



# International treaty examination of the New Zealand–European Union Free Trade Agreement

Report of the Foreign Affairs, Defence and  
Trade Committee

August 2023

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Hon Jenny Salesa  
Chairperson

# New Zealand–European Union Free Trade Agreement

## Recommendation

The Foreign Affairs, Defence and Trade Committee has conducted the international treaty examination of the New Zealand–European Union Free Trade Agreement. The committee recommends that the House take note of its report and note that the Government intends the treaty to be implemented through a bill.

## Introduction to the agreement

The New Zealand–European Union Free Trade Agreement (NZ-EU FTA) aims to boost trade between New Zealand and the European Union. The EU is an important export market for New Zealand, and an important source of high-quality imports and foreign direct investment. Taken as a whole, the EU is New Zealand’s fourth-largest trade partner. Two-way goods and services trade was worth \$20.2 billion in 2022, or about 10.3 percent of New Zealand’s total trade in goods and services. Four individual EU member states (Germany, France, Italy, and the Netherlands) are among New Zealand’s top 20 trading partners.

At present, NZ-EU trade is impeded by a number of barriers. New Zealand agricultural exports to the EU, in particular, face relatively high tariffs and restrictive quotas. The agreement would eliminate or reduce many—but not all—of these barriers.

With the United Kingdom no longer in the EU, the NZ-EU FTA would be a valuable complement to the New Zealand–United Kingdom Free Trade Agreement, which entered into force on 31 May 2023.<sup>1</sup> The NZ-EU FTA’s entry into force is subject to the completion of the necessary domestic procedures by each of the two parties. We understand that both sides are working towards entry into force in the first half of 2024.

We called for public submissions to assist us with our scrutiny. We received 13 submissions, including one from the Ministry of Foreign Affairs and Trade (MFAT).

We thank the negotiating team from MFAT for their years of work on this agreement.

## Legislation is necessary to ratify the agreement

Most of the obligations in the NZ-EU FTA are already met through current legal frameworks and policy regimes. However, a number of legislative and regulatory amendments are needed to fully implement the agreement. They include the following:

- Amending the Tariff Act 1988 to make changes to the “Tariff” (as defined in the Act) to enable the application of the agreed preferential tariff rates. The Act would also need to

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<sup>1</sup> Our report on the New Zealand-United Kingdom Free Trade Agreement is available on [Parliament's website](#).

be amended to provide for the transitional safeguard mechanism under the trade remedies chapter of the agreement.

- Amending the Dairy Industry Restructuring Act 2001 to administer the transitional quotas for dairy products (butter, cheese, milk powder, and high-protein whey).
- Amending the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product-specific rules for goods imported from the EU.
- Amending the Copyright Act 1994 to extend the term of copyright, and prohibit unauthorised circumvention of technology protection measures applied to copyright works (“digital locks”).
- Amending the Geographical Indications (Wine and Spirits) Registration Act 2006 to include the agreed list of EU geographical indications.
- Amending the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 to extend the higher (\$200 million) screening threshold to EU investors.

The National Interest Analysis (NIA) prepared by MFAT says that Cabinet approval has been given to introduce a bill in 2023 to implement the necessary legislative amendments. It notes that the bill would go through normal parliamentary processes.

## **The agreement in context**

We heard that this agreement had its genesis in discussions that began with a “scoping study” in 2015. Negotiations began formally in June 2018, at the same time as the EU opened parallel FTA negotiations with Australia, which are ongoing. Some of the outcomes in the agreement for New Zealand agricultural and food producers and exporters have attracted criticism. It remains to be seen whether Australia will secure more generous terms.

MFAT told us that this agreement would help reinforce both parties’ commitments to multilateral trading rules and openness at a time of rising protectionism, including in the EU. It said that the outcomes should be seen in the context of a powerful agricultural lobby in the EU, and relatively limited economic opportunities for the EU in the New Zealand market. We heard that, if this agreement were ratified, about three-quarters of New Zealand’s trade would be covered by FTAs. If New Zealand were one day to secure FTAs with India and the United States, this figure would increase to about 90 percent.

MFAT described the EU as a large and rich market with discerning and well-off consumers. It is the world’s largest trader of services. The agreement would therefore bring significant economic opportunities for New Zealand exporters—including services exporters, such as the education sector. Although New Zealand had not secured all of its negotiating objectives, the agreement had to be seen in the context of the EU being a powerful and politically complex negotiating partner, with 27 different electoral cycles. One submitter noted that, had the two sides not concluded the negotiations when they did, they might have been waiting a long time for another opportunity to do so. New Zealand, therefore, had to “take its moment”.

## **Mixed outcomes for agricultural and food products**

We received several submissions from representatives of New Zealand producers and exporters of agricultural and food products. They were pleased that access to European markets for some of these exports would be significantly improved. For example, tariffs on

kiwifruit, onions, wine, seafood, and honey would be eliminated, improving New Zealand's competitive position vis-à-vis other exporters of these products to the EU. However, some submitters were disappointed by the relatively limited gains for beef and dairy exporters. Some also expressed concern about how the agreement's provisions relating to geographical indications would affect New Zealand producers of dairy products for the New Zealand market. Some submitters called for parts of the agreement to be renegotiated in the period following ratification and implementation.

### **Access for beef and dairy exports would increase only modestly**

Beef and dairy product exports are among New Zealand's most lucrative exports. Several submitters were disappointed that access to European markets for these exports would improve only modestly. We note that New Zealand dairy exports would continue to be constrained by a combination of permanent quotas and in-quota tariffs. Even if quotas were filled, exports from New Zealand would make up only a fraction of EU consumption.

Submitters told us that the new quota and in-quota tariff rate for New Zealand beef would account for less than 2 percent of New Zealand's annual beef exports, and less than 0.2 percent of annual EU beef consumption. Therefore, access would not be "commercially meaningful". Several submitters compared this part of the NZ-EU FTA unfavourably with the NZ-UK FTA. Some submitters suggested that MFAT had missed an opportunity to secure better access for certifiably sustainable meat exports, given that sustainability is a key trade policy objective of the EU.

Despite these criticisms, submitters representing exporters generally supported ratification on the basis that modest gains were better than none. We note that MFAT projects that tariff savings on all New Zealand goods exports will exceed \$100 million on the first day of implementation, increasing to \$110 million after seven years.

### **Geographical indications would bind producers in both markets**

The agreement would include food trademark protections known as "geographical indications" (GIs) for some New Zealand and many EU food products, notably cheese and wine. For example, New Zealand wine names would be protected in the EU market. On the other hand, food names that are currently seen as generic in the New Zealand market, such as "feta" and "gorgonzola" cheeses, would be reserved to producers from certain European regions. As a result, New Zealand producers would no longer be able to use these names for products on the domestic market, or for products exported to foreign markets.

Several submitters told us that they consider these restrictions unreasonable, and inadequately compensated by New Zealand's access to the EU dairy market. They said that some GI cheeses had been introduced to New Zealand by migrants from the original region: "The granting of G.I. protection for the name Feta means New Zealand producers will be locked out of a domestic market they have developed". Small producers in particular would face onerous compliance costs. GIs would also stop New Zealand producers from introducing new products with protected names. Submitters called for New Zealand producers to receive transitional assistance, and for EU producers to help pay for the cost of the GI regime. We heard from submitters that the problem may be helped by government-funded programmes to develop new names for a range of specialty cheeses produced in New Zealand.

## Intellectual property rules for pharmaceutical products

MFAT told us that one of the EU's main negotiating objectives was for New Zealand to align with the EU's patent and intellectual property rules on pharmaceuticals. Conversely, New Zealand sought—ultimately, successfully—to resist full alignment for fear of how this would affect medicine procurement costs for Pharmac. We heard that the matter was a high enough priority for both sides to be raised at “leader level”, and New Zealand had prevailed.

Some submitters questioned New Zealand's approach to this issue. They said there is no evidence that alignment with EU rules would increase costs for Pharmac. We heard that failure to align left New Zealand out of step with the OECD mainstream. In addition, alignment might have been an opportunity to encourage EU investment in New Zealand's pharmaceuticals sector.

In response, MFAT told us that its analysis showed that concession on this point would have raised the cost of both medicines and agricultural chemicals significantly for New Zealanders. Recalling that much of the agreement was negotiated during the COVID-19 pandemic, it said that this would have been an unacceptable outcome.

## Outcomes for Māori

MFAT told us that the agreement would bring significant economic opportunities for Māori exporters. Examples given were better market access for New Zealand mussels and hoki, and protection of the name Mānuka. We note that one of MFAT's objectives was to ensure that the agreement addressed criticisms of the e-commerce chapter of the CPTPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) by the Waitangi Tribunal.<sup>2</sup> MFAT told us that it had been able to do so. Nevertheless, some submitters described the agreement's provisions on Māori economic and cultural interests as insubstantial and not “tika”, or compliant, with the Treaty of Waitangi.

Some submitters also expressed disappointment at the level of engagement with Māori during the negotiations. They said that the Crown had negotiated with the EU largely in secret, and had played off different Māori representatives against each other. MFAT rejected this characterisation. It told us that engagement with stakeholders had been constrained by the need for confidentiality, but these negotiations had seen a “fundamental shift” for the better in MFAT's engagement with Māori, compared with previous FTA negotiations.

## Inclusion of animal welfare provisions

Chapter 8 of the agreement includes provisions about animal welfare. Submitters representing animal welfare advocates supported the inclusion of this chapter. They said it might encourage producers in both markets to raise animal welfare standards. They supported the creation of a technical working group on animal welfare. However, they were disappointed that the group would not include non-government representatives. They also described the chapter as “aspirational and non-committal”, suggesting that its provisions could be strengthened.

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<sup>2</sup> The Waitangi Tribunal's report on the CPTPP is [available on its website](#).

## **Inclusion of provisions on climate action**

The agreement includes first-of-a-kind provisions committing the parties to the Paris Agreement, with the possibility of trade sanctions for non-compliance. We commend negotiators for securing this outcome. However, some members are disappointed that the agreement does not include stronger commitments on phasing out fossil fuel subsidies. MFAT told us that it was also disappointed by this outcome. It agrees that developed countries have a responsibility to reform. We heard that the ministry was taking a “multitrack approach” to the issue, including both traditional trade agreements and work through the World Trade Organization. We heard that the EU had echoed New Zealand’s call for multilateral negotiations on this issue.

## **Appendix A: Committee process**

### **Committee procedure**

This treaty was presented to the House and referred to us on 20 July 2023. We met between 20 July and 24 August 2023 to consider it. We called for public submissions with a closing date of 28 July 2023. We received submissions from 13 organisations and individuals. We heard oral evidence from 9 submitters at hearings in Wellington and via videoconference.

