive FTA that covers trade in services would undoubtedly provide further opportunities for trade between the two countries, which would be to the long run benefit of both economies.

8.3 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should comprehensively cover trade in services.*

9. Customs Procedures

9.1 Business New Zealand believes that an FTA with Malaysia should provide adherence to international best practice standards in customs administration, so that there is a minimisation of any disruption to the flow of goods and people, whilst avoiding any unnecessary costs to traders. It would provide an opportunity to strengthen cooperation between the two customs agencies in areas such as clearance procedures, the provision of advance rulings, and the use of electronic methods and procedures for appeal and review.

9.2 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should comprehensively cover customs procedures.*

10. Government Procurement

10.1 Both New Zealand and Malaysia are active participants in the APEC Government Procurement Experts' Group (GPEG), which is the forum for discussion and information exchange on government procurement regimes in APEC nations. The group aims for greater transparency and liberalisation of government procurement markets, as well as providing a forum for ongoing peer review of individual economies' action plans and progress. Business New Zealand has always advocated increased effectiveness and efficiency of government expenditure, given its effects on economic growth.

10.2 While the principles on government procurement are non-binding, Business New Zealand believes the agreed principles through GPEG of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination, should be included in an FTA with Malaysia.

10.3 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should cover government procurement.*

11. Labour and Environmental Standards

11.1 Business New Zealand recognises that the Government places a high importance on labour and environmental standards, but we would be concerned if such considerations became the overriding factor in whether to negotiate an FTA with any economy.

- 11.2 Notwithstanding the fact that free trade has proven to be beneficial to developing countries in raising living standards, opponents of free trade have used labour and environmental standards as a smokescreen to mask their inherent protectionism. While on the one hand complaining about the gap between rich and poor, the anti-globalisation lobby has restricted the ability to trade and grow their economies by insisting on adherence to strict labour and environmental standards.
- 11.3 As a matter of principle, we submit that New Zealand should not seek to include labour and environmental standards as part of an FTA with Malaysia. We consider that the International Labour Organisation provides a more appropriate mechanism to address labour standard issues on an international level. The framework of multilateral environment agreements provides a similar mechanism for consideration of environmental issues.
- 11.4 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should **not** include provisions on labour and environmental standards.*

12. Treaty of Waitangi

- 12.1 The information paper that MFAT has published on the New Zealand-Malaysian FTA has mentioned a reference to the Treaty of Waitangi.
- 12.2 Business New Zealand is strongly opposed to the inclusion of a Treaty of Waitangi clause being written into an FTA agreement with Malaysia. We would not support any measures that would allow the Government to give any special interest group preferential treatment. This could be construed as protectionism by another name, and Business New Zealand would be concerned if a clause of this kind were to be viewed as such by Malaysia, and it risked the need to make important concessions in other areas.
- 12.3 The paper also mentions that a Treaty of Waitangi provision would give the New Zealand Government “scope to implement policies related to Maori”. However, there is no mention of what these policies would be. If these policies were in the form of non-tariff barriers or subsidies, this could place additional costs on the economy, as well as resulting in a misallocation of resources.
- 12.4 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should **not** include a provision on the Treaty of Waitangi.*

13. Dumping Issues and Intellectual Property Rights

- 13.1 Rules around anti-dumping are an important competitive safeguard to ensure that imports are not sold in a market below cost. Imported products that are sold below cost (i.e., ‘dumped’ on an offshore market) subject both local industry and imports from other countries to unfair and injurious competition. At its most predatory, dumping can result in the elimination of

competitors, leaving the market open to the dumper, which might then price as it wishes to more than recoup any losses incurred while dumping.

