



Submission from

**Amnesty International
New Zealand**

on the

**International Treaty Examination
of the**

**Free Trade Agreement
Between**

**The Government of New Zealand
And
The Government of the People's
Republic of China**

May 2008

Amnesty International is an independent movement of over 2.2 million people in more than 150 countries who contribute their time, money and expertise to the promotion human rights and international campaigning to prevent some of the most serious violations.

Amnesty International, recognising that human rights are indivisible and interdependent, also works to promote all the human rights enshrined in the Universal Declaration of Human Rights and other international standards, through human rights education programs and campaigning for ratification of human rights treaties.

Amnesty International's New Zealand section has approximately 8,100 members and regular donors, and active members in some 30 local community groups, specialist groups and various action networks. At any one time its members are working on cases and issues in approximately 90 countries. The work of Amnesty International's New Zealand members is supported by paid staff and volunteers based in Auckland, and the movement's International Secretariat based in London.

Amnesty International is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect

Amnesty International's policies and plans are discussed and decided at general meetings of the membership and meetings of their elected representatives held every two years (International Councils). In New Zealand their implementation is managed by the Chief Executive Officer overseen by an elected Governance Team. Between International Councils the international affairs of Amnesty International are managed by the Secretary General, who reports to an elected International Executive Committee of members from at least seven different countries.

Amnesty International is financed by its worldwide membership and the public. Strict guidelines exist to safeguard its independence of the organisation; AI does not accept government funds for its campaigning work or organisation.

Amnesty International has formal relations with the United Nations Economic and Social Council (ECOSOC), UNESCO, the Council of Europe, the Organization of American States, the Organisation of African Unity, and the Inter-Parliamentary Union.

Amnesty International was awarded the United Nations Human Rights Prize for "outstanding achievements in the field of human rights" on the 30th anniversary of the Universal Declaration of Human Rights. The movement received the Nobel Peace Prize in 1977 for its contribution to "securing the ground for freedom, for justice, and thereby also for peace in the world".

INTRODUCTION

1. Amnesty International New Zealand (AINZ) welcomes the opportunity to make submissions on the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China (the FTA). This submission is focussed on the likely impact of the FTA in terms of labour rights and human rights in China, and its consistency or otherwise with New Zealand's labour rights and international human rights obligations in international law.
2. Amnesty International does not oppose this or any other preferential trade agreement between New Zealand and foreign governments.
3. However, Amnesty International is concerned at the lack of human rights and particularly labour rights addressed in the FTA, and its accompanying Memorandum of Understanding on Labour Cooperation (MOU).
4. Labour rights and obligations have been weakened in comparison with all of New Zealand's other preferential trade agreements.
5. Many of the provisions or lack thereof, are likely to undermine New Zealand's reputation as a country which strives to protect human rights and on a global scale, speak out on human right violations. This FTA has not reached the appropriate balance between trade and economic relations with China and realising its international obligations. Despite comment by New Zealand's elected representatives and officials alike that trade and human rights are not related – this is very far from the truth. Labour rights are human rights;

Universal Declaration of Human Rights;

Article 23

- (1) *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
- (2) *Everyone, without any discrimination, has the right to equal pay for equal work.*
- (3) *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
- (4) *Everyone has the right to form and to join trade unions for the protection of his interests.*

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

6. As member states of the United Nations, both China and New Zealand have obligations to uphold the Universal Declaration of Human Rights alongside many other international treaties and conventions to which they are signatory. In downplaying labour rights they challenging the basic tenant outlined in Article 30 of the Universal Declaration of Human Rights;

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

7. New Zealand and China are both committed to respect, promote and realize in good faith the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work (1998) by virtue of their ILO membership. Indeed, China is a founding nation of the ILO.