### **Committee members**

Hon Jenny Salesa (Chairperson)  
Hon Gerry Brownlee  
Golriz Ghahraman  
Todd Muller  
Ibrahim Omer  
Dan Rosewarne

### **Evidence received**

The documents that we received as evidence are available on the Parliament website, [www.parliament.nz](http://www.parliament.nz).

## **Appendix B: National Interest Analysis**

### **National Interest Analysis**

The National Interest Analysis, prepared by the Ministry of Foreign Affairs and Trade, is attached.



NEW ZEALAND  
FOREIGN AFFAIRS & TRADE  
Manatū Aorere

# New Zealand-EU Free Trade Agreement

National Interest  
Analysis

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## Frequently Used Acronyms and Terms

<b>AD</b>	Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (WTO Anti-Dumping Agreement)
<b>ASEAN</b>	Association of South East Asian Nations
<b>CPTPP</b>	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
<b>EU</b>	European Union
<b>FDI</b>	Foreign Direct Investment
<b>FTA</b>	Free Trade Agreement
<b>GATS</b>	General Agreement on Trade in Services (the WTO agreement covering trade in services)
<b>GATT</b>	General Agreement on Tariffs and Trade 1994 (the WTO agreement covering trade in goods)
<b>GDP</b>	Gross Domestic Product
<b>GIs</b>	Geographical Indications (a sign or name used in relation to goods that have a specific geographical origin and qualities essentially attributable to that origin, for example, 'Champagne')
<b>Harmonised System (HS)</b>	the Harmonised Commodity Description and Coding System, a near-universal method for classifying international trade in goods
<b>ICT</b>	Information and Communication Technology
<b>ILO</b>	International Labour Organisation
<b>IP</b>	Intellectual Property
<b>ISDS</b>	Investor-State Dispute Settlement
<b>IUU</b>	Illegal, Unreported, and Unregulated Fishing
<b>MBIE</b>	Ministry of Business, Innovation and Employment
<b>MFAT</b>	Ministry of Foreign Affairs and Trade
<b>MPI</b>	Ministry for Primary Industries
<b>MFN</b>	Most-Favoured-Nation treatment, a requirement that preferential treatment extended to one nation (the 'most favoured') be extended to others

<b>National Treatment (NT)</b>	A requirement that the same level of treatment extended to domestic entities be extended to the entities of the other Party to the Agreement
<b>NGOs</b>	Non-Governmental Organisations
<b>NIA</b>	National Interest Analysis
<b>NTB</b>	Non-Tariff Barriers
<b>NTM</b>	Non-Tariff Measure
<b>NZ-EU FTA</b>	New Zealand European Union Free Trade Agreement
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OIE</b>	World Animal Health Organisation
<b>PARC</b>	Agreement on Relationship Cooperation
<b>PSITC</b>	Productive, Sustainable, and Inclusive Trade Channels Framework
<b>PSR</b>	Product Specific Rules of Origin
<b>SMEs</b>	Small and Medium-Sized Enterprises
<b>SPS</b>	Sanitary and Phytosanitary measures (applying to animal or plant health)
<b>TBT</b>	Technical Barriers to Trade (non-tariff barriers to trade in goods)
<b>TPK</b>	Te Puni Kōkiri (Ministry of Māori Development)
<b>UN</b>	United Nations
<b>WHS</b>	Working Holiday Scheme
<b>WTO</b>	World Trade Organisation



# 1. Executive Summary

The New Zealand-European Union Free Trade Agreement (NZ-EU FTA) establishes bilateral preferential trade arrangements between Aotearoa New Zealand and the twenty-seven members of the European Union (EU)<sup>1</sup>.

In June 2018, New Zealand and the European Union formally launched negotiations towards a free trade agreement (FTA). This was an important step in further developing New Zealand's trade relationship with the EU and followed a preparatory period, including a process to agree on the broad scope of the negotiations that ran from 2015-2017.

Both sides shared a commitment to conclude a high quality, comprehensive and inclusive agreement, capable of setting a precedent for sustainable and liberalising trade agreements. For New Zealand this included ensuring consistency with the New Zealand Government's Trade for All objectives<sup>2</sup>.

Negotiations on the NZ-EU FTA concluded on 30 June 2022. The Agreement was subsequently legally verified and signed on **9 July 2023** in Brussels.

## 1.1 The EU as a Trade and Economic Partner

New Zealand has longstanding historical, cultural, political and economic ties to Europe. These are the foundation for our modern relationship with the European Union and its twenty-seven Member States.

The EU is a close and like-minded partner for New Zealand. We work together across a range of international issues which impact our well-being and security including climate change, biodiversity and human rights. Conclusion of an NZ-EU FTA has established the basis for an even stronger trade and economic relationship, adding a vital additional piece of architecture to the close relationship between the EU and New Zealand.

A high quality and inclusive FTA is expected to open up new opportunities and deliver significant economic gains. In doing so, the NZ-EU FTA will also play an important role in New Zealand's post-pandemic trade recovery strategy, efforts build resilience, to promote trade diversification, respond to rising cost of living pressures and the effects of severe natural disasters, such as Cyclone Gabrielle.

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<sup>1</sup> Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

<sup>2</sup> <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf>

With a combined population of nearly 450 million, the EU's total GDP reached US\$17 trillion in 2022. Trade accounted for more than 21% of EU GDP in the period 2019-2021. It was the world's number one services trader, second largest goods exporter and third largest goods importer.

Overall, the EU is New Zealand's fourth-largest trade partner, with two-way goods and services trade worth NZ\$20.2 billion in 2022 (or around 10.3% of New Zealand's total trade in goods and services). Four individual EU Member States (Germany, France, Italy and the Netherlands) sit within New Zealand's top 20 trading partners.

In 2022, New Zealand's annual goods exports to the EU were worth NZ\$4.7 billion, with meat, fruit, dairy, fish and seafood, wine, medical appliances and machinery constituting the main products. Services are also an important export sector, with the EU being our sixth-largest market in 2022, while prior to the Covid-19 pandemic, it was our fourth-largest market for services exports.

New Zealand imported \$11.4 billion in goods and \$3.4 billion in services from the EU in 2022.

## **1.2 Broader Context for the FTA**

New Zealand and the EU share a deep and long-standing commitment to democracy, respect for human rights, and the rule of law. Multilaterally, both are also committed to the international rules-based system and its key institutions such as the United Nations (UN) and the World Trade Organization (WTO). Reinforcing this cooperative relationship is particularly important in the face of the challenges in the current geo-political environment.

This shared sense of international citizenship sees New Zealand and the EU working together on many global issues, including development in the Pacific, climate change, disaster relief, scientific collaboration, and international security threats like terrorism and cyber-crime.

Moreover, many New Zealanders have whakapapa (ancestry) connections to the EU, with migration from EU countries having contributed to the fabric of modern New Zealand. Our young people keep up a contemporary connection through study, travel and popular working holiday schemes with many EU countries.

The overarching framework for further development of the New Zealand-EU relationship is the Partnership Agreement on Relationship Cooperation (PARC), signed in 2016. This strengthens bilateral engagement, dialogue and cooperation on issues of mutual interest, including economic and trade matters, science and innovation, education and culture, migration, counter-terrorism and judicial cooperation.

Conclusion of an NZ-EU FTA has established the basis for an even stronger trade and economic relationship, building out another piece of infrastructure to support and grow the close relationship

between the EU and New Zealand. It will also now allow for greater strengthening of other parts of the bilateral relationship touched on above.

The FTA also significantly levels the playing field for New Zealand with the large number of other trade partners which already enjoy preferential access into the EU. As at December 2021, the EU had 42 FTAs in force with 74 countries. This includes the FTAs concluded over recent years with Canada, Japan, Singapore and Viet Nam; as well as longer-standing agreements, such as the EU-Chile FTA, which was recently modernised and is currently undergoing ratification.

### 1.3 Estimated economic impact

Independent economic modelling on the impact of the NZ-EU FTA<sup>3</sup> commissioned by the New Zealand government and undertaken by ImpactECON, estimates that the NZ-EU FTA stands to boost New Zealand's annual real Gross Domestic Product (GDP) from 0.17-0.24 percent (equal to between NZ\$1.0-NZ\$1.4 billion)<sup>4</sup>. These economic gains, based on relatively conservative assumptions, are expected to build over time, in line with improvements in market access under the FTA.

An earlier impact assessment undertaken by the EU (March 2020) estimated similar, if moderately larger, real GDP increases for New Zealand of NZ\$2.27 billion in the 'ambitious' and NZ\$1.22 billion in the 'conservative' scenario.<sup>5</sup> This EU assessment estimated the NZ-EU FTA was likely to have positive impacts on both the EU and New Zealand economies, under either of the two scenarios modelled ('ambitious' and 'conservative').

In the ImpactECON report, tariff elimination is estimated to increase New Zealand's GDP by about 0.12 percent (or around half of the overall GDP gain), once the Agreement is fully implemented. Expanded quota access and reduced in-quota tariffs are estimated to account for a further 17% of the overall gains.

Reducing goods-related Non-Tariff Barriers (NTBs) are estimated to contribute about 18% to the overall impact of the NZ-EU FTA, worth between \$120 - \$519 million. ImpactECON found similar, though smaller scale, impacts from reducing Non-Tariff Measures (NTMs) affecting services trade.

This net economic benefit is expected to be reflected in New Zealand society, including in generating higher real wages and reduced prices to improve the cost of living.

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<sup>3</sup> ImpactECON LLC: Impacts of the New Zealand-European Union Free Trade Agreement on the New Zealand Economy, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: April 2022  
<https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Final-Report-Economic-Modelling.pdf>

<sup>4</sup> By 2035.

<sup>5</sup> European Commission, 'Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand', March 2020: [https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments\\_en](https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments_en)

Real wages are expected to lift by 0.21 to 0.36 percent, relative to the baseline, once the NZ-EU FTA is fully implemented. This estimated increase in real wages is broad-based across different job categories, with agricultural and low skilled workers experiencing the largest gains. While the overall net economic benefit to New Zealand is estimated as favourable, it is expected that those regions sending a higher proportion of their exports to the EU would benefit more.

**Table 1: Summary of Impacts**

Economic benefit	Increase in NZ GDP in 2035 when the FTA is fully in effect, relative to baseline	
	Percent of real GDP	Constant 2019 NZ\$
Reductions in tariffs on goods trade	0.11 to 0.12	\$688 million to \$742 million
Expansion in quota access for goods trade	0.02 to 0.04	\$140 million to \$251 million
Reductions in Non-Tariff Measures (NTMs) on goods trade	0.02 to 0.04	\$120 million to \$253 million
Reductions in NTMs on services trade	0.02 to 0.03	\$95 million to \$187 million
<b>Total economic benefit</b>	<b>0.17 to 0.24</b>	<b>\$1,043 million to \$1,434 million</b>

**Source:** ImpactECON

**Note:** Ranges are based on scenarios one and two.

Note: Ranges are based on ImpactECON's Scenario 1 ("conservative") and Scenario 2 ("moderate"), as set out in the report's Executive Summary.