- 13.2 Both New Zealand and Malaysia are members of the World Trade Organisation (WTO) Agreement on anti-dumping. However, to ensure that there is greater discipline towards dumping and a minimisation of opportunities to use anti-dumping in an arbitrary or protectionist manner, Business New Zealand would want to see a specific reference to this in any FTA with Malaysia.
- 13.3 On a positive note, Malaysia has fewer issues regarding dumping than some of its neighbours with whom New Zealand is also establishing either an FTA and CEP. Table 8 shows the number of anti-dumping country investigations carried out by New Zealand between 1982-2001. Although Malaysia appears on the list, the number of investigations has been relatively minimal. Since 2001, there have been two recent New Zealand investigations into dumping that relate to Malaysia, one concerning galvanized wire from Malaysia and China, the other involving reinforcing steel bar and coil from Malaysia and Thailand. Both investigations were initiated in 2003.
- 13.4 Business New Zealand notes that anti-dumping clauses have been provided in previous FTA and CEP arrangements, and we would request likewise for an FTA with Malaysia.

Table 8: Anti-Dumping Country Investigations by New Zealand 1982-2001

<i>Country</i>	<i>Total Investigations</i>
European Union	15
Thailand	12
Korea	11
Australia	10
Indonesia	9
China	8
Taiwan	5
Japan	3
Malaysia	2

Source: "Anti-Dumping Law and Practice in New Zealand, Ministry of Economic Development, March 2001

- 13.5 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should include an anti-dumping clause similar to that of the New Zealand-China FTA.*
- 13.6 Business New Zealand is also concerned that breaches of intellectual property rights such as piracy, copyright and patent breaches could occur after a New Zealand-Malaysian FTA has been agreed to. However, it's important to note that Malaysia is one of the few countries that has shown strong improvement in reducing piracy in South-East Asia. In 1994, Malaysia's piracy level was 82%, which had dropped to 68% by 2002. This compares with 23% for the USA, which has the lowest piracy rate in the world². Malaysia was removed from the USA top priority watch list for piracy and counterfeit in January 2002. However, Business New Zealand

² 'New Study Reveals Piracy Rates in Asia on the Rise', Business Software Alliance, June 2003.

would still want to see the New Zealand-Malaysian FTA include a provision regarding intellectual property rights.

- 13.7 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should include an intellectual property rights clause similar to that of the New Zealand-China FTA.*

14. Investment

- 14.1 One of Business New Zealand's objectives is to see increased investment, including Foreign Direct Investment (FDI) to enhance economic growth. During the privatisation programme reforms of the 1990s, Malaysia enjoyed strong inflows of FDI in the decade before the Asian economic crisis, which further enhanced its industrialisation process. However, current two-way direct investment between New Zealand and Malaysia is relatively low, as Malaysian FDI to New Zealand totaled \$17 million as at March 2004, while FDI by New Zealand into Malaysia accounted for \$38 million. An open door policy towards foreign investment means that an FTA between the two countries would assist greatly in this regard.

- 14.2 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should seek to encourage and promote greater investment flows.*

15. Dispute Settlement

- 15.1 Business New Zealand considers it important for an FTA with Malaysia to provide for a disputes resolution process. Such a system would be important for addressing problems around market access, non-tariff barriers, intellectual property breaches and trade remedies (e.g. disputes over anti-dumping).
- 15.2 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should include provisions on a disputes resolution process.*

PART 2: FREE TRADE ARRANGEMENT WITH ASEAN

16. Summary of Recommendations

16.1 Business New Zealand recommends that:

- (a) Talks for an FTA with ASEAN should proceed;
- (b) The emphasis in FTA talks should be on complementarity and cooperation rather than competition in third-country markets;
- (c) An FTA with ASEAN should seek to encourage and promote greater investment flows;
- (d) Robust and enforceable rules of origin be included in any FTA with ASEAN;
- (e) An FTA with ASEAN should include all ASEAN members and should not involve a lengthy phase-in period for newer ASEAN members;
- (f) An FTA agreement should be comprehensive, and efforts should be focused on ensuring that any sensitive areas are satisfactorily addressed over time without resorting to exclusions;
- (g) An FTA with ASEAN should seek to include agreement for the reduction or elimination of non-tariff barriers;
- (h) An FTA with ASEAN should include an anti-dumping clause similar to that of the New Zealand-China FTA, and all ASEAN members should be encouraged to improve their track record in this regard;
- (i) An FTA with ASEAN should include an intellectual property rights clause similar to that of the New Zealand-China FTA;
- (j) An FTA agreement with ASEAN should comprehensively cover trade in services;
- (k) An FTA with ASEAN should comprehensively cover customs procedures;
- (l) An FTA with ASEAN should cover government procurement;
- (m) An FTA with ASEAN should **not** include provisions on labour and environmental standards;
- (n) An FTA with ASEAN should include provisions on a disputes resolution process; and
- (o) An FTA agreement with ASEAN should **not** include a provision on the Treaty of Waitangi.

