

24 May, 2001

“NZ/Hong Kong CEP Discussion Paper “
The Trade and Economic Analysis Division
Ministry of Foreign Affairs and Trade
Private Bag 18901
WELLINGTON

Dear Sir/Madam

Comment on

**“Hong Kong and New Zealand
Initial analysis of the bilateral trade and economic relationship as background to
a possible ‘closer economic partnership’ agreement”
The Trade and Economic Analysis Division
Ministry of Foreign Affairs and Trade**

You requested comment on the above discussion paper. We welcome the invitation, along with indications that there will be consultation in this process and hope it will comprise two-way communication, unlike that with the Singapore agreement. It is also good to see a more informative analysis at this stage than there was for the Singapore negotiations, though there are major gaps in the analysis. Our comments follow below, and should be read in conjunction with the attached report. They are not a summary of the report, but in addition to it and specific to your Discussion Paper. For brevity, the comments in general raise questions rather than provide documentary evidence, as that is available either in the attached report or on request.

We assume that all comments will be summarised before presentation to government. we request that a draft of that summary be circulated to those commenting in order that they can check the accuracy and fairness of the representation of their views before they are presented to the government.

As a further issue of process we request that negotiating drafts of the text of the agreement, should it proceed, be made publicly available as they are made available to the negotiating parties. Our experience is that comment and consultations amount to little more than shadow boxing unless actual texts can be examined and analysed. Given that these drafts will be available to the Hong Kong authorities, there is no reason for secrecy. Secrecy is also likely to raise the suspicions and anxieties of people already concerned about the effects of such an agreement.

We also request copies of the background papers from the Hong Kong authorities that are noted at the top of page 6 of the Discussion Paper.

Yours faithfully

Comments

1. General

As concluded in the enclosed report, we oppose the negotiation of a CEP with Hong Kong. If there are mutual benefits to be gained from closer relationships with Hong Kong, those should be properly identified, analysed and can be addressed by specialised agreements or other arrangements. The following comments should be read in this light as either substantiation for this position, or palliative if the agreement should be concluded.

The “Preambular Principles” of the Agreement (Annex A) reflect views that are increasingly being discarded in the light of widening income and wealth gaps within societies and between countries, the recurring financial crises, and studies of successful development (most of which have been based on some form of protection, and investment and currency controls). They are at odds with the present government’s position domestically that the free market cannot be left to determine the nation’s priorities. “Market forces let loose on New Zealand in our recent past did lead to inequality deepening at a faster rate in our country than almost anywhere else in the western world,” said Helen Clark in a recent speech (3/4/01, “Achieving Equality in NZ – St Andrew’s on The Terrace Lecture Series”).

Yet the principles include for example

“Conscious that open, transparent and competitive markets are the key drivers of economic efficiency, innovation, wealth creation and consumer welfare;”

and

“Mindful that liberalised trade in goods and services will assist the expansion of trade and investment flows, raise the standard of living and create new employment opportunities and improved conditions in their respective economies”.

Whether or not the increasing liberalisation of the past two decades has in fact led to net social, environmental and economic benefits to New Zealanders is a matter for inquiry, research and wide consultation rather than basic assumption as the preamble implies. We submit that such an inquiry should be held before negotiations proceed, given the lack of prima facie evidence to support that proposition.

Though we welcome recognition of

“their right to regulate, and to introduce new regulations on the supply of services and investment in order to meet government policy objectives of the two economies”

it is at odds with the rest of the stated agenda, and with the pressure to progressively increase liberalisation embodied in the model Singapore CEP such as in services (Article 20):

“As part of the reviews of this Agreement provided for in Article 68, the Parties undertake to review their schedules of commitments at least every two years, but earlier if so agreed, and progressively to expand these initial commitments as well as expand market access and/or national treatment between them in accordance with the APEC objective of free and open trade in services by 2010.”

and other preambular principles such as

“Recognising the importance of ongoing liberalisation of trade in goods and services at the multilateral level”

which imply ongoing reduction in regulation.

In many places in the Discussion Paper, a benefit of a CEP is claimed to be that it would be “taking an important step to reinforce linkages to North Asia and to raise our profile as a business partner within the region” (Summary, p.7). Yet other lower cost ways (taking costs in the widest sense including economic, social, environmental and sovereignty considerations) of raising New Zealand’s profile are nowhere discussed. These could include conventional but increased marketing, negotiation of specialised agreements where mutual benefits exist (such as in mutual recognition of qualifications or reducing compliance costs), and cultural exchanges. Because they can be purpose-designed and targeted, such methods are likely to be longer lasting, less intrusive and more effective than a complex, obscure, high-risk, trade and investment agreement.

