

**Explanatory Materials for the Agreement between New Zealand and
the Separate Customs Territory of Taiwan, Penghu, Kinmen and
Matsu on Economic Cooperation**

**Ministry of Economic Affairs
July 10, 2013**

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PREAMBLE

New Zealand and Taiwan signed the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu on Economic Cooperation (ANZTEC or Agreement) on July 10, 2013 as members of the WTO under the WTO framework.

According to Taiwan Customs' statistics for 2012, Taiwan is New Zealand's 12th largest trading partner, 10th export market, and 13th largest source of import with bilateral trade amounting to approximately USD1.207 billion. ANZTEC is the first economic cooperation agreement that Taiwan signed with a developed country. It carries great significance to the Taiwan's trade economy as it continues to connect with the international community. In addition, according to the separate feasibility studies conducted by both parties, ANZTEC will open up export markets, improve consumer welfare, and have a positive impact on New Zealand and Taiwan's respective economies.

There are 25 chapters in this Agreement, including Trade in Goods, Rules of Origins, Customs Procedures and Cooperation, Cross Border Trade in Services, Investment, Government Procurement, Dispute Settlement, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, E-commerce, Competition, Intellectual Property, Institutional Provisions, General Provisions (Preamble, Definitions, General Exceptions, and Transparency), Labour, Environment, Indigenous Issues, Film and TV Co-production.

ANZTEC covers a wide range of issues. Its conclusion marks a large step in Taiwan's strategy for regional integration and connection to the Asia Pacific Region and beyond. The features of ANZTEC include:

1. Comprehensive Coverage: ANZTEC covers issues not yet covered by the WTO, such as investment, environment, air transport, labour, indigenous issues, and film and television co-production.
2. Ambitious Liberalization: On market access, with respect to trade in goods, the "trade in goods" chapter sets forth a comprehensive customs duties elimination plan. Taiwan included 99.88% of the goods for tariff liberalization while New Zealand listed 100% of their goods for tariff liberalization. With respect to trade in services, other than those listed in the non-conforming measures, both parties have committed to opening their trade in services and investment markets. In addition to its commitment under the WTO, New

Zealand further opens its engineering, urban planning and landscaping, research and development, and environmental services to Taiwan. Taiwan notably commits to allowing profit-seeking organizations from New Zealand to establish a maximum of two schools for students with foreign nationalities in Taiwan.

3. Advanced Cooperation: In addition to the chapters focusing on trade in services and trade in goods, the "TBT" and "SPS" chapters not only strengthen both parties' regulations on the relevant issues, but also allow the parties to cooperate on matters of mutual interest by entering into implementing arrangements. The "intellectual property" chapter adopts the protection of geographical indications through the parties' trademark laws or other regulations. The above-mentioned chapters build upon the foundation of WTO Agreements and increase both parties' commitments in those chapters. Finally, ANZTEC is an ongoing agreement. Both parties commit to regularly reviewing its implementation progress and discussing related trade cooperation issues in future Joint Commission meetings.

Milestones of ANZTEC

1. The Taipei Economic and Cultural Office in New Zealand (TECO) and New Zealand Commerce and Industry Office (NZCIO) issued a joint press release on October 25, 2011, announcing their intent to conduct respective feasibility studies for an economic cooperation agreement (ECA).
2. TECO and NZCIO issued a joint press release on December 15, 2011, announcing the completion of the respective studies and the launch of a joint feasibility study.
3. TECO and NZCIO issued a joint press release on May 18, 2012, announcing the launch of negotiations.
4. The Agreement was signed on July 10, 2013.

I. Institutional Provisions and Dispute Settlement

- (1) The parties proclaim under ANZTEC to comply with the basic principles of the Agreement. In order to strengthen amicable trade relations, both parties should ensure that its respective regulations and information will be made public, and that they will establish a Joint Commission as a stable channel of communication. The parties will undertake a review of the implementation measures and discuss other cooperation opportunities within two years after ANZTEC comes into effect. The parties should consider proposals to amend the Agreement and inject "vitality" to the Agreement to ensure sustainable relationships and cooperation on economic and trade matters.