17. Why have an FTA with ASEAN?

- 17.1 The Association of South East Asian Nations (ASEAN) was established in 1967. The original members were Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand. Between 1992 and 1999, Cambodia, Laos, Myanmar and Vietnam also joined. If the European Union is counted as a single destination, ASEAN is New Zealand's fifth largest export market and fifth largest source of imports.
- 17.2 New Zealand became a dialogue partner of ASEAN in 1975, and over that time has strengthened relations by building upon areas of mutual interest and competitive advantages for both sides.
- 17.3 An FTA between New Zealand, Australia and ASEAN would represent a combined population of over 500 million people, and an estimated GDP exceeding US\$700 billion. In 2000 when FTA negotiations were agreed to take place, it was then estimated that an FTA would boost GDP across the 12 countries by more than US\$48 billion over the period 2000-2020, with an additional US\$3.4 billion to New Zealand. Obviously, this may not be as large in terms of economic benefits as say an FTA with the USA or China, but it still represents a positive step forward in encouraging trade liberalisation in other countries, given the proposed partnership between a largely developing country grouping and two developed countries that are already partners.
- 17.4 New Zealand has already taken steps towards FTA and CEP agreements with particular ASEAN members. An agreement with Singapore has been concluded, while negotiations with Thailand are currently taking place. Bilateral FTA discussions are currently being held with Malaysia. While the gains of an FTA with the ASEAN region are smaller given the agreements already in place or currently being negotiated, Business New Zealand agrees there are still economic gains to be expected.
- 17.5 New Zealand's merchandise exports to ASEAN accounted for around \$2.2 billion during the September 2004 year. This was down from the September 2003 and 2002 years, probably due to the SARS outbreak last year. The value drop has meant the percentage of New Zealand's exports heading to the ASEAN region has also dropped from 8.4% in 2002 to 7.4% in 2004. Table 9 shows the percentage breakdown of merchandise exports by the ASEAN member countries for 2002-2004. Indonesia, Malaysia and the Philippines, Singapore and Thailand have consistently remained over 1% for the three years, and with three of these countries New Zealand has reached or is currently in negotiations regarding bilateral trade. Of the rest, countries such as Brunei, Cambodia, Laos and Myanmar represent a very small part of New Zealand's total export value.

Table 9: New Zealand's Percentage of Merchandise Exports to ASEAN Nations (Year Ending September 2002-2004)

ASEAN Country	2002	2003	2004
Brunei	0.01%	0.01%	0.01%
Cambodia	0.00%	0.00%	0.00%
Indonesia	1.57%	1.36%	1.32%
Laos	0.00%	0.00%	0.00%
Malaysia	1.95%	1.94%	1.70%
Myanmar	0.06%	0.04%	0.02%
Philippines	1.61%	1.70%	1.53%
Singapore	1.26%	1.11%	1.12%
Thailand	1.22%	1.13%	1.18%
Viet Nam	0.70%	0.48%	0.50%
ASEAN Total	8.37%	7.77%	7.39%

Source: Business NZ/Statistics NZ

17.6 Table 10 shows the percentage breakdown of merchandise imports from ASEAN to New Zealand for 2002-2004. New Zealand's merchandise imports from ASEAN account for more than its exports to ASEAN. During the September 2004 year, the value of imports from ASEAN stood at around \$3.3 billion, which represented a 27% increase from the year ending September 2003. Correspondingly, the percentage share of merchandise exports to ASEAN as a total has risen from 8% in 2002 to 9.6% in 2004. Singapore is now New Zealand's first source for imports of the member countries, standing at 2.7% for 2004. Malaysia is also a relatively significant importer to New Zealand at 2.3%. Cambodia, Laos and Myanmar are the only ASEAN countries that appear to have very low exports as a percentage total of exports to New Zealand.