8. This submission focuses on a number of issues of concern, being the provisions and issues relating to:

- general exclusion of human rights and labour rights in the process of negotiation and signing
- prison labour and child labour goods
- the weakening of ILO obligations
- the absence of requiring harmonisation of domestic laws
- the weakening of public awareness promotion
- the type of engagement with Chinese authorities
- transparency and consultation
- level of governmental delegates engaging with China
- in case of termination of the Memorandum of Understanding on Labour Cooperation

General exclusion of human rights and labour rights in process

9. Amnesty International has consistently expressed concern at the exclusion of human rights issues in the process leading to the signing of the FTA.

10. A Framework for Integrating Labour Issues into Free Trade Agreements was established by the Ministry of Foreign Affairs and Trade (MFAT) in 2001.¹ However, that framework appears not to apply to this FTA, and in particular:

¹ Available at <http://www.mfat.govt.nz/Trade-and-Economic-Relations/NZ-and-the-WTO/Trade-Issues/0-labour-framework.php>

- The 'Joint study investigating the benefits of a Closer Economic Partnership (CEP) Agreement between Thailand and New Zealand' included 'Other Trade Related Issues', and incorporated labour matters. The China – New Zealand joint feasibility study of November 2004 failed to mention any labour or human rights matters.
- The Trade and Economic Cooperation Framework (TECF) signed by China and New Zealand in May 2004 also failed to mention labour matters.
- The Prime Minister, Minister of Trade and other government delegates who were involved with the negotiations have repeatedly separated human rights from the trade deal.²

Exclusion of prison labour provision

11. Amendment – We omit our concern on the exclusion of a provision in relation to prison labour acknowledging this exclusion is incorporated by way of GATT Article XX, in Article 200 of the FTA.

12. We are concerned with the increase in the use of Re-education through Labour (RTL) in China. RTL is used as a form of detention without trial and is openly based on prison labour. Within its April 2008 report, *The Olympics Countdown – crackdown on activists threatens Olympic legacy* (ASA 17/050/2008) Amnesty International documents that despite long-standing efforts to substantially reform or abolish this system it remains intact. Moreover, in the lead up to the Olympics it has been available for use by the Beijing police as a tool to sweep 'undesirables' off the streets and 'clean up' the city resulting in an increase of its use. RTL breaches various international obligations, namely Articles 8, 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR) of which China and New Zealand are both signatories, although China is yet to ratify the ICCPR.³ RTL

² Questions for written answers, No. 2590 (2008), Keith Locke to the Minister for Trade (01 Apr 2008) Helen Clark quoted, "*the deal and human rights are not directly related.*" In NZ Herald (06-04-08) "*I don't think there is any crossover between the two.*" [Human rights and the FTA].

Phil Goff in a letter to Amnesty International dated 7 April 2008 stated that "*Wider human rights issues are dealt with in their own right and are not included within any of our existing trade agreements, or within multilateral trading agreements.*"

³ Article 9 on the right to liberty and security of the person, which *inter alia* prohibits arbitrary detention, upholds the right of detainees to be brought promptly before a judge and entitles detainees to take proceedings before a court so that the court may assess the lawfulness of detention;

- Article 14 on the right to fair trial, which *inter alia* upholds detainees' rights of access to legal counsel of their choosing at all stages of the legal process and a fair and public hearing by a competent, independent and impartial tribunal;

- Article 8, on the prohibition of slavery, which *inter alia* states that no one shall be required to perform forced or compulsory labour.

also breaches Article 2(b) of the ILO Declaration on Fundamental Principles and Rights at Work.⁴

13. Amnesty International is concerned at the use of child labour in China. Despite China's ratification of the *Worst Forms of Child Labour Convention 1999 in 2002*, child labour continues. The Committee of Experts on the Application of Conventions and Recommendations' report published in 2007⁵ on the above-mentioned Convention reported that several procedures in the criminal justice system which deal with minors allow children to be sent to special 'work study' schools, or to labour camp re-education programmes. The 'work study' schools have become the basis of a form of school-run factories, allowing for the exploitation of child labour. The labour camp re-education programmes take in minors between 13 and 16 years with little avenue for appeals. China established an interagency commission in 2002 to study the issue of child labour. The failure to make the activities of the commission public and the inadequate implementation of the Convention are ongoing concerns.⁶ A New York Times article, published on 1 May 2008, has reported that the authorities in Southern China's Guangdong Province had made several arrests and had already 'rescued' more than 100 children aged between 13 and 15 from factories. There were reports that hundreds of other rural children had been lured or forced captive, in almost slave-like conditions for minimal pay.⁷