- (2) The objective of the "dispute settlement" chapter is to regulate the procedure for the settlement of disputes arising from the implementation, interpretation or application of the Agreement. Its main contents include the scope of matters eligible for dispute resolution, request for consultation, the parties' agreement to mediation, establishment of an arbitral tribunal when consultation fails, appointment of arbitrators, functions of the arbitral tribunal, procedural rules of the arbitral tribunal proceedings, reports of the arbitral tribunal, implementation of the reports, and the prevailing party's remedies when the other side fails to comply with the arbitral tribunal report.

II. Chapters Related to Trade in Goods

1. Tariff Liberalization

Under ANZTEC Taiwan included 99.88% of New Zealand goods for tariff liberalization, while New Zealand included 100% of Taiwan's goods.

- (1) Taiwan's customs elimination timeframe: The customs elimination will be implemented through eight stages: immediate reduction, two-year, three-year, four-year, six-year, eight-year, tariff rate quotas (TRQ), and goods excluded from customs elimination. Customs duties on 94.51% of the goods will be eliminated immediately when the Agreement comes into effect. Velvet antlers and liquid milk products are subject to tariff rate quotas, but its over-quota tariff rates will be eliminated and custom duty reduced to zero by the 12th year following the effective date of the Agreement. Rice and rice products, however, will not be affected by the Agreement and are not included in the liberalization scope.

- (2) New Zealand's customs elimination timeframe: Custom duties on all of Taiwan's agricultural products are eliminated when the Agreement comes into effect. As for industrial products, New Zealand will eliminate customs duties on 29 products (including plastics, pullovers, panty hose, glass containers and iron and steel products) within four years (the value of the 29 products only accounts for 2.5% of the value of industrial products exported from Taiwan). Customs duties on all other industrial products will be eliminated when the Agreement comes into effect.

2. Rules of Origin

- (1) This chapter includes two sections: Rules of Origin and Operational Procedures. The Agreement adopts the declaration of origin and verification of origin systems. In addition to importers who have applied for preferential tariff treatment, exporters, manufacturers, suppliers, or any others qualified in the supply chain can provide customs with a declaration or a certificate or some other proof of the origin of the goods and receive preferential tariff treatment. Compared to the issuance of a certificate of origin by the authorities, “self-declaration” and “self-certification” streamline the customs procedures and promote trade facilitation.

- (2) In the spirit of trade facilitation, ANZTEC does not require a declaration or certificate of origins if the custom value of the goods does not exceed US\$1,000 or when the customs of the importing party waives such a requirement.

3. Customs Procedures and Cooperation

- (1) In addition to the transparency of the customs procedures and the designation of inquiry points for customs matters, both parties will simplify customs clearance procedures and documentation to ensure the efficient and expeditious clearance of goods. By applying risk management principles that examines only high risk goods, the parties aim to release imported goods 48 hours after their arrival.
- (2) An importer, exporter or producer can apply for an advance ruling on the tariff classification or origin before the importation of goods. Customs must inform the applicant of its decision within a specific time.
- (3) The customs administration of the parties agrees to exchange expertise, share information, and consult with each other regarding tariff classification and customs procedures.

4. Trade Remedies

The "trade remedies" chapter of ANZTEC reserves both parties' rights to apply WTO measures, such as anti-dumping, countervailing duties, and safeguard measures, against imported goods from the other party. Following other FTAs' practices, safeguard measures should not be applied against imported goods from the other party as long as they do not cause "serious injury."

III. Chapters Related to Investment and Trade in Services

1. Investment

The "investment" chapter requires both parties to open their markets for investment by applying the national treatment principle and provide protection to investors and their investments. The main contents include:

- (1) Investment Promotion: includes free remittance and usage of funds, prohibition of any local content requirement or nationality requirement that limit board members and senior management positions to natural persons of any particular nationality.
- (2) Investment Protection: (i) Expanding the scope of investment protection from traditional rights of personal property and real property to assets such as technology, intellectual property rights, and securities; (ii) Ensuring timely, effective and sufficient compensation to investors for expropriation; (iii) Providing fair treatment and safety protection to the other party's investors and their investments; and (iv) Allowing investment disputes between investors and the local government to be submitted to international arbitration before a fair and unbiased international arbitrator.
- (3) Investment Liberalization: Investor's investments in the other party may enjoy the same treatment given to the investors of that party (national treatment); however, both sides may reserve subsectors that do not meet the national treatment rules and measures for the non-conforming measures (NCMs) list.