Table 10: Percentage of New Zealand's Merchandise Imports from ASEAN Nations (Year Ending September 2002-2004)

ASEAN Country	2002	2003	2004
Singapore	1.83%	1.88%	2.74%
Malaysia	2.38%	2.71%	2.33%
Thailand	1.73%	1.74%	1.80%
Indonesia	1.27%	1.24%	1.24%
Brunei	0.30%	0.64%	0.80%
Philippines	0.27%	0.36%	0.37%
Viet Nam	0.22%	0.23%	0.29%
Cambodia	0.00%	0.00%	0.00%
Laos	0.00%	0.00%	0.00%
Myanmar	0.01%	0.01%	0.00%
ASEAN Total	8.01%	8.81%	9.58%

Source: Business NZ/Statistics NZ

17.7 Table 11 shows New Zealand's BMS exports to major markets for the year ending September 2004. ASEAN members are at the bottom end of the major markets (ranked 11th and 12th-15th), which cumulatively make up around 3.2% of total BMS exports. In terms of ETMs, table 5 shows that around 5% of New Zealand's exports in this area go to ASEAN countries.

Table 11: New Zealand's Basic Manufacturing Sector Exports by Major Markets (Year Ending September 2004)

Country	\$(m)	% of Total
Australia	4,632.2	37.5%
United States of America	1,874.6	15.2%
Other Countries Combined	1,729.5	14.0%
Japan	1,687.0	13.7%
United Kingdom	454.9	3.7%
China	428.5	3.5%
South Korea	285.9	2.3%
Hong Kong	225.8	1.8%
Fiji	185.9	1.5%
Italy	159.2	1.3%
Canada	151.1	1.2%
Singapore	132.7	1.1%
Taiwan	131.6	1.1%
Malaysia	101.6	0.8%
Thailand	95.7	0.8%
Indonesia	62.1	0.5%
Grand Total	12,338.4	100.0%

Source: Business NZ/Statistics NZ

17.8 While some level of competition will undoubtedly exist between countries with which New Zealand pursues an FTA agreement with, there appear to be relatively few areas of sensitivity in merchandise trade with respect to an FTA with ASEAN. An FTA between New Zealand and ASEAN would greatly improve collaboration and joint ventures in third-markets, as opportunities for business ventures would be strengthened.

17.9 *Recommendation: Business New Zealand recommends that the emphasis on an FTA talks should be on complementarity and cooperation rather than competition in third-country markets.*

18. Investment

18.1 One of Business New Zealand's objectives is to see increased investment, including Foreign Direct Investment (FDI) to enhance economic growth. New Zealand currently invests approximately \$500 million into the ASEAN region, which represents around 3.4% of New Zealand's total FDI. Direct investment by ASEAN countries into New Zealand is more than double this, over \$1.1 billion, but represents a lesser percentage figure, contributing 2% of FDI into New Zealand. An open door policy towards foreign investment means that an FTA between New Zealand and ASEAN would assist greatly in this regard.

18.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should seek to encourage and promote greater investment flows.*

19. New Zealand's Sensitive Sectors

19.1 When considering the impact of tariffs and their usefulness in protecting local industry, it is helpful to consider the market share imported products have in local markets. Two of New Zealand's most sensitive sectors are Textiles, Carpet, Clothing, Footwear and Leather (TCCFL) & Furniture.

