SUBMISSION BY

to

THE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

on

THE IMPACT OF NON-TARIFF BARRIERS ON TECH EXPORTS

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INTRODUCTION

NZTech thanks the committee for reaching out to us as part of its consultation process. We are very supportive of its work and keen to contribute in whatever way we can.

NZTech is a member-funded, not-for-profit organisation representing more than 2,500 members who together employ 10 percent of the New Zealand workforce, comprising startups, local tech firms, multinationals, education providers, financial institutions, major corporations, network providers, hi-tech manufacturers, and government agencies that work closely with the tech ecosystem.

The tech sector is a significant and growing part of the New Zealand economy, employing 121,000 people and contributing around $22b in GDP. It is also one of the fastest-growing export sectors – New Zealand's 3rd largest – with export receipts of $10.7b in 2023. Software exports, for example, are growing at more than 20% p.a.

We note that "tech" includes physically manufactured products with a significant digital/knowledge-intensive component (e.g. Rakon, Tait Communications, F&P Healthcare), as well as weightless "digital" exports such as software, AI or gaming (e.g. Datacom, Xero, Orion Health, RocketWerkz).

Non-tariff barriers are very significant to New Zealand tech exporters and pose some key challenges to the tech sector, which our submission highlights.

THE DIFFERENCE BETWEEN DIGITALLY ENABLED TRADE AND DIGITAL EXPORTS

It is important to recognise that trade agreements that contain digital clauses – such as those that focus on using digital means to support trade with e-invoicing and logistics – are not the same as digital exports.

New Zealand exporters of physical products such as dairy can use digital tools such as digital logistics or e-invoices to export efficiently. This is "digitally-enabled trade" and is crucial to New Zealand – it can deliver important benefits for supply chain integrity and cost savings for goods exporters.

However, digitally-enabled trade is not the same as "digital exports" or "tech exports" – those are a very different kind of trade, and need to be considered, and supported, in different ways.

New Zealand has already negotiated some useful trade agreements to support digitally-enabled trade – for example, in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) or the ASEAN Australia New Zealand Free Trade Agreement (AANZFTA), and some useful building blocks for developing rules for digital trade, such as the Digital Economy Partnership Agreement (DEPA). But concrete rules to support "digital trade" are largely lacking – what is needed now is a new focus on how to boost "digital trade" into global markets.

POTENTIAL NON-TARIFF BARRIERS (NTBs) FOR TECH EXPORTERS

We note at the outset that *all* barriers are NTBs for digital exporters (at least for now, as there are no "tariffs" on digital trade).

Physical high-tech exports can face tariffs, but they also face a range of NTBs.

NTBs for tech exporters essentially fall into one of four categories: talent; intellectual property; establishing a presence and repatriation of funds; and digital rules, regulations and legislation.

(1) Talent

- For B2B digital exports, firms often need to send tech talent offshore for implementation, integration and support of products in-market. This can be blocked by expensive, opaque or restrictive visas and other regulations in foreign markets.

- The inability to freely move talent can create NTBs for New Zealand tech firms.

(2) Intellectual Property

- In some countries there is a risk of exploitation of IP. While this is becoming less of a problem as we move more and more to exporting software as a service where the code stays in NZ.

- However, digital exports can still face a patchwork of different approaches on IP, or inadequate protections and enforcement in some markets. That erodes value and opportunities.

(3) Establishing a local presence and repatriation of funds

- Some tech exporters will need to establish offices and teams in the countries to which they export to support their tech.

- In some cases rules around data localisation may drive this need for a local presence.

- In certain countries, it can be complex and financially costly to establish a presence and to repatriate funds back to New Zealand, making it hard for tech exporters to reinvest in other markets and maintain their growth.

(4) Digital rules, regulations and legislation

- Governments are increasingly regulating things such as privacy, biometrics, flows and control of data (sometimes called data sovereignty), artificial intelligence, certification of code, and access to markets (e.g. through issuing licences).

- While many of these are legitimate areas to regulate, the regulations can be overly restrictive, fragmented and rapidly changing. Standards can also vary significantly across markets.

- In other cases, the approaches our trading partners use are clearly driven by economic protectionism, or by what we might not consider "legitimate" reasons, e.g. societal control.

- If New Zealand gets out of sync with these foreign regulations and standards, our tech exporters will face multiple problems around compliance. This will necessitate retooling products for multiple markets.

- There is a strong case for New Zealand to try to influence these foreign regulations and standards to create the most coherent operating environment we can.

- At the same time, influencing foreign regulations and standards, and preparing New Zealand tech exporters locally to meet them, may create some advantages, such as becoming an early mover in certifications or standards.

- Platforms can create opportunities for New Zealand exporters, but they can also operate by their own rules, including such aspects as access to data on transactions and customers, dispute resolution and algorithms. This can make it hard for New Zealand tech exporters (e.g. in the gaming sector) to develop and deploy export strategies.

- Finally, we note that the expiration of the temporary agreement to forgo applying tariffs (also called Customs duties) on digital products transmitted electronically would have a serious negative impact on New Zealand's tech and entertainment sectors.

RECOMMENDATIONS

An NTB strategy for digital/tech trade must be multi-pronged, acknowledging that some good work is already being done by New Zealand, including by the Ministry of Foreign Affairs and Trade (MFAT), and that this will require an investment of sufficient resources.

Specifically:

(1) Upskilling and resourcing staff on digital trade

- This will require additional investment (business-as-usual is not sufficient given the breadth and depth of digital trade fronts.)

(2) Mapping the landscape

- A more in-depth understanding of the barriers facing digital and tech exporters, which will differ by sector and by market, is needed. For example, gaming doesn't necessarily face the same set of barriers as software-as-a-service (SaaS), or trust services, or high-tech manufacturing.

(3) Creating the best possible enabling-environment internationally

- This can be done by investing in international conversations on digital trade governance, by negotiating good trade rules, and by promoting good regulatory practices for digital in all settings (e.g. WTO, APEC, UN, OECD, ISO and other standards-setting bodies, and in bilateral and multilateral groupings).

(4) Investing in solving ad hoc digital NTBs as they arise

IMPLEMENTATION

Implementing these four recommendations will require:

- Investing further in upskilling MFAT staff on their understanding of how very differently digital/tech export businesses operate from traditional New Zealand primary sector exporters.

- More actively engaging in international multilateral digital dialogues in key areas such as AI rules, data/privacy rules, standards development and platform/competition regulation. In these instances, digital should be approached similarly to more traditional trade – small but influential, always involved, and bringing creative solutions to the table.

- Continuing to negotiate more and/or better in developing binding trade rules through trade agreements, with a wider range of trading partners. In doing so, New Zealand needs to actively work to reduce the "digital noodle bowl" of overlapping, fragmented and divergent trade rules for digital.

- Continuing to work to achieve a permanent WTO Moratorium on duties on digital products transmitted electronically: the "e-commerce moratorium".

- Equipping and resourcing staff in MFAT and other relevant agencies to tackle digital NTBs as they arise, as they already do for non-digital NTBs.

CONCLUSION

NZTech thanks the committee for its invitation to appear before it and to make this submission.

We would like to acknowledge the great work undertaken by the New Zealand government in the recent extension of the e-commerce moratorium.

We would also like acknowledge the contribution and support of trade advisor to NZTech, Stephanie Honey, and other members in preparing this submission.

We would be happy to help further in any way we can on this important issue for New Zealand's tech community.

Yours sincerely,

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