

## Comparison of New Zealand's Preferential Trade Agreements

\* Agreement signed after Ministry of Foreign Affairs and Trade (MFAT) introduced the 'Framework for Integrating Labour Issues into Free Trade Agreements' in 2001 (see <http://www.mfat.govt.nz/Trade-and-Economic-Relations/NZ-and-the-WTO/Trade-Issues/O-labour-framework.php>)

\*\* Agreement signed before the introduction of the MFAT Framework

China-NZ Free Trade Agreement 2008; and its Memorandum on Labour Cooperation (MOU) *	Agreement Between New Zealand and Singapore on a Closer Economic Partnership 2001 **	New Zealand Thailand Closer Economic Partnership Agreement (CEP) 2001; and its Arrangement on Labour (AOL) *	Trans-Pacific Strategic Economic Partnership Agreement (EPA) 2006; and its Memorandum of Understanding on Labour Cooperation (MOU) *	Australia New Zealand Closer Economic Relations Trade Agreement, (CER) and Exchange of Letters (ANZCERTA) 1983 **
Article XX of GATT 1994 is incorporated into the agreement through Article 200(1), which provides a general exception for prison products. There is no explicit reference to prison labour standards in the MOU on Labour.	Article 71 (CEP) 'nothing in this Agreement shall preclude the adoption... of measures: (g) in connection with the products of prison labour'	Section 15 (CEP) 'nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Party of measures: (e) relating to the products of prison labour'	Section 11.22 (EPA) 'Nothing in this Chapter shall be construed to prevent any Party from taking any action... which it considers (a) necessary to protect public morals, order, or safety;	Section 18 (CER) 'nothing in this Agreement shall preclude the adoption by either Member State of measures necessary: (l) in connection with the products of prison labour.

			(b) necessary to protect human, animal or plant life or health	
The Joint Study Report on a Free Trade Agreement between China and New Zealand (November 2004) <b>does not mention any labour standards</b> or human rights issues.	Core labour and environment standards are not specifically mentioned in the CEP Agreement. The Preamble to the Agreement makes clear, however, that it is intended to raise the standard of living and create new employment opportunities.	Feasibility study included 'labour and environmental standards' in investigating the benefits of an agreement/\.	National Interest Analysis noted labour cooperation.	
International Labour Organisation (ILO ) obligations are 'reaffirmed' in Article 1.  The parties also state in the preamble 'share a common aspiration to promote sound labour policies and practices' with no reference to 'as defined by the ILO.'  There are <b>no substantial commitments</b> to ILO obligations and only the		ILO obligations are 'reaffirmed' in Section 1.1 AOL.  The parties 'affirm' their intention to promote sound labour policies and practices as defined by the ILO in the AOL preamble.	The preamble states the parties share the common aspiration that free trade and investments should lead to jobs which adhere to the ILO labour principles. Article 1(c) MOU provides as an objective to 'promote better <i>understanding</i> and <i>observance</i> of the ILO principles.' Furthermore Article 2(1) 'affirms' their ILO commitments.	

use of weak language, merely reaffirming obligations – with no use of ‘promotion, adherence, or intention’.				
There is <b>no requirement</b> for the two states to harmonise their domestic laws, regulations, policies and practices with international labour standards.		Section 1.2 AOL requires the participants to ‘work actively to ensure’ laws, regulations, policies and practices are in harmony with ‘internationally recognised labour principles and rights.’	Article 2(3) MOU requires the parties to ‘work to ensure that its labour laws, regulations, policies and practices are in harmony with their international labour commitments.’	
There is <b>no requirement</b> for the promotion of public awareness of labour laws, regulations, policies and practices domestically. Article 1(5) only states that the parties recognise the ‘desirability of clear and well understood’ labour policies and practices.		Section 1.5 AOL requires the promotion of public awareness of its labour laws, regulations, policies and practices domestically. Also they are to ensure that the operation and enforcement of labour laws and regulations are fair, equitable, and transparent.	Article 2(7) MOU requires the promotion of ‘public awareness of its labour laws and regulations domestically.’	
Cooperative activities on labour matters are <b>subject to budget restraints</b> ; Article 3(2) states that funding is decided on a case-by-case basis and		For funding of cooperative activities, there is only mention of ‘available resources’ (section 2.2) and the decision on a case-by-case basis (section	Budgetary restraints do not provide a justification for not participating in cooperation; the funding is decided on a case-by-case basis (article 3(5).	

<p>'shall depend on the budgets available'.</p>		<p>2.4)</p>		
<p><b>There is no mandatory consultation required under the MOU.</b> Article 1(5) recognises the utility of 'broad domestic consultation with national stakeholders' in formulating labour policies. Article 1(4) states that the participation of unions, employers and other persons/organisations' may be invited, as appropriate in identifying areas for cooperation and in undertaking cooperative activities. Thus <b>consultation is only on invite and if considered appropriate.</b></p>		<p>Section 3.5 provides that the Labour committee may consult or seek advice of non-government sectors and may invite their attendance at meetings (no compulsory consultation).</p> <p>However section 3.6 requires the opportunity for the public and non-government sectors to submit views or advice relating to the AOL.</p>	<p>Article 3(2) MOU provides the parties 'may, as appropriate, invite the participation of its unions and employers' and other persons and organisations in identifying potential areas for cooperation and in undertaking cooperative activities.'</p> <p>Article 4(3) provides that public consultation may be undertaken by 'whatever means that Party considers appropriate.'</p>	
<p>Article 3 establishes a 'Coordinator' to facilitate communication.</p> <p>'Senior officials' are to meet within the first year, and then biannually or as agreed (Article 3(4)).</p>		<p>Section 3.1 AOL establishes a 'Labour Committee' comprising of senior governmental officials and section 3.2 designates a national focal point at officials' level to facilitate communication.</p>	<p>Article 4 MOU establishes the designation of a 'national contact point' to facilitate communication. 'Senior officials' are to meet within the first year, and then as mutually agreed.</p>	

<p><b>Ministers are only involved</b> in a joint meeting for consultations where a matter arises as to the interpretation or application of the MOU (Article 4(3)).</p>		<p>Ministers are required to meet at least once within the first two years of operation and then as mutually decided.</p>	<p>Ministers are only consulted when a matter arises over the interpretation or application (Article 5(3)).</p>	
<p>In case of termination of the MOU there is nothing that requires the main FTA to be terminated, and vice versa.</p>			<p>In a ministerial side letter to the MOU, it is specified that if a party withdraws from the MOU then it will also withdraw from the main agreement and vice versa. Thus, the main agreement cannot operate without the MOU on labour agreement.</p>	