



**Submission to the Ministry of Foreign Affairs and Trade
on the proposed Free Trade Agreement with the People's
Republic of China**

**Prepared by the
Education New Zealand Trust**

30 August 2004

Purpose

- 1 The purpose of this submission is to respond to the discussion paper from MFAT, dated June 2004, that details a proposed bilateral free trade agreement with the People's Republic of China. The Chief Executive of the Trust would appreciate an opportunity to meet with the Ministry to verbally support the contents of this submission.

Introduction

- 2 Education New Zealand is a non-profit charitable trust. The organisation is governed by an independent Chairperson and a Board of Directors (The Trust Board) comprising members from education sector peak bodies, covering state and private, secondary and tertiary providers. The present Board membership consists of the following representatives:
 - Hon David Caygill, Chairperson;
 - Prof. Bryan Gould, Vice Chancellor, University of Waikato;
 - Dr Roger Green, Chief Executive, Dunedin College of Education;
 - Mr Mark Hellyer, Director, Mt Manganui Language School;
 - Mr Ron Noordijk, Deputy Principal, Burnside High School;
 - Prof Neil Quigley, Pro Vice Chancellor, Victoria University of Wellington;
 - Mr John Scott, Chief Executive, Christchurch Polytechnic and Institute of Technology;
 - Dr Chris Tremewan, Pro Vice Chancellor, University of Auckland.
- 3 Education New Zealand is recognised by the New Zealand Government as the industry body for New Zealand's education export industry. In fulfilling this role, ENZ undertakes activity in a number of functional domains, including:
 - advocacy on behalf of New Zealand's education export industry;
 - assisting the New Zealand government and its agencies with policy development in relation to the education export industry;
 - advice to foreign governments;
 - generic and collective promotion of New Zealand as a study destination;
 - promotion of the 'Educated in New Zealand' brand; and
 - some market research and scoping of new opportunities for New Zealand providers.
- 4 Education New Zealand is committed to promoting public policy that enhances the overall interests of New Zealand's education export industry.

What specific issues do you think an FTA with China should address?

- 5 Firstly, we would like to state at the outset that Education New Zealand is very pleased the Government/MFAT is pursuing a bilateral Free Trade Agreement with China.
- 6 In terms of specifics, Education New Zealand believes the FTA should address the following:
 - securing 'GATS Plus' commitments on education from the Chinese side on Market Access across all four modes of supply (cross border supply; consumption abroad; movement of natural persons and commercial presence);and
 - securing 'GATS Plus' commitments on education from the Chinese side on National Treatment¹ across all four modes of supply.
- 7 We do not believe the FTA should include any commitments/concessions by the New Zealand side beyond what NZ has already committed to under its GATS Education Schedule and associated horizontal commitments (ie: New Zealand should stand still on its present commitments and seek a catch up from the Chinese side).

¹ This statement is based on the assumption that the bilateral FTA will take the same form as GATS, where commitments relate to the treatment of suppliers, not consumers.

- 8 Education New Zealand recommends using a negative list approach to the negotiations, so that all barriers can be covered by the FTA. If such an approach is adopted, careful research and consideration will need to be made if New Zealand is to not make any GATS Plus commitments.
- 9 While we are delighted at the prospect of a bilateral Free Trade Agreement with China, it is also important to not lose sight of the wider, multilateral process that is advancing through the World Trade Organisation. In this context, Education New Zealand recommends that MFAT adopt a policy of “competitive liberalisation” where benefits from the Bilateral FTA are used to ratchet through into the multilateral negotiations.
- 10 Lastly, Education New Zealand does not support the inclusion of “education cooperation” clauses in the Free Trade Agreement (eg: scholarships, exchanges, etc). While we are very much in favour of education cooperation, scholarships and exchanges, our view is that these are better handled through other mechanisms such as the Joint Education Memorandum of Understanding on Education.
- 11 From a negotiating perspective, recent experience has shown that such discussion diverts attention away from crucial negotiations on market access as it relates to education. Indeed, arguably, “education cooperation” is likely to be used defensively by the Chinese side to avoid having education on the negotiating agenda. Our view is that this should be resisted, and NZ should argue that education is a tradeable service and should be up for negotiation along with other services.

What do you see as the potential benefits of an FTA with China?