2. Cross-Border Trade in Services

Taiwan and New Zealand have, in principle, agreed to mutually open all sectors and subsectors in trade in services and investment. Notwithstanding, the parties are allowed to maintain their current laws and regulations that restrict trade and services as long as they are identified under the "negative list" as non-conforming measures annexed to the Agreement. As such, Taiwan reserves 34 subsectors in finance, telecommunications, air transport services, and professional services and New Zealand reserves 23 subsectors in telecommunications, audio-visual, and aviation. Compared to existing WTO commitments, New Zealand will further open its engineering, urban planning and landscaping, research and development, and environmental services subsectors; Taiwan will allow New Zealand's

profit-seeking organizations to establish a maximum of two schools for foreigners in Taiwan. The schools will be limited to students with foreign nationalities and be responsible for profit-seeking enterprise income tax. The main objectives of this chapter include:

- (1) Facilitating cross-border trade in services: Except for the few subsectors excluded as non-conforming measures, each party has agreed to provide service suppliers of the other party with national treatment and most-favored-nation treatment, and not to adopt restrictions for the numbers, transaction, total value of assets, specific types of legal entities, or require the establishment of a representative office as a restriction to market access.
- (2) Ensuring transparency: designate a point of contact to communicate and mediate issues regarding this chapter's implementing measures and the commitments toward market access. Both parties should immediately notify the other party if they sign other international agreements that relate to matters under ANZTEC.
- (3) Establishing standards for the licensing, certification, and review process: WTO/GATS-compliant professional service providers should meet the criteria, licensing, and technical standards required by the relevant authorities. ANZTEC further requires that the authorities regulating service provider applications should not delay the review, but allow applicants the opportunity to supplement an incomplete application, inquire into the status of the application, be charged reasonable licensing fees.
- (4) Establishing dialogue mechanisms for further mutual recognition in the future: Taiwan and New Zealand have agreed to establish a dialogue mechanism to facilitate the communications between professional service providers and Conforming Assessment Bodies (CAB). In order to reduce costs and enhance service quality, these mechanisms are designed to help the parties recognize the licenses of the other party's service providers on a voluntary or mutually recognizable basis provided that they adhere to each party's domestic regulations.
- (5) Enlarge the scope of services: In addition to having a specific chapter on air transport services and the Air Transport Agreement, for air transport services, ANZTEC adds two subsectors: ground handling services and speciality air services, in addition to the existing three subsectors under GATS: aircraft repair and maintenance, the selling and marketing of air transport services, and computer reservation system services.

3. Temporary Entry of Business Persons

- (1) This chapter regulates the temporary entry of qualified business persons who are providing services in the other party's territory, including business visitors, intra-corporate transferees, installers or servicers, and independent professionals. It also regulates the definition of "business persons" and their entry time limits.
- (2) When business persons of both parties apply for entry, the authorities of both parties should adopt a streamlined and transparent application process that does not infringe on domestic laws and other applicable mandatory codes of practice.
- (3) Business persons should comply with the relevant authorities' criteria and licensing requirements while providing services.
- (4) Both parties should endeavor to settle any disputes amicably through consultations or negotiations.

4. Air Transport Services

- (1) ANZTEC contains a chapter on air transport services with an Air Transport Agreement as an attachment. The Air Transport Agreement is an open sky agreement covering the designation, authorization, and application of laws and regulations typically seen in a bilateral air transport agreement. The Air Transport Agreement also includes provisions regarding aviation safety, aviation security, commercial opportunity, leasing agreements, customs duties and charges, capacity, pricing, consultation, settlement of disputes, amendments, termination, and entry into force. The main contents of the Air Transport Agreement are as follows:
 - i. Airlines designated by both parties will be able to extend a flight to another country after arriving in the other party via a mid-point and enjoy the fifth freedom.
 - ii. Airlines can decide their own airplane models and number of flights based on market demand without any limitation.
 - iii. A code-sharing clause was included in order to increase operational flexibilities.