- 19.2 Table 12 shows the value and percentage of imports from the TCCFL sector that arrived from ASEAN countries for 2001-2004. The dollar value of TCCFL imports has fallen from over \$2,158 million in 2001 to just under \$2,000 million in 2004. However, imports from the ASEAN nations as a percentage of all imports has increased from 7.1% to 8.9% over the same time period. Table 13 shows that while the total value of furniture imports to New Zealand has increased from 2001-2004, the value of imports from ASEAN nations has remained relatively constant, causing a fall in the percentage share from 32.8% in 2001 to 24.4% in 2004. However, this still remains a significant figure as roughly a quarter of all New Zealand's furniture imports come from this region. Given that most countries in ASEAN are deemed to be 'less developed country', it means they already enjoy a preferential tariff rate for certain goods, including some TCCFL items they export to New Zealand.

Table 12: Import Penetration from ASEAN – Textiles, Carpet, Clothing, Footwear, & Leather (2001-2004)

Year Ending June	Total TCCFL Imports (\$m)	TCCFL Imports from ASEAN (\$m)	ASEAN's Share of Domestic TCCFL Market (%)
2001	2,158.8	154.3	7.1%
2002	2,097.0	146.5	7.0%
2003	2,051.6	195.0	9.5%
2004	1,995.8	177.5	8.9%

Source: Business NZ/Statistics NZ

Table 13: Import Penetration from ASEAN – Furniture (2001-2004)

Year Ending June	Total Furniture Imports (\$m)	Furniture Imports from ASEAN (\$m)	ASEAN's Share of Furniture Imports (%)
2001	219.9	72.2	32.8%
2002	227.9	71.7	31.5%
2003	273.7	65.3	23.8%
2004	309.9	75.6	24.4%

Source: Business NZ/Statistics NZ

- 19.3 In terms of ASEAN's imports of TCCFL and Furniture in relation to New Zealand's domestic market, the two sectors have experienced contrasting results. For the TCCFL sector, the import share of the domestic market was over 56% in 1998, compared to around 52% in 2003/2004. However, furniture imports as a share of the domestic market continue to increase, from over 13% in 1998 to just over 19% in 2003/2004. Admittedly, the furniture sector comes off a lower base, but still shows a more consistent pattern over recent years of continued rises in the role imports are playing in the furniture sector.
- 19.4 It is Business New Zealand's strong submission that any trade agreement with ASEAN must include robust rules of origin that will ensure that only goods of New Zealand and ASEAN origin benefit from tariff preferences under an FTA. While ASEAN is not an overly significant exporter of TCCFLs to New Zealand, it still exports almost a quarter of furniture imports to New Zealand. Future developments by the ASEAN group on bilateral trade agreements with countries that may be more significant low-cost producers of

products sensitive to New Zealand interests, such as China, India and Bangladesh also need to be taken into account.

- 19.5 Also, important issues would be the percentage of local content needed for products to comply with rules-of-origin requirements and the type of costs that may be included in calculations. The bilateral agreements with Australia and Singapore have 50% and 40% local content requirements respectively. There are some differences in definitions of the costs that can be included in these calculations, such as marketing expenses and profits are often explicitly excluded.
- 19.6 A robust rules-of-origin enforcement regime will also be required with severe penalties for those attempting to abuse the tariff preferences, and it will also be very important that rules of origin can be effectively enforced through customs procedures at the borders of the ASEAN nations.
- 19.7 *Recommendation: Business New Zealand recommends that robust and enforceable rules of origin be included in any FTA with ASEAN.*