In several places the Paper addresses requests for comments to exporters, importers and investors. Indeed, at the outset (p.5) the Paper states that

“In order for a CEP with Hong Kong to best serve the needs of New Zealanders, it is important that negotiators have detailed information on the needs and interests of those who are currently trading with Hong Kong. Requests for feedback are made throughout the discussion paper.”

While acknowledging the right of these sectors to be consulted, it seems no lessons have been learned from the international debate on “globalisation”: that these issues far transcend those with direct commercial interests. We trust this does not imply that MFAT will continue its approach in previous negotiations in “consulting” only with those sectors or taking note only of their views.

Finally, as matter of economic development, we are concerned at the attitudes implied in the statement (p.15)

“Hong Kong and New Zealand have very different trade profiles. While New Zealand’s major goods exports are primarily agriculture based, Hong Kong’s are almost entirely based on manufactured products. Hong Kong and New Zealand therefore have largely complementary economies, with a CEP agreement giving each country an opportunity to increase trade in area where it holds a competitive advantage.”

If this implies (as it appears) that this agreement is designed to reinforce current specialisation – New Zealand in agriculture, Hong Kong in manufactured products – then it undermines New Zealand’s economic development. While New Zealand must still rely on agriculture, it must also develop rapidly in new areas which will have a substantial added value focus, which inevitably includes manufacturing in the widest sense. As the Prime Minister told Parliament on 13 February 2001:

“Critical to our future is the modernisation and transformation of our economy. For too long New Zealand has been trying to sustain first world living standards on the back of third world exports...”

She advocated “embracing innovation and technology in everything we do. That way we bring the old economy of commodity-based production into the new economy too.”

The Discussion Paper’s statement emphasises one of the problems of relying on free trade: it may lead to increased sales in competitive sectors, but reinforces past patterns of production rather than encouraging new, more productive, industries.

2. Investment

The statement is made in the Executive Summary (p.7) that a CEP “would also aim to attract increased flows of productive new investment from Hong Kong to New Zealand industries to assist the Government’s economic development priorities.” A similar statement is made in Chapter Six: Investment (p.33). Yet no analysis is made of what type of investment Hong Kong has to offer or has made in New Zealand in the recent past, nor is any indication given as to how a CEP would affect that. My analysis provides evidence (which backs up international evidence) that most investment from Hong Kong itself is not in the areas New Zealand needs for the Government’s economic development priorities (to the extent that they are clear). To the extent that desirable investment does come via Hong Kong, it is mostly from third countries and redirected through Hong Kong for tax minimisation and similar purposes. The Discussion Paper provides no evidence or discussion of why such investment would not continue without a CEP, and why it is desirable for it to be directed through Hong Kong.

Beyond singling out “productive new investment” (which is undefined), the Paper appears to make the assumption that all foreign investment is of benefit to New Zealand. There is no analysis of the effects of foreign investment on New Zealand in the past, or of Hong Kong investment in particular. That would seem to be a fundamental for an “initial analysis” which this Paper claims to be. For example, there is evidence of large-scale short-term Hong Kong investment in New Zealand, and of little (or negative) reinvestment of income from the investment. Is this desirable? What would the effect be on our overseas debt and our chronic deficit in investment income? What is the significance of the huge differences between Hong Kong Census and Statistics Department statistics and Statistics New Zealand statistics in this area?

The Investment Promotion and Protection Agreement between New Zealand and Hong Kong is mentioned, but no analysis of the dangers it presents, nor of how a CEP would interact with it, are presented. What are the potential effects of its expropriation

provisions and disputes procedures on central and local governments' social, environmental and economic programmes? What constraints do the national treatment provisions in both the IPPA and CEP have on economic and regional development initiatives? Is there any evidence that the IPPA or a CEP will have any measurable effect on attracting foreign investment, if that is desirable? "The presence or absence of an investment agreement was a very insignificant factor determining investment decisions of foreign investors" a report on an UNCTAD meeting concludes for example (see <http://www.twinside.org.sg/title/bil-cn.htm>). So are the costs worth the gain?

Finally, the Chapter on investment requests information only from "businesses and investors on possible barriers to two way investment flows between New Zealand and Hong Kong". Yet the implications of investment flows are society-wide, barriers may be of benefit (for which there is growing international support) as well as of concern, and are not the only aspect of investment that require consultation and deep consideration.

It would be shocking if the government was proceeding with negotiating this far-reaching agreement based on a complete absence of analysis in this area.