#### 1.4 Benefits for Goods Exporters

The EU is the destination for 6.5% of New Zealand's total goods exports (worth NZ\$4.7 billion in 2022). Many of New Zealand's current exports are subject to high tariffs or quantitative restrictions in the EU market. In the period 2017-2019, (i.e. pre Covid-19), the base period used during the negotiations, New Zealand goods exports to the EU incurred estimated tariff duties of NZ\$115 million per annum. Tariff savings will have increased somewhat since that time because there has been a 4.6% increase in EU goods imports from New Zealand over the subsequent three-year period (i.e. 2020-2022).

Under the NZ-EU FTA, New Zealand's conditions of access will immediately be significantly improved, with 91% of New Zealand's current goods trade to the EU able to enter duty-free from day one (comprising 67% benefitting from immediate tariff elimination and a further 24% from duty-free quota access). This will rise to 97% after seven years, with estimated tariff savings exceeding \$100 million from day one, growing to \$110 million after seven years.

Key products to benefit from tariff elimination at entry into force will be kiwifruit, onions, wine, mānuka honey, apples, and 99.5% of New Zealand's current fish and seafood trade with the EU. Other important New Zealand exports will have tariffs removed over 3, 5, or 7 years, including other honey (3 years), casein (5 years), and infant formula (7 years).

Additional duty-free quota access will be opened up for meat and dairy products, including further sheep meat access reaching 38,000 tonnes over 6 years, more beef quota access (reaching 10,000 tonnes over 7 years, at a reduced in-quota tariff), improved butter access (reaching 36,000 tonnes over 7 years, at a reduced in-quota tariff), and improved cheese access (reaching 31,000 tonnes over 7 years, with in-quota tariffs eliminated). New quota access for milk powders (reaching 15,000 tonnes after 7 years) was also secured. These new quotas supplement and expand existing quotas secured through commitments reached between New Zealand and the EU at the WTO, e.g. for sheep meat (125,769 tonnes) and beef (1,102 tonnes).

### **1.5 Benefits for Services Exporters**

The NZ-EU FTA contains high standard rules and commitments to support the growth and development of trade in services between New Zealand and the EU.

Services market access commitments in the Agreement build significantly on those made in the WTO General Agreement on Trade in Services (GATS). They follow the 'negative list' approach<sup>6</sup>, which provides for greater clarity and transparency of commitments.

Among the sectors in which the NZ-EU FTA delivers improved access for New Zealand services exporters are private education services (including language education and sports and recreation education), some professional services, including engineering and environmental services, and certain aviation services, including ground handling and flight training.

The Agreement also includes cross-cutting domestic regulation commitments to ensure each side's licensing and qualification requirements and procedures are transparent, fair, and not unduly burdensome. More specific regulatory commitments are incorporated for delivery, telecommunications, financial, and international maritime services, providing further transparency and certainty for our services suppliers seeking opportunities in the EU.

In the movement of business persons section, the NZ-EU FTA significantly eases the regulatory process to secure visas for New Zealand firms seeking to provide professional services on a contractual basis, including engineering, legal services, and environmental services.

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<sup>6</sup> Negative list schedules are the process by which a country makes its services and investment commitments in an FTA. Both parties agree to all the obligations set out in the Investment Liberalisation and Trade in Services Chapter, but are able to "carve out" sensitive sectors or industries from certain obligations by listing these sectors in the negative list schedules (Annex 10-A and 10-B). Therefore, all obligations apply to all sectors unless explicitly carved out – giving service providers and other stakeholders greater clarity and transparency over each Party's commitments.

The benefits of the increased transparency and certainty for service providers seeking to enter the EU market is significant. For example, the impact of the regulatory barriers faced by business and financial services exporters to the EU is estimated to be equivalent to a 28 percent tariff on that sector.<sup>7</sup> ImpactECON’s modelling of the benefits to New Zealand from reducing these regulatory barriers with the EU projects a reduction in cost to service exporters of between 10 to 20 percent.<sup>8</sup>

## 1.6 Benefits for Investors

The investment provisions in the NZ-EU FTA incorporate modern investment protection rules similar to those contained in other recent FTAs. These will provide more certainty and transparency for investors from both sides regarding the treatment they will receive. This will facilitate further growth and development in two-way investment between New Zealand and the EU.

New Zealand’s existing investment screening regime under the Overseas Investment Act will continue to apply. The NZ-EU FTA will enable EU investors to benefit from the same screening threshold, NZ\$200 million, applied to many of New Zealand’s other FTA partners, including Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) Parties, China, and Korea. The NZ-EU FTA does not contain investor-state dispute settlement (ISDS) provisions.

## 1.7 Innovations in the Agreement

The NZ-EU FTA also has a focus on delivering on the Government’s Trade for All objectives. This includes ensuring trade agreements benefits all New Zealanders, contributing to increased well-being and sustainability. With this in mind, the NZ-EU FTA contains a range of new and innovative commitments to support social, economic, and environmental objectives and the partnership with Māori under te Tiriti o Waitangi/the Treaty of Waitangi.

Examples of the advanced provisions the NZ-EU FTA contains include:

- ***Māori Trade and Cooperation.*** A ‘Māori Trade and Cooperation’ chapter agreed in the NZ-EU FTA will provide a valuable new platform to advance Māori economic aspirations in the EU. The chapter acknowledges te Tiriti/the Treaty as a foundational document of constitutional importance to New Zealand, and references Māori concepts including Te Ao Māori, Mātauranga Māori, Tikanga Māori, Kaupapa Māori, Tāonga, and Wāhine Māori.
- It provides a definition for ‘mānuka’ as the Māori word used exclusively for the *Leptospermum scoparium* tree grown in New Zealand and its derivative products and describes ‘mānuka’ as culturally important to Māori as a tāonga and traditional medicine. Elsewhere in the FTA we secured tariff-free access for New Zealand exports of Mānuka honey to the EU from day one of the FTA entering into force.

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<sup>7</sup> ImpactECON “Impacts of the New Zealand-European Union Free Trade Agreement on the New Zealand Economy”, p 14.

<sup>8</sup> ImpactECON “Impacts of the New Zealand-European Union Free Trade Agreement on the New Zealand Economy”, p 17.

- A range of cooperation areas are outlined in the chapter, including collaborating to enhance the ability for Māori enterprises to benefit from the Agreement's trade and investment opportunities and to strengthen links between EU and Māori enterprises.
- **Climate Action.** The FTA contains ambitious outcomes on climate action and the Paris Climate Agreement, including making these commitments legally binding and enforceable in the FTA;
- **Fisheries Subsidies.** The FTA includes disciplines requiring the Parties to refrain from granting or maintaining harmful fisheries subsidies. This is the first time the EU has made these kind of commitments in any bilateral FTA;
- **Fossil Fuel Subsidy Reform.** The FTA includes provisions on fossil fuel subsidy reform, including a commitment to strengthen cooperation on reform policies and measures, particularly at the WTO;
- **Environmental Goods and Services.** New Zealand and the EU have agreed to eliminate customs duties on an extensive list of environmentally beneficial goods and have highlighted the commitments each has made on environmental services.
- **Trade and Labour.** New Zealand and the EU have both committed to respect, promote and realise the International Labour Organisation (ILO) fundamental principles and rights at work<sup>9</sup>, as well as making continued and sustained efforts to ratify the fundamental ILO Conventions that they have yet to ratify. Both Parties also agreed to promote the strategic objectives of the ILO's 'Decent Work' agenda.
- **Trade and Gender Equality.** The FTA's trade and gender equality article includes binding commitments to implement relevant UN Conventions that address gender equality or women's rights. Both sides have also agreed to strengthen their cooperation on trade-related aspects of gender equality, including in international fora.
- **Domestic Advisory Group.** The FTA contains provisions aimed at promoting greater engagement and participation from a broad cross-section of society in the development and implementation of the Parties' trade policy. These involve designating a Domestic Advisory Group to advise the relevant Party on issues under the FTA, and a Civil Society Forum. Both bodies are to include Māori (in the case of New Zealand), Non-Governmental Organisations (NGOs), business and employer organisations, and trade unions.
- **Sustainable Food Systems.** This first-of-its-kind chapter creates a platform for cooperation on issues spanning the food system with the aim of working together across the economic, environmental, social, and cultural elements of the system to improve food security and nutrition for future generations.
- **Energy and Raw Materials.** This chapter facilitates trade and investment to develop and promote energy generation from renewable sources, as well as the sustainable production of raw materials. This chapter is a first of its kind for New Zealand and, with a renewed focus in the EU

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<sup>9</sup> Under the International Labour Organisation Declaration on Fundamental Principles and Rights at Work and its Follow up (1998).

on supply chain resilience and critical minerals, is expected to provide another useful platform for enhanced engagement between the EU and New Zealand.

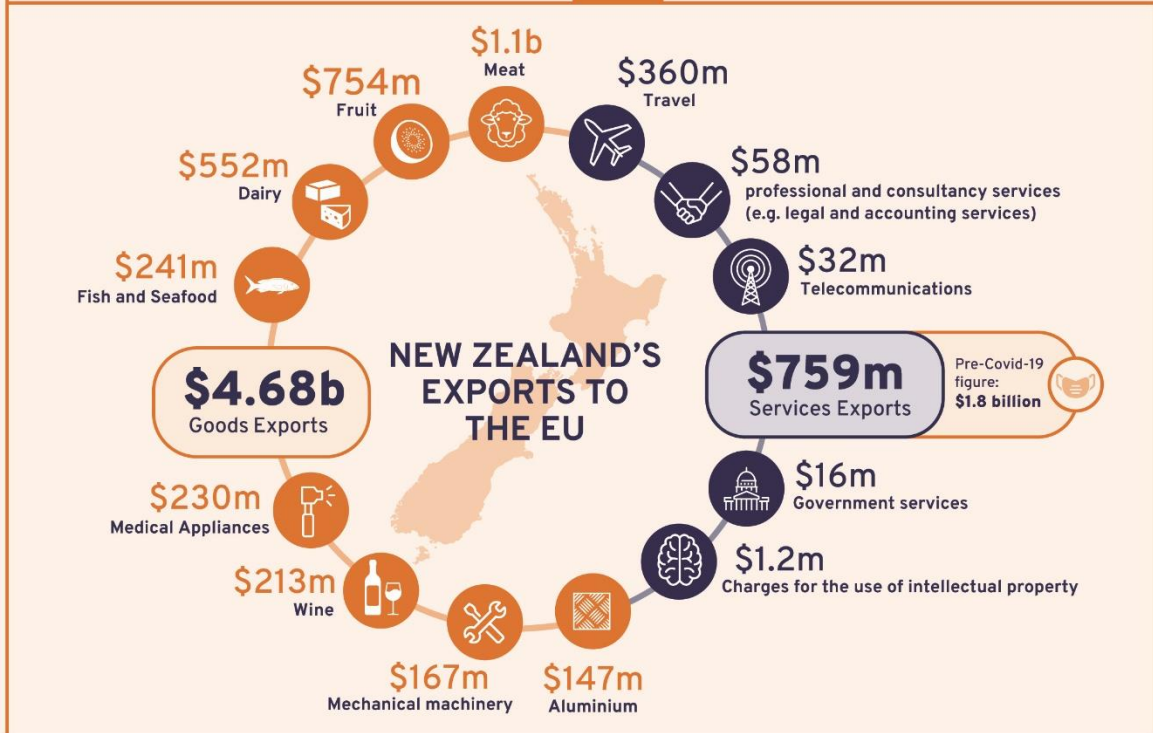
# New Zealand – European Union FREE TRADE AGREEMENT



