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Submission

on the

New Zealand-China Free Trade Agreement Bill

3 June 2008

1. Amnesty International welcomes the opportunity to make a Submission to the Foreign Affairs, Defence and Trade Select Committee on the New Zealand-China Free Trade Agreement Bill ('FTA Bill').
2. Acknowledging that the purpose of public submissions on the FTA Bill is to provide appropriate and suitable comments for the Committee to reflect in its report to the House we accordingly provide recommendations that were the basis of our oral submission on the following;
 - goods produced by child and forced labour
 - transparency and consultation with NGOs
 - in case of termination of the Memorandum of Understanding on Labour Cooperation (MOU)
 - generally weaker labour rights provisions.

Amendments to written submission of 7 May 2008

3. We bring to your attention amendments to our written submission of 7 May 2008 as follows:

Page 3, Paragraph 5.

The Universal Declaration of Human Rights Articles to be inserted are;

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.

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

The FTA Bill's failure to address concerns

5. The FTA Bill does not address any of the labour rights concerns raised by Amnesty International. Nor does it address the implementation of the MOU; for example in regards to funding of cooperative activities, the appointment of the 'coordinator' and future consultation with stakeholders. Furthermore, the FTA Bill does not address the issue of forced and child labour goods entering New Zealand in accordance with Article 200 of the FTA Agreement, and New Zealand's domestic prohibition of such goods. Given that the FTA Bill fails to substantively address any one of the issues raised in our submissions, Amnesty International does not support the FTA Bill.

Goods produced by forced and child labour

6. Recognising the domestic and international prohibition on forced and child labour and reiterating our concerns on ensuring the goods produced from such labour are not imported into New Zealand, Amnesty International recommends the Government introduce a protocol with China similar to that of the Harkin-Engel Protocol.¹
7. The Harkin-Engel Protocol (2001) was signed by chocolate and cocoa industry representatives, including companies from the United States and Europe (including the United Kingdom), to eliminate the worst forms of child labour in the growing and processing of cocoa beans and their derivative products wherever cocoa is grown.
8. Amnesty International recommends a similar framework is adopted in regard to forced and child labour, as the Protocol prescribes a key action plan and steps to eliminate the problem. All are time-specific commitments and include:
 - Publicly acknowledging the problem, publicly committing to the Protocol and committing significant resources to the problem
 - Forming multi-sector advisory groups (incorporating consultative groups that include NGOs) with the responsibility for on-going investigation of labour practices
 - Signing a joint statement witnessed at the International Labour Organisation (ILO), recognizing the issue as a matter of urgency
 - Establishing a binding Memorandum of Cooperation among the major stakeholders that establishes a joint action program
 - Establishing a joint foundation to oversee and sustain efforts to eliminate the problem

¹ Text available at <http://www.cocoainitiative.org/ici/reference-documents/harkin-engel-protocol.html>

- Developing and implementing credible, mutually-acceptable voluntary standards of public certification consistent with applicable law.

9. Amnesty International firmly believes the New Zealand Government has a unique opportunity to contribute to the elimination of forced and child labour in China. As repeatedly pointed out by various MPs and officials, New Zealand is the first country to sign a binding agreement on labour standards with China. Noting China's regular non-commitment to World Trade Organization and ILO obligations,² we recommend the New Zealand Government use the Harkin-Engel Protocol as a model to ensure on-going review and investigation mechanisms are in place.

Transparency and consultation

10. Amnesty International reiterates its concerns regarding the lack of consultancy in the negotiation and post-signing phases of the FTA,³ as well as the provisions in the MOU regarding consultation with NGOs and stakeholders which is only possible if considered 'appropriate' and 'on invite.'⁴ Amnesty International recommends practices of consultation are widened and include the ability for NGOs and major stakeholders, including human rights organisations, to brief New Zealand and Chinese delegates on labour rights concerns within the MOU framework.

11. In regard to transparency, Amnesty International recommends the public release of reports and outcomes of meetings within the MOU Cooperative framework. Furthermore, we recommend that details of 'cooperative activities' established under Article 2 of the MOU are publicly available.

Termination of the Memorandum of Understanding

12. Highlighting our concerns in the event of the MOU being terminated,⁵ Amnesty International recommends a commitment made in the P4 agreement through Ministerial Side Letters be incorporated within the NZ-China FTA that ensures the FTA does not function without a valid labour MOU.

² Refer to Amnesty International's Written Submission, 7 May 2008, paragraph 20

³ Amnesty International's Written Submission, 7 May 2008, Paragraph 31

⁴ Article 1(4),(5) of the MOU on Labour Cooperation

⁵ Amnesty International's Written Submission, 7 May 2008, Paragraph 34

Weaker labour rights provisions

13. We recommend that, in response to submissions from Amnesty International, amongst other NGOs, the Select Committee notes that the MOU on Labour Cooperation has significantly weaker provisions. While these represent a greater degree of commitment to labour rights than China has previously been willing to undertake, they are nonetheless significantly weaker than those included in other trade agreements, notably the recently signed P4 and Thailand Agreement.

Conclusion

14. Amnesty International recommends that the issues and concerns raised in our written and oral submissions are substantively addressed by the House, and appropriately included in the implementing FTA legislation, to ensure international and domestic labour standards and the MOU commitments are complied with. Amnesty International recommends that the Committee notes in its report to the House that the MOU is as fully exploited as possible in practice. This would ensure the cooperative framework realizes the commitment to 'improve working conditions and living standards' and 'protect, enhance and enforce the basic workers' rights' in New Zealand and China as stated in the MOU's Preamble. We also recommend that future opportunities for engagement with China on labour rights issues are pursued vigorously and transparently.

15. In light of on-going Free Trade Agreement negotiations i.e. possible FTAs with Japan⁶ and India,⁷ Amnesty International recommends that concerns raised throughout this FTA process regarding consultation and transparency be recognized and addressed in future agreements. Consultation and transparency are more likely to ensure New Zealand's human rights obligations internationally and domestically are upheld, and to realize the obligation of improving labour rights. It would also maintain this country's reputation as a human rights defending country and one publicly prepared to raise human rights concerns at every level. As we stressed in our oral submission, labour rights concerns must be raised at all levels including for example business, local bodies and central bodies.

⁶ 20 May 2008, Questions in the House Martin Gallagher to Phil Goff who answered, "the Prime Minister, Helen Clark, secured from Japanese Prime Minister Fukuda, agreement to undertake a joint Japanese - New Zealand study into an economic partnership arrangement, which is a free-trade agreement between the two countries."

⁷ 22 May 2008, Phil Goff's Media Release "Free Trade Agreement on agenda for first visit of India's Commerce Minister"