Airlines of both parties can cooperate and code-share with other airlines based on this clause.

iv. Adding stopover co-terminal traffic rights, i.e., Taiwan's airlines can fly to any point in New Zealand and carry international passengers based on the market demand and operation plans, thereby creating more operational flexibility.

(2) The "air transport services" chapter also covers civil aviation safety and environmental cooperation issues. Under this chapter the parties' authorities may establish cooperative arrangements to promote information exchange and mutual recognition of civil aviation security and regulatory certification.

(3) For dispute settlements, any dispute arising from the application of this chapter should be settled by consultations under the Air Transport Agreement or the dispute settlement mechanism of ANZTEC.

5. Electronic Commerce

The "e-commerce" chapter of ANZTEC provides for the elimination of customs duties on digital products transmitted electronically, the promotion of paperless trading, the electronic transmission of import and export documents, the privacy protections of e-commerce users and consumers rights to prevent internet fraud, the protection of intellectual property rights to build consumer confidence, the recognition of the legal effect of electronic signatures and the freedom to trade by using electronic signatures, the promotion of transparency and predictability of e-commerce laws and regulations, and the promotion of the interoperability of the electronic commerce infrastructure and e-commerce's innovation and development.

IV. Other Chapters Related to Further Liberalization under the WTO Framework

1. Sanitary and Phytosanitary Measures (SPS)

The “sanitary and phytosanitary measures” chapter:

- (1) Sets forth both parties’ obligations to abide by international organization rules and related scientific evidence.
- (2) Provides for “implementing arrangements”: under ANZTEC, the parties will consult each other regarding the implementing details, *i.e.*, legal equivalence, verification, certification, and import checks. Both parties will also verify the related contents and standards in order to pragmatically resolve any agricultural trade issues for the benefit of both parties.
- (3) Establishes a notification, consultation, and information exchange mechanism: specifically require that whenever a “serious matter” arises, the affected party needs to notify the other party within 24 hours to expeditiously perform pest control and protect the life and health of the people.
- (4) Establishes a “Joint Management Committee” and a “Technical Working Group” that solicit technical advice from Taiwan’s academia to increase the government’s understanding of New Zealand’s international food safety management and current events, and facilitate the SPS cooperation and working relationship between Taiwan and New Zealand.

2. Technical Barriers to Trade (TBT)

- (1) Taiwan and New Zealand have previously signed Mutual Recognition Agreements (MRA) to facilitate trade regarding electronics devices. ANZTEC builds upon the WTO/TBT foundation and adds “WTO-plus” concepts that both sides agree to adopt international principle in the area of accreditation system on certification of products which not only avoids double testing on our industrial products but also reduces the cost from our industry. ANZTEC also establishes a communication channel for the information exchange and cooperation of standards, technical regulations, and conformity assessment procedures, and the evaluation of these issues. Furthermore, the fee for testing shall be limited to the amount to the approximate cost of services rendered.

- (2) In addition, ANZTEC provides a cooperation platform that will include, in addition to the current electrical and electronic product assessments, other assessments in the anticipated pharmaceuticals and medical devices industries. This platform will streamline the export of Taiwan's domestic products to New Zealand and effectively eliminate non-tariff trade barriers between related manufacturers.

3. Intellectual Property

This chapter enhances the exchange of IP protection information and its operational systems. A more structured cooperation is also established, including a contact point, sharing of the latest IP updates, cooperation under the current domestic laws and policies, and establishment of appropriate measures to protect genetic resources, traditional knowledge, folklore, trademarks, and geographical indications. The chapter encourages input and exchange from academia on IP rights and creates a channel for consultation and collaboration on matters relating to IP.

4. Government Procurement

- (1) The "government procurement" chapter in ANZTEC is based on the procurement rules of the WTO/GPA Agreement, which allows the suppliers of both parties to participate in the other party's government procurement and Build-Operate-Transfer (BOT) projects.
- (2) New Zealand is not a signatory of the WTO/GPA, but it will now open its government procurement market to Taiwan under ANZTEC. Both parties will use Taiwan's thresholds in the WTO/GPA as the thresholds for ANZTEC. "Government" under this chapter includes the central government and its respective administrative agencies.