<b>NEW ZEALAND POPULATION</b>		<b>EUROPEAN UNION POPULATION</b>	
<b>5.2</b> MILLION		<b>448</b> MILLION	
<b>GDP</b>		<b>GDP</b>	
<b>\$380</b> BILLION		<b>\$27.1</b> TRILLION	

<b>TWO-WAY TRADE (GOODS &amp; SERVICES) WORTH \$20.2 BILLION</b> 	THE EU IS NEW ZEALAND'S <b>4<sup>th</sup></b> <b>LARGEST TRADING PARTNER</b> 	THE EU IS NEW ZEALAND'S <b>2<sup>nd</sup></b> <b>LARGEST SOURCE OF DIRECT INVESTMENT</b> 
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<b>NZ EXPORTS TO THE EU: TOP 5 DESTINATIONS*</b> NETHERLANDS: \$1.15 BILLION GERMANY: \$1.09 BILLION FRANCE: \$0.57 BILLION ITALY: \$0.35 BILLION BELGIUM \$0.3 BILLION		<b>NZ IMPORTS FROM THE EU: TOP 5 SOURCES</b> GERMANY: \$3.61 BILLION DENMARK: \$1.86 BILLION ITALY: \$1.72 BILLION FRANCE: \$1.67 BILLION IRELAND: \$0.97 BILLION
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\*This does not include \$0.7 billion of exports to the European Union without a specified country destination.  
 EU27 includes: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.  
 All figures are in NZD  
 All figures are for 2022

Source: Stats NZ & World Bank

## 1.8 Exceptions and Protections Provided Under the Agreement

The NZ-EU FTA preserves the unique status of te Tiriti o Waitangi/the Treaty of Waitangi. The EU recognised the importance of this to New Zealand and agreed to the inclusion of a Treaty of Waitangi exception. This protects the ability of the New Zealand Government to adopt policies it considers necessary to fulfil its obligations to Māori. This provision is consistent with all of New Zealand's FTAs since 2001.

In addition, though the Treaty of Waitangi exception applies across the FTA as a whole, the Digital Trade chapter explicitly provides additional safeguards such that the disciplines contained in the chapter will not apply to measures taken by New Zealand to protect or promote Māori rights, interests, duties, or responsibilities. This outcome was hard-fought, and is a new development in New Zealand negotiating practice. It reflects and operationalises the Waitangi Tribunal's "Wai 2522" report on e-commerce.

Also, as with previous free trade agreements, the NZ-EU FTA includes general exceptions and specific reservations to preserve the Government's right to regulate and ensure public provision in areas such as health, education, labour, environment, water, culture and heritage, and other areas that are important to New Zealanders.

Incorporated into the Public Procurement chapter (which is based on WTO Government Procurement Agreement rules) is a clear affirmation that procuring authorities may take into account environmental, social, and labour considerations when making public procurements - provided these are non-discriminatory and indicated in the notice of intended procurement.

## 1.9 Legislative Amendments

The majority of the obligations in the NZ-EU FTA are already met through New Zealand's existing domestic legal and policy regime. There are, however, a limited number of legislative and regulatory amendments that will be required in order to implement the NZ-EU FTA. These are described in more detail in Section 6 of the NIA, and include amendments to the:

- Tariff Act 1988 to amend the 'Tariff' (as defined in that Act) to enable the application of the preferential tariff rates agreed in the NZ-EU FTA;
- Tariff Act 1988 to provide for the transitional NZ-EU FTA safeguard mechanism under the Trade Remedies chapter;
- Dairy Industry Restructuring Act 2001 to administer the transitional quotas for dairy products (butter, cheese, milk powder, high protein whey);
- Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules of origin (PSRs) for goods imported from the EU;

- Consumer Information Standards (Country of Origin (Clothing and Footwear) Labelling Regulations 1992 to accept “Made in the EU” labelling alongside current practice of accepting labelling for individual EU Member States;
- Copyright Act 1994 to extend the term of copyright;
- Copyright Act 1994 to prohibit the act of unauthorised circumvention of technology protection measures applied to copyright works (TPMs), i.e. digital locks;
- Geographical Indications (Wine and Spirits) Registration Act 2006 to allow for the protection of the agreed list of EU Geographical Indications<sup>10</sup> in New Zealand to the standard of protection as provided in the Agreement; and
- Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 to extend the higher (NZ\$200 million) screening threshold to EU investors.

### 1.10 Consultation

Throughout the negotiations on the NZ-EU FTA, the Ministry of Foreign Affairs and Trade (MFAT) together with other government agencies, has been active in engaging with Treaty partners, as well as with a wide spectrum of New Zealand stakeholders, including unions, NGOs, industry associations and civil society. (See Section 10 for more detail)

Public consultations were undertaken in order to provide the opportunity for New Zealanders to seek more information about the negotiations and the Agreement arrived at, as well as to enable their views to be taken into account throughout the negotiation process.

The NZ-EU FTA has also been subject to an extra level of scrutiny and assessment after the FTA was concluded, in line with the recommendations of the Trade for All Ministerial Advisory Board<sup>11</sup>. This has included separate and independent post-conclusion reports on outcomes for Māori, prepared by ACE Consulting and Te Taumata, and a Te Tiriti focused analysis prepared by Ngā Toki Whakarururanga. These are summarised in Section 10.

The Ministry of Foreign Affairs and Trade’s analysis of economic, cultural, social and environmental impacts of the NZ-EU FTA, as set out in Section 7, has also been independently peer reviewed by Sense Partners. This concluded that the analysis provided “a good overview of most relevant costs and benefits” and “demonstrates a commitment to the Trade for All principles”. It provided a range of suggestions to strengthen the analysis that have been incorporated into this NIA, and identified a number of analytical extensions for officials to explore for future NIAs.

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<sup>10</sup> Geographical indications are usually names that identify that a product comes from a particular area. They indicate that a product has a given quality, reputation or other characteristic that is essentially attributable to that area. For example, “Central Otago” is registered as a wine GI in New Zealand. This GI identifies wine that is made from grapes grown in Central Otago and, as a result, has particular characteristics that distinguish it from wines made from grapes from other regions.

<sup>11</sup> <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf>

In accordance with standard practice for FTAs, the NZ-EU FTA will be scrutinised by a parliamentary select committee and Parliament will consider the necessary legislative changes required to give effect to the Agreement's outcomes.

## 2. Nature and Timing of Proposed Treaty Action

The NZ-EU FTA was signed **on 9 July 2023** in Brussels by Minister for Trade and Export Growth, Damien O'Connor, for New Zealand, and Executive Vice President and Trade Commissioner, Valdis Dombrovskis, for the European Commission.

The NZ-EU FTA is a treaty-level agreement negotiated between New Zealand and the European Commission (on behalf of the 27 Member States of the European Union). Negotiations on the NZ-EU FTA were concluded on 30 June 2022, and the text of the agreement was verified by the New Zealand and EU legal teams by December 2022. The texts of the agreement in English and the 23 other EU languages are equally authentic.

Entry into force of the NZ-EU FTA is subject to the completion of the necessary domestic procedures by each of the Parties. The FTA will enter into force on the first day of the second month following the date on which the Parties exchange written notifications certifying they have completed their respective legal requirements for the entry into force of the Agreement, or at another date agreed between the Parties.

Both sides are working towards entry into force in the first half of 2024, subject to respective processes for both the EU and New Zealand being satisfactorily completed.

The NZ-EU FTA would not apply to Tokelau.

## 3. Reasons for New Zealand Becoming a Party to the Treaty

The absence of a Free Trade Agreement with the EU (New Zealand's fourth-largest trading partner) has been a major gap in New Zealand's otherwise close and substantial relationship with the European Union and its Member States. The NZ-EU FTA delivers on important commercial interests; as well as contributing to broader relationship and trade policy objectives.

Trade remains a vital aspect of New Zealand's economic and social wellbeing and acts as an important driver of productivity, employment, innovation, and incomes. New Zealand's core objective in trade policy is to improve wellbeing and living standards for all New Zealanders, while safeguarding the Government's right to regulate in the interests of New Zealand and our people. The concluded FTA with the EU is fully consistent with these objectives, the Government's efforts to promote trade diversification, our Economic Strategy for a high-wage, low-emissions economy that provides security in good times and bad, our broader Covid-19 Trade Recovery Strategy and efforts to recover from the effects of Cyclone Gabrielle, as well as helping to address rising costs of living for New Zealanders.

For its part, the EU remains a major player in global and bilateral trade and investment. It has a combined population of nearly 450 million, and is the world's largest services trader (both imports and

exports), second-largest goods exporter and third-largest goods importer. Trade accounted for more than 21% of EU GDP in the period 2019-2021 (or US\$7,677 per capita).

In New Zealand's case, the EU is our fourth-largest trade partner, with two-way goods and services trade worth NZ\$20.2 billion in 2022 – or around 10% of New Zealand's total trade in goods and services. In 2022, New Zealand's goods exports to the EU were worth NZ\$4.7 billion (or around 7% of overall New Zealand goods exports). The EU was also New Zealand's fourth-largest market for services exports prior to the Covid-19 pandemic, with travel services accounting for the bulk of exports. The impact of Covid-19 saw a substantial dip in the value of services exports to the EU (to NZ\$760 million in 2022, from NZ\$1.8 billion in 2019).

Investment is a further important dimension to the economic relationship. New Zealand's stock of outward direct investment (ODI) to the EU was NZ\$7.1 billion in 2021. The NZ-EU FTA will help to further reduce barriers to investment and support New Zealand investors to better navigate the EU regulatory system. The stock of foreign direct investment (FDI) from the EU was NZ\$15.5 billion in 2021, making it New Zealand's second largest source of FDI.