14. Noting New Zealand's domestic prohibition of importing goods manufactured or produced using prison labour⁸ and highlighting the easing of access for Chinese products into New Zealand, Amnesty International would welcome clarification on how New Zealand will ensure the products of prison labour are not imported into New Zealand.

15. Furthermore, Amnesty International is concerned with Article 1(3) of the MOU that states it is 'inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes.' If New Zealand's domestic prohibition of prison labour requires New Zealand to operate custom procedures and other measures, as it should duly do so, this could be considered 'protectionist' by China. Amnesty International welcomes clarification on how this

⁴ Article 2(b) provides an obligation to promote and to realize, in good faith, the principles concerning the fundamental rights namely (b) 'the elimination of all forms of forced or compulsory labour'.

⁵ CEACR: Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No.182) China (ratification:2002), published 1997. Document No. (ilolex): 062007CHN182

⁶ 2002 Annual Report: The Congressional-Executive Commission on China; www.cecc.gov

⁷ China Says Abusive Child Labor Ring Is Exposed, David Barboza (published NY Times, May 1 2008), available at <http://www.nytimes.com/2008/05/01/world/asia/01china.html?partner=rssnyt&emc=rss>

⁸ Section 54, First Schedule of the Customs & Excise Act 1996.

issue will be dealt with.

International Labour Organisation (ILO) Obligations

16. Amnesty International is disappointed to note the weakening of affirmation of ILO obligations compared with other trade agreements.

- The Trans-Pacific CEP MOU states its ‘common aspiration for free trade that leads to jobs with terms and conditions of employment which adhere to the core ILO labour principles’ in its preamble. Furthermore it provides as an objective to ‘promote better understanding and observance’ of the ILO principles in its objectives (Article 1(c)).
- The United States and Canada have signed FTAs with a number of countries that all reaffirm the ILO parties’ obligations and commitments under the ILO Declaration. Furthermore, in 2007 a new trade policy was agreed between the Administration and Congress of the US stipulating that FTA countries would need to be committed to adopting and enforcing laws that abide by basic international labour standards (as in the ILO Declaration). The policy also states that these labour standards would be incorporated into the main / core free trade treaty, rather than a side agreement or letter.

Harmonisation of domestic laws

17. There is no requirement to harmonise domestic laws, regulations, policies and practices with international labour commitments, a feature in New Zealand’s other trade agreements. Specifically,

- Memorandum of Understanding on Labour Cooperation among the parties to the Trans-Pacific Strategic Economic Partnership Agreement, Article 2(3)
- Arrangement on Labour between New Zealand and the Kingdom of Thailand, Section 1.2

Promotion of public awareness

18. The promotion of public awareness required within other trade agreements has been downgraded within this FTA. The China MOU provides for ‘raising awareness of the legal rights and obligations of employers and employees’ as only an optional cooperative activity. Existing trade agreements which include a mandatory and substantive obligation to promote public awareness, can be found within the

- Trans-Pacific MOU which includes the promotion of public awareness of its labour laws and regulations domestically as a key commitment in Article 2(7)
- Thailand’s Labour Arrangement includes the promotion of public awareness of its labour laws, regulations, policies and practices domestically as a mandatory duty in Section 1.5

Type of engagement or cooperation with China regarding labour issues

19. Amnesty International is further alarmed at the level of commitment to cooperate within the MOU framework. Whilst recognising that the MOU is the first legally binding inter-governmental agreement on labour China has concluded within the context of a FTA, the cooperation framework established is only on a voluntary basis. It therefore allows China to ignore the cooperative forum. Amnesty International questions the practical effectiveness of the MOU given the pattern of China's non-compliance of international conventions, despite ratification.