20. Sensitive Sectors and Tariff Rates in ASEAN

- 20.1 While ASEAN members have a CEP Tariff scheme that establishes phased tariff reductions amongst themselves; ASEAN members are free to set their own tariff levels against non-members. The four additional members of ASEAN have an extended timetable to meet lower tariff rates for intra-ASEAN trade.
- 20.2 ASEAN is also set to start free-trade negotiations with Japan and South Korea in 2005. Its aim is to have free trade arrangements with Japan in place by 2012, and with South Korea by 2009 for the original six members of ASEAN. Its four newer members would follow suit five years later. A similar two-step process may also take place regarding an FTA between New Zealand and ASEAN. While Business New Zealand does not view this as a major impediment towards a proposed FTA, Business New Zealand would still want any FTA with ASEAN to include all member countries within a relatively short period of time.
- 20.3 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should include all ASEAN members and should not involve a lengthy phase-in period for newer ASEAN members.*
- 20.4 Business New Zealand has already submitted on a CER with Singapore and Thailand, as well as an FTA with China. These submissions have highlighted issues regarding tariff levels in those countries. Table 14 highlights some of the more pertinent tariffs in place by ASEAN nations that currently impact on New Zealand exporters. The value of tariff rates for particular commodities varies across the members. An FTA with ASEAN would take a large step towards dismantling such barriers for New Zealand exporters.

Table 14: Tariffs by ASEAN Countries on New Zealand's Main Exports Overseas

Description	Tariff Code	Brunei	Cambodia*	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Milk	0402	0%	-	5-10%	5%	0%	1-3%	3-5%	0%	5-30%	10-30%
Cheese	0406	0%	-	5-10%	5-10%	5-10%	3%	3-10%	0%	30%	20%
Sheep meat	0204	0%	-	5-10%	10-30%	0%	5-15%	5%	0%	0-5%	5-20%
Wood - logs	4403	20%	-	0-10%	20%	0%	10-15%	0%	0%	1%	0%
Kiwifruit	0810	0%	-	5-10%	0%	15%	15%	10%	0%	0%	0%
Apples	0808	0%	-	5-10%	8-30%	5%	15%	10%	0%	10%	5-40%
Refrigerators & freezers	8418	5%	-	5-20%	10-20%	30%	1-10%	3-15%	0%	3-30%	3-50%
Beef - live	0102	0%	-	0-10%	5-10%	0%	0%	0-3%	0%	10%	0%
Bovine meat	0201	20%	-	0-10%	30%	0%	5-15%	10%	0%	0%	5-20%
Sheep - live	0104	0%	-	0-10%	5-10%	0%	0%	0%	0%	0-5%	0-5%
Fish - frozen	0303	0%	-	5-10%	6-20%	0%	5-10%	5-7%	0%	0-5%	5-30%
Wool	5101	0%	-	0-10%	5%	0%	0.5%	3%	0%	1%	0%

* Information on tariffs into Cambodia could not be attained.

Source: Business NZ/Statistics NZ

20.5 As in previous submissions regarding any form of CEP or FTA that New Zealand may enter, Business New Zealand would want the inclusion of all products in an FTA with ASEAN. Ministerial and diplomatic efforts should be focused on ensuring that any sensitive areas, such as dairy or meat are satisfactorily addressed without resorting to exclusions.

20.6 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should be comprehensive, and that efforts should be focused on ensuring that any sensitive areas are satisfactorily addressed over time without resorting to exclusions.*

21. Non-Tariff Barriers

21.1 As section 8 discussed, Business New Zealand believes that in the context of any FTA it will be important to ensure that non-tariff barriers are addressed. While tariffs are the most visible trade barriers, they are not necessarily the barriers that cause the most distortion and impediment to trade.

21.2 Business New Zealand has already highlighted the issue in previous CEP and FTA submissions that New Zealand exporters face significant non-tariff barriers in ASEAN countries that New Zealand has or is currently negotiating trade arrangements with.

21.3 Last year's SARS outbreak, New Zealand's vulnerability to imported animal diseases such as foot and mouth, and the impact of exotic insects on trees all highlight the importance of New Zealand remaining vigilant in maintaining a secure border. Business New Zealand would be most concerned if an FTA with ASEAN were to compromise the robustness of New Zealand's phytosanitary and biosecurity regimes.