The New Zealand and EU economies are highly complementary, with New Zealand's main goods imports from the EU made up of vehicles and parts, machinery, pharmaceuticals and equipment; and New Zealand's main exports to the EU made up of food and beverages. New Zealand and the EU are complementary seasonal producers too, enabling consumers to benefit from year-round access to a wide range of each other's products. Against this background, EU exports of food products to New Zealand have grown in recent years to NZ\$1.2 billion in 2022.

The EU's Sustainability Impact Assessment conducted in March 2020 indicated that the FTA would have a limited, but positive, impact on New Zealand consumers, a finding supported by independent modelling commissioned by the New Zealand government. Both studies found that New Zealand consumers would enjoy higher levels of consumption due to wage growth and a greater range of available goods and services (with a reduction of prices for imported goods)<sup>12</sup>. This is important as consumers grapple with the rising cost of living and with the after-effects of the recovery from Covid-19 and the impacts of severe natural disasters, such as Cyclone Gabrielle.

As a result of the improved market conditions the NZ-EU FTA would deliver, independent economic modelling suggests that by 2035 New Zealand's goods exports to the EU could increase by up to \$1.8 billion per annum, generating an extra \$1.4 billion annually in New Zealand GDP. According to the ImpactECON assessment, for New Zealand service exporters the costs of trading into the EU are projected to reduce by between 10% and 20%. The NZ-EU FTA also reduces costs and incorporates trade-facilitating rules in support of further growth in the New Zealand-EU trade, economic and investment relationship.

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<sup>12</sup> European Commission, 'Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand', March 2020: [https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments\\_en](https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments_en)

Modern, forward-looking FTAs, such as the NZ-EU FTA, also play a key role in creating the environment in which trade and investment linkages can develop, grow and evolve. This helps contribute towards a more productive, sustainable and inclusive economy. The EU accounts for more than a quarter of world Research and Development spending. Its size and level of development provides opportunities for New Zealand business across all stages of the value-chain from primary products to capital equipment; as well as intermediate and finished manufacturing goods, services, innovation, and investment.

Moreover, New Zealand and the EU share the objective of an FTA that serves to promote sustainable and inclusive trade. This is delivered specifically through the chapters on Trade and Sustainable Development and on Māori Trade and Economic Cooperation.

As the first FTA concluded by the current European Commission (in office since the end of 2019), the NZ-EU FTA has been described by EU leaders as representing a 'gold standard' for future EU FTAs, especially in the area of trade and sustainable development.

### **3.1 Advancement of the New Zealand-EU Relationship**

New Zealand and the EU have long-standing, substantive and constructive relationship extending across the full spectrum of our geopolitical, economic, environmental, social, and multilateral interests. The relationship is based on historical connections and the many values New Zealand and the EU share, including respect for human rights and the importance of an international rules-based system.

As a result, the EU is one of New Zealand's closest and most important partners, with ties encompassing strong political, social, environmental and climate change, economic and trade, security, educational, cultural, research and innovation, sporting, and people-to-people links.

In 2016, New Zealand and the EU concluded a Partnership Agreement on Relationship Cooperation (PARC). This provides a comprehensive framework for more effective and coordinated engagement between the European Union, its Member States and New Zealand across various pillars of our bilateral relationship.

The PARC both reflects and builds on the depth of New Zealand-EU relations. Its objective is to strengthen political dialogue and cooperation, including in areas such as economic and trade matters, science and innovation, education and culture, migration, counter-terrorism, the fight against organised crime and cyber-crime, and judicial cooperation. The Joint Committee of the PARC provides an annual opportunity to take stock of the relationship at a strategic level and to set its future direction.

The EU is New Zealand's most important regional science and innovation partner, accounting for nearly 40% of all our international research collaboration. Environment and climate change are two particular areas where New Zealand and the EU cooperate and share a number of common policy objectives.

Both the EU and New Zealand have well-developed systems to price carbon and have legislated to establish a target of reaching net zero emissions by 2050.

In June 2022, both sides jointly committed to develop this cooperation further, with a particular focus on the environment and climate change, including through exploring closer cooperation on climate finance; support for the Pacific; and Just Energy Transition Partnerships in Asia. The two sides have also undertaken to implement approaches to avert, minimise and address loss and damage in the Pacific; tackle the biodiversity crisis; and take forward joint work on climate change initiatives and on emissions trading schemes and environmental integrity of carbon markets.

The New Zealand-EU relationship is supported by a number of further, more specific, government-to-government agreements, including in the trade and economic area. These include:

- a bilateral Sanitary Agreement (covering animals and animal products);
- an Agreement on Mutual Recognition of Conformity Assessment for a range of manufactured sectors;
- a Science and Technology Cooperation Agreement that governs the overall science and innovation relationship between New Zealand and the EU and provides a formal platform for research and innovation partnerships;
- a Customs Mutual Assistance in Administrative Matters Agreement;
- recognition by the EU of the ‘adequacy’ of New Zealand’s personal data protection regime in meeting EU requirements to enable free flow of data between the EU and New Zealand;
- an Air Services Agreement; and
- a Framework Agreement on Crisis Management Cooperation (enabling New Zealand participation in EU Common Security and Defence Policy missions).

In the absence of an FTA, New Zealand’s access into the EU has been undermined by the competitive advantage other trade partners have enjoyed. For example, New Zealand exporters currently face tariffs on kiwifruit (8.8%), onions (9.6%), tomatoes (12.8%), honey (17.3%), whereas competitors from other countries with FTAs in place with the EU, enter the market duty free.

Over the last 20 years this has meant that, while imports of goods from around the globe by the EU’s 27 Member States have grown by over 170%, its imports from New Zealand have grown by just 20% – meaning New Zealand’s market share in the EU has more than halved.<sup>13</sup>

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<sup>13</sup> These import statistics are for the current membership of the EU (i.e. 27 members excluding the United Kingdom). EU goods imports from New Zealand were NZ\$3.82 billion in 2003, and \$4.6 billion in 2022, up just 21% in 20 years. Over the same period, EU imports globally grew from at a time when EU imports globally grew from NZ\$1.82 trillion to NZ4.98 trillion.

## 3.2 Enhanced Trade and Economic linkages

### Improved goods access

The EU is one of New Zealand's largest export destinations by value for sheep meat, kiwifruit, apples, wine, fish, and venison.

Under the NZ-EU FTA, 91% of New Zealand's current goods trade to the EU will enter duty free from day one (with 67% benefitting from tariff elimination and a further 24% entering duty free under quotas). This will rise to 97% after seven years, resulting in an estimated tariff savings of \$100 million from day one, growing to \$110 million after seven years.

Specific products will benefit from significantly improved access, as follows:

- tariffs on kiwifruit, apples, mānuka honey, onions and wine will be eliminated on entry into force;
- 99.5% of New Zealand's current fish and seafood trade will enter the EU tariff free at entry into force (\$19.6 million saved). This will increase to 99.9% within 5 years, and 100% within 7 years;
- tariffs will also be eliminated on manufactured goods, textiles, apparel and leather products from entry into force;
- other key New Zealand products will have tariffs removed over 3, 5 or 7 years, including other honey (3 years); casein (5 years) and infant formula (7 years).
- Valuable additional quota access will be opened up for key products of export interest to New Zealand, including for meat products, as follows:
  - additional beef quota access of 10,000 tonnes over a 7 year period (3,333 tonnes on entry into force, rising to 10,000 tonnes), with an over 60% reduction to in-quota tariffs for both this new quota access and existing WTO quota access;
  - additional duty-free sheep meat access of 38,000 tonnes over a 7 year period;
  - In the case of sheep meat, New Zealand's total quota volumes equate to close to 100% of the EU's total current sheep meat imports, demonstrating that New Zealand will have effective free access into the EU market.
- For dairy products, the EU has previously been largely a closed market to New Zealand dairy exporters. Prior to the conclusion of the NZ-EU FTA, New Zealand had only limited access to the EU market for dairy products through WTO quotas and these were often accompanied by high in-quota tariffs and restrictive quota conditions. Under the NZ-EU FTA, improved dairy access has been negotiated, as follows:
  - for butter, New Zealand will be able to export 36,000 tonnes to the EU per annum at a significantly reduced in-quota tariff, phased in over 7 years;
  - for cheese, New Zealand will be able to export 31,000 tonnes to the EU duty free per annum under quota, phased in over 7 years;

- for milk powders, new quota access of 15,000 tonnes, phased in over 7 years, at a reduced in-quota tariff.

In the context of EU total dairy imports, New Zealand's butter access will constitute 60% of the EU's total imports, and make us the second-largest supplier to the EU, behind the UK, if filled. New Zealand's cheese access would represent 15% of the EU's total imports and make us the third-largest supplier, after the UK and Switzerland, if filled. In the case of milk powders, New Zealand's new access would make us the second largest milk powder supplier, if filled.<sup>14</sup>

EU exports to New Zealand will benefit from 100% tariff elimination on entry into force, putting the EU on par with New Zealand's other FTA partners, including Australia, Association of Southeast Asian Nations (ASEAN), China, Korea, the UK and CPTPP Parties<sup>15</sup> (for which the final tranche of tariffs will have phased out by 1 January 2024).

### **Better services and investment linkages**

Included in the NZ-EU FTA are high standards, rules and commitments to support the growth and development of trade in services between New Zealand and the EU. The FTA includes improved commitments to help facilitate and provide certainty for services exporters. Prior to the COVID-19 pandemic, New Zealand services exports to the EU were worth \$1.8 billion (in 2019), though exports dropped to \$760 million in 2022 due to a sharp decline in travel services exports as a result of COVID-19. Europe was a particularly important tourism market for New Zealand pre-pandemic, as European tourists had the highest average visitor spend and length of stay.<sup>16</sup>

Among the sectors in which the NZ-EU FTA would deliver improved access for New Zealand services exporters are private education services and certain professional services, including engineering services. The EU and New Zealand have also agreed to include commitments on a broader range of aviation services, including ground handling services and services such as flight training, aerial fire-fighting, aerial spraying, and other airborne agricultural, industrial and inspection services. These are also sectors where the impact of regulatory barriers are particularly high – equivalent to a 16 percent cost for aviation services and a 28 percent cost for professional and engineering services. Economic modelling of the NZ-EU FTA's impact suggest these costs could be reduced by between 10 - 20 percent.

In the NZ-EU FTA, New Zealand was able to secure new commitments for access in several key sub-sectors of interest to New Zealand services suppliers, including:

- education services ('other education services'). This subsector includes language education for primary and secondary school-aged students through to adult education, and recreational

<sup>14</sup> The in-quota tariff for milk powders is set at 20% of the EU's standard tariff: €238 per tonne for skim milk powder, and €261 per tonne for whole milk powder. This may impact on the quota fill rate.