V. Chapters Related to Cooperation Issues

1. Competition

The objectives of this chapter are to promote fair competition and eliminate and deter anti-competition activities such as monopolies, mergers, and concerted actions. The major articles aim to enhance the understanding, communication, and cooperation of both parties' competition law-related authorities. This chapter also includes a private right of action for individuals to independently seek redress for injury resulted from a violation of competition laws. Under the consumer protection provisions each party shall promote cooperation and coordination to address misleading and deceptive conduct. Each party shall also seek bilateral consultation when anti-competitive practices might adversely affect trade or investment between the parties. Finally, both parties should endeavor to settle any disputes amicably through consultations or negotiations.

2. Trade and Labour

- (1) The trade and labour chapter requires Taiwan and New Zealand to respect the fundamental labour principles and rights that are recognized by the international community. The Agreement also aims to promote better understanding of each party's labour systems and policies through cooperation and dialogue to improve the capability of each party to address its labour issues.
- (2) Regarding the cooperation on labour issues, the parties may cooperate on labour issues of mutual interest not only through the government, but through industries, education and research institutions, and labour unions, by carrying out academic visits, technical exchanges, information exchanges, conferences and seminars, training session and education programs.

3. Trade and Environment

- (1) Under ANZTEC, Taiwan and New Zealand will support each other's trade and environment policies and encourage the adoption of voluntary market mechanisms to protect natural resources and the environment. Further, the parties will enhance cooperation on environmental issues through the exchanges of personnel, conferences and joint projects. ANZTEC also designates a point of contact to

resolve the differences between the parties through dialogue, consultation, and cooperation.

- (2) This chapter also aims at eliminating tariff and non-tariff barriers for environmental goods to facilitate the trade of environmental goods and services. The list of environmental goods under ANZTEC adds up to 132 items and can be categorized into three major types: equipment for renewal energy, reduction of pollution, and environmental monitoring and control. The items include renewal energy equipment that replaces fossil fuel, and products and parts for pollution reduction and environmental control, monitoring, and analysis.

4. Film and TV Co-Production

- (1) According to this chapter, the co-produced films of Taiwan and New Zealand that meet “domestic film” standards will simultaneously enjoy the subsidies and benefits typically reserved for domestic films from both parties.
- (2) This chapter promotes the exchange of professional knowledge, skills, and collaboration of film producers of each party by setting forth the percentage of funding and personnel needed to qualify for domestic films.
- (3) This chapter assists the parties' film producers in seeking resources to co-produce films and strengthens the exchange of film knowledge and experience through further cooperation of the parties. ANZTEC enhances the development of each party's film industries with the added benefits of raising national profile and developing local tourism.

5. Cooperation on Indigenous Issues

New Zealand's Māori and the indigenous peoples in Taiwan are both of Austronesian descent and have maintained good relations and frequent contact. ANZTEC is the first free trade agreement to include a special chapter to foster closer interactions between the indigenous peoples of both parties. This chapter is expected to enhance the exchange of both parties' indigenous experiences, literature and media, encourage cooperation between the indigenous institutions with regards to tourism, and establish a cooperation mechanism that will benefit their economic development and assist Taiwan's indigenous peoples in upgrading their industries.

EPILOGUE

The benefits of signing the ANZTEC are:

1. Economic benefit: The trade liberalization of ANZTEC opens market access, facilitates investments, increases consumer welfare, and other economic benefits.
2. Cross-government cooperation: ANZTEC sets up communication channels for New Zealand and Taiwan's authorities to discuss, research, and collaborate on issues of mutual interest under a legalized framework.
3. Systematic regime: ANZTEC is binding on both parties' governments. It not only provides a more comprehensive legal environment but also allows the enterprises, organizations, and people of both sides to enjoy the trade benefits and legal protection under ANZTEC.
4. Because ANZTEC is a high standard, "WTO-plus" trade liberalization agreement, its signing exemplifies Taiwan's determination towards trade liberalization and its initiative to conclude and participate in ECAs and RTAs with other countries in the future.