3. Goods trade

On the effects on New Zealand industry of tariff elimination, the Discussion Paper says only that "A CEP would have implications for New Zealand's protected industries, including the textiles, clothing, and footwear (TCF) sectors." Yet there is no analysis of how zero tariffs would affect these sectors, even if strict enforcement of rules of origin were possible (which people knowledgeable in the area doubt). How much of the New Zealand industry would be put out of business? How many jobs would it affect? What pressure would it place on wages and working conditions in the remaining industry, and on the viability of high-value TCF production if the skill base is badly eroded? What would need to be done within New Zealand to replace that industry, given the government's recognition that the free market will not automatically provide replacements? What effect would it have on provincial communities for which TCF factories are often the sole or main employer? What are the wider costs – tax losses from unemployment and bankrupt firms, and increases in government expenditure from welfare payments; downstream effects on the suppliers of materials and distributors of those firms products; the effect on the current account deficit; and so on?

All that we are given is a bland statement in the Summary that "Apart from the implications of tariff elimination for protected sectors, the adjustment costs involved for New Zealand, as with the NZ/Singapore CEP Agreement, would appear to be minimal" (p.9). Yet those implications for the protected sectors are huge, and the nature of Hong Kong's "domestic" TCF sector is quite different from Singapore's.

A further issue is to question what New Zealand gains from eliminating its tariffs to Hong Kong. For good reason, Labour policy is to freeze remaining tariffs at their 2000 levels at least until 2005, or until "key trading partners match those levels". Alliance policy is to increase tariffs other than from Australia. It is stretching the word "key" to describe Hong Kong as a "key" trading partner, being about our 22nd largest source of imports. It is our seventh largest export destination, but some of that is re-

exported to third countries. However, according to the Discussion Paper, now “the overall policy is that tariffs would be only removed before then on a reciprocal basis” (p.21). Yet Hong Kong has no tariffs at all so there is no reciprocity possible.

The best that can be said is that “While it [Hong Kong] currently grants de facto open access to its market for New Zealand exports, there is no legal obligation on it to maintain completely open access for ‘unbound’ items on a permanent basis.” (p.22)

In other words our only reciprocal gain is that

- Hong Kong *might* one day completely turn around its long-held policy of a free port, its very reason for existence, and reimpose tariffs on industrial goods (bearing in mind our current interest is mainly in agricultural based exports which would even then remain tariff free); *and*
- New Zealand would be exempted from those raised tariffs if for some extraordinary reason Hong Kong (or China) did not insist on renegotiating the CEP with its inconsequential “partner”, New Zealand, when it was willing to face the inevitable cries of outrage and derision from major trading economies in the rest of the world.

That this can be considered a matching benefit invites incredulity. It is simply unilateral tariff reduction.

If the benefit is from reduced prices of imports (because of tariff reductions) then we are simply back to the rejected policies of the previous government – one that does not consider the social and economic costs of the destruction of industries and jobs, and one that assumes that the reduced prices do in fact flow through to the consumer.

Perhaps the gain comes from benefits from other parts of such an agreement. If so, the Discussion Paper’s analysis should have demonstrated that. As our other comments indicate, the opposite is the case: no benefits have been demonstrated, and only a few claimed, but without evidence.

On rules of origin, we reiterate that we share the real concerns of people with experience in both the region and the relevant sectors that any rules of origin will be almost impossible to enforce. On top of that, as my report describes, the nature of Hong Kong “domestic” production is that it is highly internationalised. Even if rules of origin were adhered to, there is still considerable room for Hong Kong traders and manufacturers to carry out minimal manufacturing in Hong Kong and use the zero tariffs to claim their margin and undercut local production. Many TCF manufacturers in New Zealand are permanently on the edge of viability; it will not take a large drop in the price of imports to put them out of business.

This is not only a question of protected domestic industries. High-end clothing manufacturers have demonstrated export potential, yet they depend on a critical mass in the domestic industry for skilled staff and other benefits of scale. Devastation of the domestic industry may well force the exporters to go out of business or leave New Zealand.

Again, the request for comment on these matters is only addressed to “importers, exporters and local manufacturers on rules of origin issues in relation to bilateral trade.

We are also interested in receiving information on any difficulties relating to the above that you may have experienced in importing from or exporting to Hong Kong” (p.25). Surely workers, unions, local governments and affected communities (among others) also have experiences and viewpoints to contribute to this discussion, and not only on rules of origin?

4. Services

As with the rest of the Discussion Paper, there is minimal consideration given to the negative effects within New Zealand of further opening of our service sectors – and particularly our public services – to overseas competition. Concerns for increasing commercialisation of tertiary education have frequently been stated but are not addressed. There are parallel concerns in health, environmental services (such as waste, water, and parks maintenance), and many others. There is no analysis of the costs and benefits (in the widest sense) of our previous experiences in overseas ownership and commercialisation of our services.