<sup>15</sup> CPTPP is a free trade agreement with 11 current Parties: New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam.

<sup>16</sup> MBIE, 'New Zealand Tourism Forecasts: 2018-2024', May 2018.

education, including sports (for example rugby training). This commitment covers 20 EU Member States;

- engineering and environmental services. Commitments in the FTA will enable New Zealand service providers in these sectors/sub-sectors to have similar access to the EU market as many competitors, including those from the UK and Canada;
- cross-cutting domestic regulation commitments to ensure each side's licensing and qualification requirements and procedures are transparent, fair and not unduly burdensome and which encourage agencies to simplify their approval processes for service providers;
- specific regulatory commitments on delivery services, telecommunications, financial services, and international maritime services;
- movement of business persons – 'Contractual Service Suppliers' and 'Independent Professionals'. The NZ-EU FTA will significantly ease the regulatory process to secure visas for New Zealand firms seeking to provide professional services on a contractual basis in the EU. Visas for up to one year will be available for a range of professional services, including engineering and legal services, as well as environmental services;
- 'most favoured nation' (MFN) treatment. In addition, if the EU or New Zealand agree on more favourable treatment with a third country in a future trade agreement (e.g. in the case of the EU, with Australia), this treatment would be extended to each other under the 'most favoured nation' clause in the NZ-EU FTA, and provide to New Zealand services exporters those new benefits.

## Investment

The NZ-EU FTA contains modern investment rules to create a transparent and reliable environment designed to facilitate and protect the growth of investment flows between New Zealand and the EU. In particular, the disciplines include:

- non-discrimination: to ensure that New Zealand investors and investments cannot be discriminated against by the EU compared to its own domestic EU investors in like circumstances, or against investors from any other country. Without these obligations, New Zealand investors could be treated less favourably than other investors (e.g. they could face more onerous investment authorisation requirements) at any stage of the investment lifecycle;
- limits on performance requirements: the investment provisions limit the two sides from imposing or enforcing certain performance requirements as a condition of investing, such as a requirement to transfer technology to the other partner or to use a certain percentage of the other partner's goods in order to be able to invest. These types of requirements can be particularly onerous on small and medium sized enterprises.

Under the NZ-EU FTA, the investment screening threshold applied to the EU would increase to NZ\$200 million, bringing this into line with the level applied to other New Zealand FTA partners, including under CPTPP.

Investor-State Dispute Settlement (ISDS) is not included in the NZ-EU FTA.

### **Other Benefits of the Agreement**

As well as the market access opportunities and regulatory protections outlined above, the NZ-EU FTA also works to modernise and improve the rules governing the trading environment between the two sides, to facilitate the growth of two-way trade and economic connections and enhanced collaboration. Particular examples include the chapters on:

- Customs and Trade Facilitation. With the aim of promoting trade facilitation, including through simplification and modernisation of customs procedures and practices, the FTA chapter builds on the cooperation already established between New Zealand and EU customs authorities, including under the NZ-EU Agreement on Customs Cooperation and Mutual Administrative Assistance. The chapter adopts a risk management approach and promotes advance electronic submission and processing of documentation, prompt release of goods, including expedited release of urgent goods and perishable products.
- Technical Barriers to Trade (TBT). The TBT chapter builds on the WTO TBT Agreement to address NTBs. It contains commitments on: carrying out impact assessments of planned technical regulations; reviewing technical regulations periodically to consider greater convergence with relevant international standards; labelling and marking that provide reasonable flexibility to facilitate trade; and working together to support and promote alternatives to animal testing. The chapter includes annexes covering motor vehicles and wine and spirits, aimed at reducing barriers in these sectors.
- Small and Medium-Sized Enterprises. Consistent with the objective that New Zealand and the EU share of enhancing the ability of small and medium-sized enterprises to benefit from the FTA, there is a focus on providing ready access to information of particular relevance to SMEs and on keeping this information updated regularly. According to the EU's impact assessment<sup>17</sup>, results of the economic analysis suggest that the NZ-EU FTA is likely to have positive impacts on SMEs.
- Sustainable Food Systems. In a first for both sides, New Zealand and the EU have included a chapter focused on Sustainable Food Systems. It provides for cooperation on strengthening policies and programmes that contribute to the development of sustainable, inclusive, healthy and resilient food systems. It envisages areas for possible exploration including, inter alia, regenerative agriculture; indigenous knowledge, participation, leadership in food systems, and environmental and climate impacts of food production.
- Energy and Raw Materials. This chapter facilitates trade and investment to develop and promote energy generation from renewable sources, as well as the sustainable production of raw materials. It includes a prohibition on creating monopolies for import or export of energy and raw materials, and includes regulatory disciplines to promote competition. There are requirements to

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<sup>17</sup> European Commission, 'Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand', 2020.

conduct environmental impact assessments for activities producing energy goods or raw materials which may have a significant effect on the environment; as well as provisions addressing health, safety and environmental protection for offshore exploration and production of oil and gas. The chapter provides for cooperation to promote research, development and innovation in energy efficiency, renewable energy and raw materials.

### 3.3 Progressing New Zealand's Trade Recovery Strategy, including through Expanded Opportunities for Export Growth and Diversification

New Zealand's experience during the COVID-19 pandemic has underlined that trade links (both exports and imports) and maintaining and expanding a more open, rules-based, trade and investment environment are central to our ability to address supply chain impacts. It has also highlighted the issues New Zealand faces as a small country at the end of many global supply chains.

In 2022, with the re-opening of New Zealand's borders, the government developed and refreshed the Trade Recovery Strategy 2.0<sup>18</sup>. This aims to help New Zealand businesses to secure new opportunities for trade and investment and reconnect with the world. It recognises that trade is a key driver in New Zealand's overall recovery from the economic impacts of COVID-19, as well as efforts to raise New Zealand living standards.

In the context of the growing risks, uncertainties and pressure in the global economic, trade and geo-strategic environment, the Trade Recovery Strategy 2.0, recognises that building agility and resilience into New Zealand's trade is now more important than ever. The Strategy focuses on four key areas (the STAR framework):

- **Sustainable and inclusive trade:** the strategy fully supports the Trade for All agenda to deliver for all New Zealanders, and contribute to addressing global challenges.
- **Trade and export lift:** the strategy works to lift the capability of New Zealand exporters, and directly support New Zealand businesses in their markets, including through trade missions and economic diplomacy.
- **Architecture:** the strategy supports further investment in building the architecture of FTAs, and other trade agreements, including at the WTO, to enable New Zealand business to trade under more predictable, improved, trade rules.
- **Resilience:** addressing vulnerabilities exposed or exacerbated by the pandemic, and strengthening New Zealand's trade against future shocks. This includes promoting diversification of trade and mitigating supply chain pressures.

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<sup>18</sup> <https://www.mfat.govt.nz/en/trade/trade-recovery-strategy/trade-recovery-strategy-2-0/#:~:text=Trade%20Recovery%20Strategy%202.0%20The%20Trade%20Recovery%20Strategy,overall%20recovery%20from%20the%20economic%20impacts%20of%20COVID-19.>

The NZ-EU FTA contributes to all four of these inter-related areas. It will expand our FTA architecture to include improved access to the large and high value EU market and grow the proportion of New Zealand exports covered by this FTA network to 74%.

New Zealand's goods trade is heavily dominated by primary sector exports and these have traditionally been subject to the highest levels of protection internationally, particularly in the EU. Agreement in the NZ-EU FTA to eliminate or reduce many of the customs duties and quota barriers that have restricted trade in such products will make an important contribution to increasing diversity and resilience in New Zealand's trade. The FTA also includes ground-breaking sustainable trade outcomes (as below). In implementation of the FTA, the New Zealand Government will be looking to work with exporters to help take advantage of the many benefits, including preferences, secured.

### **3.4 Advancing New Zealand's Trade for All Objectives**

The NZ-EU FTA reflects the shared view that New Zealand and the EU brought to the negotiations that trade should build prosperity for all, support efforts on climate change, and strongly promote sustainable development, including gender equality.

#### **Trade and Sustainable Development**

The Trade and Sustainable Development (TSD) chapter in the NZ-EU FTA represents a landmark for both sides. It promotes strong labour, gender equality, environment and climate change outcomes. The chapter provides a platform for more engagement and cooperation to address trade-related sustainable development issues between New Zealand and the EU – two of the world's most progressive champions in this area.

At the same time, these new, high ambition, benchmarks serve to demonstrate to the wider global community, the commitment New Zealand and the EU have to addressing global issues of major concern (such as climate change). They also highlight the ongoing efforts both sides are making to strengthen the international rules-based system to tackle these issues.

Provisions in the chapter acknowledge the importance of sustainable management of ecosystems, and reaffirm the need to end harmful practices such as subsidies that contribute to overfishing, overcapacity, and Illegal, Unreported, and Unregulated Fishing (IUU).

In addition to the overarching obligations to promote high levels of environmental protection and effective enforcement of environmental laws, there are commitments by both sides to take measures to combat illegal wildlife trade, and to promote trade in products made from sustainable biological resources. Similarly, both sides have undertaken to combat illegal logging and related trade, as well as to promote the conservation and sustainable management of forests.

In line with New Zealand's Trade for All agenda and te Tiriti O Waitangi, the role of Indigenous Peoples and local communities embodying traditional lifestyles, in contributing to the conservation and sustainable use of biological diversity is explicitly acknowledged in the chapter.

### **Labour**

In the labour area, there are high-quality provisions designed to promote mutually supportive trade and labour regulations, policies and practices, including through reinforcing and implementing internationally recognised labour rights. The chapter also encourages high levels of labour protection, promotes decent work, and provides for cooperation and dialogue between the Parties.

The chapter commits to respect, promote and realise the Fundamental International Labour Organization (ILO) principles and rights at work<sup>19</sup>, and welcomes the addition of safety and health to these principles. The chapter also commits the Parties to make continued and sustained progress towards ratification of any fundamental ILO Conventions they have yet to ratify. For New Zealand, this refers to ILO Conventions 87 on Freedom of Association and 138 on minimum age of employment.

### **Climate Change**

These are one of the most progressive features of the TSD chapter and include ground-breaking commitments on climate change and the Paris Agreement, with the possibility of trade sanctions for non-compliance if either Party were to, by act or omission, materially defeat the object and purpose of the Paris Agreement (alongside a similar possible sanction for breaches of fundamental labour rights).

The chapter also includes an article on fossil fuel subsidy reform which represents the first time the EU has incorporated such an article in an FTA. It provides for strengthened cooperation on trade-related aspects of fossil fuel subsidy measures both bilaterally and in international fora.