20. Examples of China's non-compliance with World Trade Organisation (WTO) and ILO obligations:

1. The Committee of Experts on the Application of Conventions and Recommendations (concerning the Worst Forms of Child Labour Convention 1999, ratified by China in 2002) found that, 'although the national legislation appears to prohibit the sale and trafficking of children under 18 years, the trafficking of children, especially girls, under 18 years for labour and sexual exploitation remains an issue of concern in practice. Although China does possess national legislation banning child labour and its worst forms, *there remains a serious gap between legislation and implementation and monitoring.*'⁹
2. China and the ILO signed a Memorandum of Understanding in May 2001 with the purpose being to launch a programme of cooperation between the ILO and the Chinese Labour Ministry.¹⁰ It set out mutually agreed objectives and priorities, including activities to promote and realize the ILO Declaration on Fundamental Principles and Rights at Work, to promote public awareness of labour rights, and to promote and improve the enterprise collective bargaining system. The result has been limited, demonstrated by the lack of independent unions and increasing statistics of forced labour. Indeed, the only work the ILO does in China is technical and training based, resulting in the failure to achieve concrete results.
3. Prisoners of conscience have increasingly been sentenced to RTL, as reported in Amnesty International's April 2008 report.¹¹ Amnesty International wrote an open letter to the Standing Committee of the National People's Congress (NPC) asking them to ensure any legislation passed to replace RTL complies with international standards. However, it is unclear whether any reforms were

⁹ CEACR: Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No. 182) China (ratification: 2002) Published: 2007, available at <http://www.ilo.org/ilolex/english/newcountryframeE.htm>

¹⁰ Available at <http://www.ilo.org/public/english/chinaforum/download/chinamou.pdf>.

even discussed and there is no legislation adopted to replace RTL. Recent targets assigned to RTL have included human rights activists and petitioners.

21. Furthermore, budgetary constraints (refer to China MOU article 3(2)) can now impact on both State's obligation to participate in cooperative activities.

- The Trans-Pacific MOU and Thailand Labour Arrangement both provide that the funding is decided on a case-by-case basis and does not provide for a financial justification not to adhere to the MOU or Arrangement respectively.¹²

22. Amnesty International notes that a 2008 Report of the Director-General of the International Labour Organisation¹³ outlined the importance of a provision of adequate financial resources for cooperation activities to be foreseen, stating that financial support is also needed 'to build capacity if meaningful results are to be achieved'.

Lack of unions in China

23. China has not ratified the Convention concerning Freedom of Association and Protection of the Right to Organise or the Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.

24. Independent trade unions are illegal under Chinese trade law. Despite ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in February 2001, it placed a reservation on its obligations towards Article 8 of the Covenant, which guarantees trade union rights, in particular Article 8.1a which concerns the right to freedom of association.

25. Amnesty International is concerned at the lack of free and independent unions and lack of collective bargaining options in China, which is a necessary and vital means of promoting ILO obligations and keeping the government in line with its international commitments.

26. The China-ILO Memorandum of Understanding¹⁴ under which Beijing promised to promote workers' rights, including activities to raise public awareness about international labour standards. Despite this there have been no concrete results because China is yet to ratify these ILO and UN Conventions allowing workers to

¹¹ *The Olympics Countdown – crackdown on activists threatens Olympic legacy* (ASA 17/050/2008)

¹² Trans-Pacific MOU, Article 3(5); Thailand Labour Arrangement, Section 2.4.

¹³ 'Freedom of association in practice: lessons learned'; Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, *Report of the Director-General*, (published 2008), available at http://www.ilo.org/global/What_we_do/Officialmeetings/ilc/ILCSessions/97thSession/ReportsubmittedtotheConference/lang--en/docName--WCMS_091396/index.htm

join independent unions and bargain collectively.

Transparency

27. A lack of transparency during pre-signing negotiation rounds has also caused concern. Amnesty International would welcome assurances that engagement between the New Zealand and Chinese governments over labour and other human rights matters in and around the FTA are transparent and public.