While the Discussion paper sees education exports as potentially benefiting from a CEP, it is not clear how. New Zealand already has many Hong Kong students studying here, and a CEP on the Singapore model would make no difference to that; Hong Kong (despite a lack of GATS commitments) is entirely open to New Zealand institutions setting up there – and as the Paper reveals has in fact invited that. Yet even if the CEP would assist that (how it would is not obvious) the paper does not address the feasibility of undercapitalised New Zealand institutions setting up in the exceptionally expensive Hong Kong environment, undoubtedly against strong competition from Australia, Canada, the U.S.A., and the U.K., among others. It also raises concerns that GATS commitments in education will be extended through this agreement, despite the government’s public commitment to a “nation-building” role for education.

Similar comments apply to Tourism and Environmental Services as described in the Paper. There are in fact no practical regulatory barriers to New Zealand entry to Hong Kong in these markets; yet the concerns that would be raised by the entry to New Zealand of corporations with a real or paper presence in Hong Kong are not addressed.

As the Paper concedes, “New Zealand’s services market is already open and largely deregulated. Under the WTO our commitments on market access and national treatment are more extensive than Hong Kong’s”. Given that, New Zealanders need to know what concessions will be demanded by Hong Kong for apparently skimpy gains to New Zealand. How much more of our already exposed public services will need to be opened? What will be the costs and problems raised for the communities affected?

If there are mutual benefits to be gained from bilateral agreements in the areas of (for example) air transport and mutual recognition of qualifications, the paper does not canvas the alternative of seeking specialised agreements in those areas, rather than insisting on a full free trade and investment agreement as proposed. That is not to say that reaching such agreements would be problem-free (they would raise a number of concerns) but they would substantially reduce the risks and complexity of the proposed CEP.

Again, as with trade, since in practice Hong Kong is almost completely open to services, the potential practical gains from a CEP are negligible: we can gain only tenuous assurances for an unlikely eventuality of the market being closed at some future date.

And again, we question why the request for comments on this Chapter (Five) is addressed only to service suppliers, when all New Zealanders are likely to be affected by further opening of our social and environmental services.

4. Other issues

In **competition policy**, it seems most unlikely that we could move Hong Kong on its competition policies by ourselves (should that be desirable), given that changes would affect all countries with relationships with Hong Kong – most countries in the world. In any case, as the Paper acknowledges, “They [monopolies] do not, however, appear to operate in areas in which New Zealand has a direct interest.”

The implications of the different **tax regimes** of the two countries are not spelled out. Overseas corporations frequently have a presence in Hong Kong for tax reasons, and if a CEP does (as claimed) increase Hong Kong’s profile in New Zealand, there is a risk that more New Zealand companies will use it for tax avoidance and other jurisdictional purposes.

The standard **exceptions** under GATT Article XX are proving insufficient to ensure environmental, health and social concerns are primary over the economic ones of trade and investment. Trade and investment arrangements such as this should be subject to international agreements in the areas of labour, environment, human rights and social standards.

While the **Treaty of Waitangi** clause raised controversy in the Singapore CEP, it remains inadequate for a number of reasons. In stark contrast to the investor-state disputes provisions of the IPPA and Singapore CEP, Maori have no standing to enforce the provision themselves. It leaves room for Hong Kong to challenge actions which it considers are “arbitrary or unjustified discrimination against [Hong Kong traders and investors etc] or as a disguised restriction on trade in goods and services or investment”. The destruction of jobs in the TCF industries by the CEP’s removal of tariffs is likely to particularly affect Maori workers in the TCF industries. There is already Maori concern about the effect of the TRIPs agreement on native plants and animals and their collective “intellectual property”. This will be exacerbated by including it in a further agreement, especially that there is no recognition of any right to exercise tino rangatiratanga in the process of making international treaties.

As with the Singapore CEP, we remain concerned about any proposals to relax **safeguards** and controls on **dumping**, which may well be exacerbated by the elimination of tariffs. Information is also needed on Hong Kong’s standards in biosecurity, labelling, food standards, etc in order to allay concerns that reduction of **non-tariff barriers** will undermine our ability to maintain and raise our standards.

5. Labour and environmental standards

We have noted above our preference for such standards to be by the primacy of labour, human rights, and environmental international organisations and agreements over trade and investment arrangements. In addition the former need strengthening in most cases. The application of a labour clause to the Hong Kong agreement would be futile given the extensive degree to which production in Hong Kong has been internationalised. It is the nature of internationalised production, bargaining down wages and labour conditions, which is the primary problem, rather than the particular conditions in Hong Kong – even assuming the clause would have any appreciable affect on Hong Kong conditions.