### **Gender Equality**

The Trade and Gender Equality article reflects the important link between inclusive trade and advancing women's economic empowerment, in line with UN Sustainable Development Goal 5 and the objectives of the Joint Declaration on Trade and Women's Economic Empowerment of the WTO Ministerial Conference (the Buenos Aires Declaration), December 2017.

In this article, New Zealand and the EU are held to a high level of accountability, through the ground-breaking commitments related to the implementation of UN Conventions that address gender equality or women's rights to which each is a party, such as the Convention on the Elimination of all Forms of Discrimination Against Women.

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<sup>19</sup> Rights to freedom of association, collective bargaining, elimination of forced labour, child labour and discrimination at work.

For the first time in any New Zealand or EU FTA, the central dispute mechanisms for the FTA (short of trade sanctions) will apply to the trade and gender equality provisions.

### **Māori Trade and Cooperation**

New Zealand and the EU have also agreed a ‘Māori Trade and Cooperation’ chapter in the FTA that establishes a valuable new platform to advance Māori economic aspirations in the EU. The chapter acknowledges te Tiriti/The Treaty as a foundational document of constitutional importance to Aotearoa New Zealand, and references Māori concepts including Te Ao Māori, Mātauranga Māori, Tikanga Māori, Kaupapa Māori, Tāonga and Wāhine Māori.

In recognition of the specific interest Māori have in the term ‘mānuka’, the chapter provides an agreed definition for ‘mānuka’ as the Māori word used exclusively for the *Leptospermum scoparium* tree grown in New Zealand and derivative products such as honey and oil. It describes ‘mānuka’ as culturally important to Māori including as a tāonga and traditional medicine. Separately, the FTA will deliver full tariff elimination for Mānuka honey from day one of the agreement entering into force.

The cooperation areas in this ground-breaking chapter include collaborating to enhance the ability for Māori enterprises to benefit from the Agreement’s trade and investment opportunities, to strengthen links between EU and Māori enterprises (with a particular emphasis on SMEs), to support science, research and innovation links, and to cooperate on geographical indications.

### **Evaluation of Trade for All Impacts**

In addition to outcomes within the NZ-EU FTA itself, Trade for All principles have underpinned the analysis of the FTA’s economic, social, cultural, and environmental costs in this NIA. As noted by the Trade for All Advisory Board, advancing Trade for All objectives requires a detailed and broad understanding across a range of areas when evaluating the impacts of trade agreements, such as the NZ-EU FTA.

The analysis in Section 7 is informed by the ‘Productive, Sustainable, and Inclusive Trade Channels’ (PSITC) Framework, which is an analytical tool developed by MFAT to identify and understand the complex channels through which trade affects a variety of outcomes. It is a critical tool for evaluating the impact of trade agreements from a Trade for All perspective. Section 7 includes an assessment of the distributional and regional impacts, the impacts on Māori and women, and the effects on the environment. An independent peer review of this analysis by Sense Partners concluded that it “demonstrates a commitment to the Trade for All principles”. Similarly, engagement with the New Zealand Council of Trade Unions acknowledged the inclusion of distributional aspects in the analysis, including overall impacts for wages, sectors, and different population groups.

## 4 Advantages and Disadvantages of New Zealand Becoming a Party to the Treaty

### 4.1 Chapter 2: National Treatment and Market Access for Goods

The chapter covering National Treatment and Market Access for Goods sets out the rules New Zealand and the EU will apply for qualifying goods imports from the other country, including the elimination or reduction of tariffs.

Annexed to the Chapter is a 'schedule' of tariff commitments for each Party. This is standard practice in FTAs. The EU's schedule (Annex 2-A-1) specifies the preferential duty treatment that will apply for qualifying imports from New Zealand for each of the EU's tariff lines, including immediate or phased tariff elimination or quotas providing a specified volume of access at a preferential tariff. New Zealand's schedule (Annex 2-A-2) sets out a commitment to eliminate all customs duties on qualifying imports from the EU immediately upon entry-into-force of the Agreement.

#### Advantages

The advantages of this chapter and the associated tariff and quota outcomes for New Zealand include:

#### New Zealand Goods Exports to the EU

- Ratification of the NZ-EU FTA will deliver immediate economic and commercial benefits for New Zealand goods exporters. Immediately on entry into force of the Agreement, 91% of current New Zealand goods exports will enter the EU duty free, through a combination of tariff elimination and duty-free quotas, rising to 97% over seven years.<sup>20</sup>
- Overall, the FTA will provide estimated tariff savings of \$100 million on New Zealand goods trade to the EU immediately on entry into force, rising to \$110 million over seven years.<sup>21</sup>
- In addition, the FTA will also deliver improved quota access for dairy and red meat into the EU market. While access will not be fully liberalised for these products, quotas will create new market access opportunities into the EU at a preferential tariff.
- Overall, independent economic modelling suggests that as a result of the liberalisation in the NZ-EU FTA, by 2035 New Zealand's goods exports to the EU could increase by up to \$1.8 billion per annum, generating an extra \$1.4 billion annually in New Zealand GDP. This modelling also accounts for improved and preferential quota access for red meat and dairy products.<sup>22</sup>

<sup>20</sup> All figures in this section are based on EU goods imports from New Zealand across a three-year average, from 2017-2019. The 91% figure upon entry into force comprises the following: tariff elimination on 66.8% of trade, plus duty-free quota access on 24.1% of trade (for sheep meat). Tariffs will be eliminated on a further six percent of EU imports from New Zealand over seven years, reaching a total of 97%.

<sup>21</sup> As stated above, these tariff savings figures are a static calculation based on EU goods imports from New Zealand across a three-year average, from 2017-2019. Any increases in this trade due to the FTA would increase the tariff savings accordingly.

<sup>22</sup> ImpactECON, LLC 'Impacts of the New Zealand-European Union Free Trade Agreement on the New Zealand Economy', April 2022, available here: <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Final-Report-Economic-Modelling.pdf>. Three

The tariff savings by sector include the following:

- **Horticulture:** 99.9% of New Zealand's horticultural trade to the EU (\$714 million p.a.<sup>23</sup>) will be able to enter the EU tariff free immediately from entry into force of the FTA, delivering estimated annual tariff savings of \$46 million. Currently, almost all New Zealand horticulture trade into the EU is subject to tariffs – e.g. of up to 8.8% for kiwifruit, 9.6% for onions, up to 9% for apples, and up to 30% for processed horticultural products such as juices.
- **Fish and Seafood:** All New Zealand's fisheries trade to the EU (\$238 million p.a.) will be able to enter the EU tariff free, 99.5% immediately from entry into force of the FTA – delivering estimated annual tariff savings of \$19.6 million.<sup>24</sup> Currently, 95% of New Zealand fisheries trade into the EU is subject to tariffs – typically 7.5-15%, rising to 20% for mussels and up to 26% for prepared fish, crustaceans and molluscs. Most of New Zealand's competitors in seafood (e.g. Chile, South Africa, Norway and others) pay no tariffs on their exports. Their competitive advantage will be immediately eliminated, providing new opportunities for New Zealand traders into this high value market.
- **Wine, Honey and Other Agricultural Products:** 97% of New Zealand's trade in these products to the EU (\$437 million p.a.) will benefit from tariff elimination immediately from entry into force of the FTA, rising to 99.5% after 7 years – delivering estimated annual tariff savings of \$15 million. This includes immediate removal of a 17.3% tariff for Mānuka honey and over 3 years for all other honey, immediate removal of a tariff of up to €32 per 100 litres for wine, and tariffs of up to 12.8% for other agricultural products.
- **Industrial Products:** 99.9% of New Zealand's trade in industrial products to the EU (\$667 million p.a.) will be able to enter the EU tariff free immediately from entry into force of the FTA. All remaining tariffs on industrial products will be removed within 7 years. This will deliver an estimated \$9.1 million in annual tariff savings, including removing tariffs of up to 6.5% on organic chemicals, aluminium, plastic articles, electrical machinery, etc.

As noted above, the FTA will level the playing field vis-à-vis many competitors supplying the EU market, and also provide New Zealand a tariff advantage over exports from countries without an FTA with the EU. Taking the fisheries sector as an example, New Zealand will level the playing field with large exporters such as Norway and Chile, and obtain a tariff advantage over the United States, China and India – improving trading conditions for key New Zealand exports such as hoki, mussels and squid. A similar situation applies for the other important New Zealand exports to the EU listed above, such as horticulture, wine and industrial products.

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scenarios were modelled, from less to more ambitious in terms of quota expansion and tariff phasing. The GDP and EU export increases cited above reflect the modelled Scenario 2, in line with the final outcomes of the negotiation.

<sup>23</sup> EU imports from New Zealand, 2017-2019 average

<sup>24</sup> For certain species caught on foreign-owned vessels outside New Zealand's territorial waters but within New Zealand's Exclusive Economic Zone, the tariff elimination outcomes apply up to specified volumes, above current trade levels – see Chapter 3 (Rules of Origin and Origin Procedures) Annex II-A, Table 2.

**Summary of estimated tariff savings: outcomes by sector<sup>25</sup>**

Sector	Trade volume	Trade %: tariff elimination: Entry Into Force	Trade % tariff elimination: Year 7	Tariffs currently paid	Tariff savings: Entry Into Force	Tariff savings: Year 7
Horticulture	\$714m	99.95%	99.99%	\$46m	\$46m	\$46m
Fish and Seafood	\$238m	99.6%	100%	\$19.6m	\$19.55m	\$19.6m
Wine, Honey, Other Agriculture	\$437m	96.6% <sup>26</sup>	99.5% <sup>26</sup>	\$15m	\$12.8m <sup>26</sup>	\$14.7m <sup>26</sup>
Industrial Products	\$667m	99.98%	100%	\$9m	\$9m	\$9m
Textiles, Apparel, Footwear & Leather Products	\$208m	100%	100%	\$1.5m	\$1.5m	\$1.5m
<b>TOTAL</b>	<b>\$3,716m</b>	<b>91.2%</b> (including duty-free sheep meat quota <sup>27</sup> )	<b>96.9%</b> (including duty-free sheep meat quota <sup>27</sup> )	<b>\$115.6m</b>	<b>\$100.7m</b>	<b>\$109.6m</b>

The advantages for the dairy and red meat sectors include the following, also summarised in the table below:

***Dairy:*** The EU has long been a largely closed market to New Zealand dairy exporters, with only limited access to the EU market through WTO quotas, often accompanied by high in-quota tariffs or quota conditions that preclude trade. The FTA will deliver improved quota access for butter, cheese, high protein whey, and milk powders, as follows:

Butter:

- At entry into force of the FTA: 26,000 metric tonnes at an in-quota tariff set at 20% of the standard EU tariff<sup>28</sup>.
- After 7 years: 36,000 metric tonnes at an in-quota tariff set at 5% of the standard EU tariff.
- It is estimated that this quota access, once fully phased in and if fully utilised, would have a market value of approximately \$260 million.<sup>29</sup>
- This quota volume, once fully phased in, amounts to 60% of the EU's average butter imports over the past five years<sup>30</sup>, currently sourced almost exclusively from the UK; and is just over

<sup>25</sup> All figures in this table are calculated based on EU imports from New Zealand (2017-2019 average).