- 12 New Zealand's education exports with China are immense. The following table summarises the situation as at 1 July 2003. Please note that these figures are only for Chinese students studying in New Zealand:

	School	State Tertiary	Private Tertiary	English Language	Total
Number of Chinese students	5,376	17,004	3,743	27,483	53,606

- 13 In terms of economic value of the trade, estimates at the mid point of 2003 were in the vicinity of \$800 million per annum. However, it needs to be noted that this figure represents a short term high point in the trade.
- 14 Provided market access and national treatment commitments can be secured through this process, the bilateral FTA offers immense scope for savings for New Zealand's education exporters.
- 15 Non-schedule benefits include: greater transparency of Government policy settings; greater certainty of operating environment; greater clarity of the regulatory relationship between the Federal and Provincial Governments in China.

What do you see as the potential risks of an FTA with China?

- 16 Moving New Zealand's education and trade policy settings beyond the level that we have currently committed to under GATS. As stated above, we do not support such a move at this time.

What possibilities do you see for maximising those benefits and/or minimising those risks?

- 17 To assist in maximising the benefits and minimising risks, we recommend that MFAT maintain an open dialogue with Education New Zealand throughout the negotiation. ENZ would offer views and support in its capacity as the industry body for education exporters.

What impact do you think an FTA with China will have on your business?

- 18 Education exporters from all sectors will welcome the FTA if additional commitments can be secured in education. If this is the outcome of the negotiation, Education New Zealand would offer strong public support for the gains made by the Government/MFAT.

Are there specific outcomes that you would like to see from an FTA with China?

19 Yes. However, as this is a public submission, a list of China specific trade barriers will be provided to the China FTA Taskforce.

Are there specific problems in trade that you think an FTA could address?

20 Yes. See above response.

Is there any specific information you can provide, for example from your experience of doing business with China, that would help to develop New Zealand's negotiating position?

21 Yes, See above response.

Yours sincerely,

Robert Stevens
Chief Executive

30 August 2004



30 August 2004

Mr Charles Finny
Head, China FTA Taskforce
Ministry of Foreign Affairs and Trade

Annex to Education New Zealand's Submission on the China Free Trade Agreement: Barriers to Raise with China in Negotiations

1) **Profit Repatriation.** The not-for-profit status of education, as enshrined in the Education Acts, makes a commercial approach to education impossible as the notion of profit and surplus simply cannot be accommodated legally or culturally.

At this stage, educational institutions are getting around this through the use of very high "directors' fees", "management charges" and the like. However, this practice is very dependent on the relationship with the local partner and the level of trust.

2) **Lists for consumer guidance** (though, strictly speaking, not a trade barrier). Chinese Government's request for a list of quality NZ Private Training Establishments. Chinese Government's official "Study Abroad" website www.jsj.edu.cn

3) **Restrictions around recruitment** (Chinese nationals must, under Govt law, receive 9 years schooling in China). This effectively means that NZ schools are operating illegally if they recruit in China. In practice this is not a huge restriction as authorities tend to 'turn a blind eye' to schooling marketing.

4) **Recognition of Qualifications.** Professional qualifications/awards are only recognised for courses that have been approved by the Chinese Federal Government.

5) **Licensing** - need to partner with a local partner. Under new regulations, incoming foreign providers must partner with a local Chinese educational institution if they wish to establish a commercial presence.

6) **Joint Ventures** require Ministry of Education approval.

7) **Joint Ventures** require a joint administrative organ (council). This impacts on the autonomy of any commercial presence operation, and can lead to governance and management difficulties (price setting, curriculum content, profit repatriation, etc).

8) **Internet:** the Chinese Government maintains a firewall to the internet. Access to the internet is a problem. Curriculum content is liable for vetting by Chinese officials. This impacts on the ability of NZ providers to deliver via the cross-border supply mode.

9) **Working Visas.** Working Visa's are very difficult to obtain for foreign academics. Most foreign academic's and teachers enter China on a tourist visa. This impacts on the ability of NZ providers to deliver using the presence of natural persons.

10) **Transparency.** China's massive regulatory framework is made more complex by the layers of bureaucracy and decision making at national, provincial and municipal levels. Many education providers complain that the Chinese system lacks transparency and that "things keep changing". While it is acknowledged that some of this is cultural, it would be good to have some clarification and transparency, particularly in relation to the enforcement of federal regulations at local level.