28. We recommend that the outcomes of meetings, joint projects, exchange visits and other means in which cooperative activities may be implemented (refer to Article 2(3) MOU) be transparent and made public.

Consultation

29. Again, Amnesty International reiterates its concerns in regard to the lack of consultation leading up to the signing of the FTA. Despite regular attempts to organise meetings with governmental officials, only one dedicated FTA meeting with Amnesty International was held.

30. Amnesty International has regularly corresponded with the North Asia Division of MFAT regarding human rights in China, urging them to convey our concerns to the trade division. We also note Phil Goff's written answer to questions in Parliament (April 2008) which lists organisations that MFAT consulted in the process of the FTA. None are primarily connected to human rights or labour rights.¹⁵

31. Following the release of the FTA, our concerns regarding consultation have remained unanswered. Under the MOU consultation is not mandatory.

- Article 1(5) recognises the 'utility of broad domestic consultation with national stakeholders' in formulating labour policies; it does not strictly require domestic consultation.
- 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. This is similar wording to the Thailand Labour Arrangement. However, the Thailand document requires the parties to 'provide an opportunity for the members of its public or domestic non-government sectors to submit views or advice to it' on labour matters (Section 3.6). This is a mandatory duty – there is no such mandatory duty in the China MOU.

¹⁴ Available at <http://www.ilo.org/public/english/chinaforum/download/chinamou.pdf>.

¹⁵ Written Question 3323 (2008). Nandor Tanczos to the Minister for Trade (18 Apr 2008):

32. We therefore seek clarification on what Amnesty International can expect within the cooperation activities under the MOU. We seek consultation and participation under Article 2(4) of the MOU in identifying potential areas for cooperation and in undertaking cooperative activities.

Level of governmental delegates meeting with China in future over labour issues within FTA

33. Amnesty International is disappointed that the level of delegation to meet with Chinese delegates has been lowered from ministerial level to ‘senior governmental officials’. The only opportunity for Ministers to meet within the MOU is solely for ‘consultations’, a substantially lower requirement than within other trade agreements. Specifically we refer to;

- Thailand Labour Arrangement establishes a labour committee comprising ‘senior officials’ (Section 3.1), but requires the Minister to meet once within the first two years of operation (section 3.8)
- Trans-Pacific MOU suggests joint meetings with Ministers for ‘mutual discussions and consultations’ (article 5(3)). A national contact point for relevant labour matters is established.

In case of termination of the MOU

34. Amnesty International is also concerned at Article 5(1) that enables termination with six months notice. If such is the case, will the main FTA be withdrawn from and vice versa? Will there be a similar agreement to the agreement within the Trans-Pacific MOU?

- Under the Trans-Pacific MOU, 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 Trans-Pacific SEP and vice versa.

Ability to speak out on human rights abuses in China

35. And finally, Amnesty International is concerned that New Zealand’s ability to speak out on human rights abuses in China, irrespective of whether it is related to labour, is diminished by the FTA. We are concerned that the National Interest Analysis does not address this issue, or the implications of the relationship between China and New Zealand on other non-FTA issues.

36. Phil Goff, as the Minister of Foreign Affairs has continued to assure Amnesty International that New Zealand has (in every meeting with his Chinese counterpart) and will continue to raise concerns with China, including those

relating to democratic status and human rights in general.¹⁶ Furthermore Phil Goff has stated “all governments have a duty to ensure that their actions do not result in abuse, violation or denial of human rights.” He also assured that the Government is “firmly committed to ensuring that the rules that govern international trade are fair and equitable for all countries,” and more specifically would continue to promote human rights in his new portfolios.¹⁷ We would welcome clarification on how such assurances can be delivered on in a publicly transparent way.

¹⁶ Phil Goff’s letter to Amnesty International dated 7 April 2008.

¹⁷ In response to Joan Wood, Amnesty International’s Government Liaison Group Coordinator, in a letter dated 14 February 2006.