- 21.4 Other less obvious non-tariff barriers include phytosanitary, biosecurity, and trade security requirements, as well as any fees and charges for services relating to such requirements. Most countries, including New Zealand, have such requirements and they are regarded as acceptable providing they do not amount to protectionism, a tax on trade, or impose compliance costs that are overly onerous.
- 21.5 On the other hand there are strong arguments for considering this country's Import Transaction Fee and further proposed charges for recovering the Government's costs of border security to be taxes on trade. Border security is primarily of benefit to New Zealand as a whole. As such it should be funded from general taxation.
- 21.6 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should seek to include the reduction or elimination of non-tariff barriers.*

22. Dumping Issues and Intellectual Property Rights

- 22.1 While both New Zealand and most ASEAN nations are members of the World Trade Organisation (WTO) Agreement on anti-dumping, Business New Zealand would want to see a specific reference to this in any FTA with ASEAN to ensure that there is greater discipline towards dumping and a minimisation of opportunities to use anti-dumping in an arbitrary or protectionist manner. Table 8 in section 12 shows that of the total number of anti-dumping country investigations by New Zealand from 1982-2001, three of the top nine involved ASEAN members. Since 2001, there have been three further anti-dumping investigations involving ASEAN members.
- 22.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should include an anti-dumping clause similar to that of the New Zealand-China FTA, and that all ASEAN members should be encouraged to improve their track record in this regard.*
- 22.3 Business New Zealand is also concerned that breaches of intellectual property rights such as piracy, copyright and patent breaches could occur after a New Zealand-ASEAN FTA has been agreed to. While some ASEAN members such as Malaysia have taken recent initiatives to curb such breaches, other ASEAN nations such as Thailand are well known to continue to have piracy and copyright issues, despite recent initiatives by the Thai Government to eradicate the problem.
- 22.4 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should include an intellectual property rights clause similar to that of the New Zealand-China FTA.*

23. Services Trade

- 23.1 Most of ASEAN is already fairly open in the services trade with current services exports contributing more than \$400 million to the New Zealand economy. A comprehensive FTA that covers trade in services with ASEAN

would undoubtedly provide further opportunities for trade between New Zealand and the ASEAN nations.

- 23.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should comprehensively cover trade in services.*

24. Customs Procedures

- 24.1 Business New Zealand believes that an FTA with ASEAN should provide adherence to international best practice standards in customs administration, so that there is a minimisation of any disruption to the flow of goods and people, whilst avoiding any unnecessary costs to traders. This would provide an opportunity to strengthen cooperation between the two customs agencies in areas such as clearance procedures, the provision of advance rulings, the use of electronic methods and procedures for appeal and review.

- 24.2 *Recommendation: Business New Zealand recommends that an FTA with Malaysia should comprehensively cover customs procedures.*

25. Government Procurement

- 25.1 New Zealand and seven members of ASEAN are active participants in the APEC GPEG, which is the forum for discussion and information exchange on government procurement regimes in APEC nations. As outlined in section 10, Business New Zealand believes the agreed principles through GPEG of transparency, value for money, open and effective competition, fair dealing, accountability and due process, and non-discrimination, should also be included in an FTA with ASEAN.

- 25.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should cover government procurement.*

26. Labour and Environmental Standards

- 26.1 Given our stance outlined in Section 11 of this submission, we submit that New Zealand should not seek to include labour and environmental standards as part of an FTA with ASEAN. We consider that the International Labour Organisation provides a more appropriate mechanism to address labour standard issues on an international level. The framework of multilateral environment agreements provides a similar mechanism for consideration of environmental issues.

- 26.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should **not** include provisions on labour and environmental standards.*

27. Dispute Settlement

- 27.1 Business New Zealand considers it important for an FTA with ASEAN to provide for a disputes resolution process. Such a system would be important for addressing problems around market access, non-tariff barriers,

intellectual property breaches and trade remedies (e.g. disputes over anti-dumping).

- 27.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should include provisions on a disputes resolution process.*

28. Treaty of Waitangi

- 28.1 Business New Zealand takes the same viewpoint for ASEAN as discussed in section 15 regarding Malaysia, namely that a Treaty of Waitangi clause should not be included in any FTA or CEP.

- 28.2 *Recommendation: Business New Zealand recommends that an FTA with ASEAN should **not** include a provision on the Treaty of Waitangi.*