<sup>26</sup> The remaining 0.5% of this trade (accounting for \$0.3m of duties), will be subject to duty-free access within the high whey protein quota from entry into force of the agreement, meaning that 100% of 2017-2019 trade will be duty-free (99.5% tariff elimination plus 0.5% duty-free within quota).

<sup>27</sup> Sheep meat comprises 24.1% of EU imports from New Zealand, duty-free under WTO quota (with additional duty-free access through the FTA as outlined below).

<sup>28</sup> The EU's standard tariff ("MFN rate") is €1,896 per tonne for butter, and €2,313 per tonne for other milk fats.

<sup>29</sup> This is based on the average New Zealand global export price for butter for 2019-2021.

<sup>30</sup> Average EU butter import volumes from 2017-2021.

7.5% of New Zealand butter production. While an in-quota rate will apply, it is at a level that is not expected to constitute an impediment to the quota being utilised.<sup>31</sup>

- The agreement delivers improved access through a mixture of new FTA quota access and changes in-quota conditions for the existing WTO quota: with 21,000 tonnes delivered through improvements to EU's country-specific quota for New Zealand butter in the WTO, and the remainder (15,000 tonnes) as a new FTA quota. The WTO quota remains only for butter; the FTA quota additionally covers milk fat, allowing a broader product mix to be traded.
- In addition to the above volumes, the FTA delivers small improvements for an additional 14,000 tonnes of the EU's WTO country-specific quota. This will reduce the in-quota tariff to 30% of the EU standard tariff (i.e. €569 per tonne). This is slightly lower than the €700 per tonne tariff that currently applies to the EU's country-specific quota for New Zealand butter in the WTO, which has prevented trade in recent years as the gap between the EU and New Zealand butter prices has narrowed. Given the in-quota tariff, this element of the overall FTA butter outcome is expected to be of value only at times where the EU and Oceania prices diverge significantly.
- The FTA butter quota will be administered by New Zealand issuing export certificates. An import licence will be issued automatically upon presentation of a valid export certificate with no other restrictions applied at the EU end.
- Quota administration procedures for the EU's WTO country-specific quota for New Zealand will also be improved upon entry into force of the FTA, by removing restrictive conditions including quota sub-periods and the split between 'traditional' and 'new' importers categories for import licences.

#### Cheese:

- At entry into force of the FTA: 14,364 metric tonnes, duty free.
- After 7 years: 31,031 metric tonnes, duty free<sup>32</sup>.
- It is estimated that this quota access, once fully phased in and if fully utilised, would have a market value of approximately \$187 million<sup>33</sup>.
- This quota volume, once fully phased in, amounts to 15% of the EU's average cheese imports over the past five years, almost all sourced from the UK and Switzerland; and is 8.5% of New Zealand's cheese production. If utilised, New Zealand would be the third largest exporter of cheese to the EU (after the UK and Switzerland).
- In addition, processed and blue cheese will have tariffs progressively eliminated over 7 years, from which point access will be duty-free, quota free.

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<sup>31</sup> The in-quota tariff drops to 15% of the standard EU tariff in the first year following entry into force of the Agreement, and then phases down to 5% of the standard EU rate in linear steps. Quota volumes grow linearly over seven years.

<sup>32</sup> The quota volumes will increase linearly, by 2,381 tonnes each year.

<sup>33</sup> This is based on the average New Zealand global export price for cheese for 2019-2021.

- The agreement delivers improved access through a mixture of new FTA quota access and changes in quota conditions for the existing WTO quota: with 6,031 tonnes of this cheese access delivered through improvements to the EU's country-specific quota for New Zealand cheese in the WTO, and the remainder (25,000 tonnes) as a new FTA quota.
- The FTA cheese quota will be administered by New Zealand through issuing export certificates. An import licence will be issued automatically upon presentation of a valid export certificate with no other restrictions at the EU end.
- Quota administration procedures for the EU's country-specific quota for New Zealand in the WTO will also be improved upon entry into force of the FTA, by expanding quota coverage to all cheese tariff lines and removing all end-use restrictions.

#### **High Protein Whey:**

- At entry into force of the FTA: 1,167 metric tonnes, duty free.
- After six years: 3,500 metric tonnes, duty free.<sup>34</sup>
- It is estimated that this quota access, once fully phased in and if fully utilised, would have a market value of approximately \$46 million.<sup>35</sup>
- This quota covers high value, high protein whey and milk protein concentrates, as well as food preparations containing dairy. These 15 tariff lines are currently subject to EU tariffs of up to €1.67 per kg, or 15.4% on the value of the product, plus in some cases an additional tariff based on the milkfat or milk protein content – but are not subject to quotas in the EU's WTO tariff schedule.
- The FTA outcome will allow New Zealand to trade the above volume of product duty free into the EU, with any additional volumes able to be traded outside quota at the standard EU tariff.
- This FTA quota will also be administered by New Zealand through issuing export certificates. Imports at the EU end will be on a first-come, first-served basis upon presentation of an export licence; no import licences will be required.

#### **Milk Powders:**

- At entry into force of the FTA: 5,000 metric tonnes at 20% of the standard EU tariff<sup>36</sup>.
- After seven years: 15,000 metric tonnes at 20% of the standard EU tariff.
- This quota volume, once phased in, amounts to 22% of the EU's average annual milk powder imports over the past five years, almost all sourced from the UK; it is just under 1% of New Zealand's milk powder production. The in-quota tariff may constitute an impediment to

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<sup>34</sup> Quota volumes grow linearly year by year.

<sup>35</sup> This is based on the average New Zealand global export price for high protein whey products under HS3502 for 2019-2021.

<sup>36</sup> The EU's standard tariff ("MFN rate") is €1,188 per tonne for skim milk powder, and €1,304 for whole milk powder; 20% of this tariff is €238 and €261 per tonne.

the quota being consistently utilised. If utilised, however, it would have a market value of approximately \$73 million.<sup>37</sup>

- The FTA milk powders quota will be administered by New Zealand. No restrictions will apply at the EU end; an import license will be issued automatically upon presentation of a valid export certificate.

#### **Other Dairy: tariff elimination**

- In addition to the above dairy quotas, the FTA also delivers tariff elimination on other dairy products over 5 or 7 years, with current trade value of \$4 million per annum. This includes casein, peptones and retail infant formula, currently subject to tariffs of up to 9%. It also includes tariff elimination over 7 years on a range of products of trade interest not currently traded due to high tariffs – such as cream, processed and blue cheese (as noted above), buttermilk powder, and certain whey products. This opens up new opportunities to expand trade in these products.

**Red Meat:** While New Zealand has long had duty-free quota access to the EU for sheep meat through a large country-specific quota in the WTO, we have had only limited beef access to the EU, through a country-specific quota for high-quality beef. The FTA will deliver improved quota access for both sheep meat and beef, as follows:

#### **Sheep meat:**

- At entry into force of the FTA: 12,666 metric tonnes, duty free.<sup>38</sup>
- After 6 years: 38,000 metric tonnes, duty free.
- These volumes are additional to New Zealand's existing 125,769 tonnes of duty-free access to the EU through a country-specific quota for New Zealand in the WTO.<sup>39</sup>
- The FTA delivers useful flexibility to the New Zealand sheep meat industry to export additional volumes of sheep meat duty free to the EU on top of the existing WTO quota volume in the future, should there be a commercial interest in doing so.
- New Zealand's combined quota access is equal to almost 100% of the EU's current total exports. This means New Zealand will dominate the import market through effective free access into the EU market for sheep meat, with exports expected to respond to the level of demand in the EU market.
- The FTA sheep meat quota, like the existing WTO quota, will be administered by New Zealand through issuing export certificates. Imports at the EU end will be on a first-come, first-served basis upon presentation of an export certificate; no import licences will be required.

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<sup>37</sup> This is based on the average global export price for whole milk powder for 2019-2021.

<sup>38</sup> The sheep meat quota volume is split into two separate quotas: fresh or chilled (35% of the volume) and frozen (65% of the volume). Both are calculated in 'carcass weight equivalent', using conversion rates specified in the FTA (Annex 2-A, Section D).

<sup>39</sup> Also in carcass weight equivalent.

**Beef:**

- At entry into force of the FTA: 3,333 metric tonnes, at a 7.5% tariff.<sup>40</sup>
- After 7 years: 10,000 metric tonnes, at a 7.5% tariff.
- It is estimated that this quota access, once fully phased in and if fully utilised, would have a market value of approximately \$156 million.<sup>41</sup>
- These volumes are additional to New Zealand’s existing 1,102 metric tonnes of access through the EU’s country-specific quota for New Zealand high quality beef in the WTO.<sup>42</sup>
- The FTA therefore delivers an eight-fold increase in access for New Zealand beef to the EU (calculated in product weight), with improved conditions. First, the in-quota tariff rate applicable for both quotas will be 7.5%, down from 20% currently applied under the WTO quota. (This in-quota tariff cut will deliver tariff savings of \$11.7 million on current WTO quota beef trade: \$8.7 million from entry into force and the remaining \$3 million phased in).
- Second, the prescriptive definition for ‘high quality beef’ in the WTO quota will not apply to FTA quota trade – instead all New Zealand beef “raised under New Zealand’s pastoral farming conditions” (i.e. not including commercial feedlots) will be eligible for FTA tariff preference. Finally, the FTA beef quota, like the existing WTO quota, will be administered by New Zealand through issuing export certificates. An import licence will be issued automatically upon presentation of a valid export certificate with no other restrictions applied at the EU end.

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<sup>40</sup> The FTA beef quota is calculated in ‘carcass weight equivalent’, using conversion rates specified in the FTA.

<sup>41</sup> This is based on the average New Zealand global export price for beef for 2019-2021.

<sup>42</sup> This WTO quota is in product weight.

## Improved Quota Access for Dairy and Red Meat

Quota product	Access type	Existing access prior to the FTA	Post-EU FTA: quota volume and in-quota tariff	
			Entry Into Force	By Year 7
Butter	FTA access		<b>5,000 MT</b> in-quota tariff €379/MT (20% of MFN rate)	<b>15,000 MT</b> in-quota tariff €95/MT (5% of MFN rate)
	WTO access	<b>47,177 MT</b> in-quota tariff €700/MT (37% of MFN rate)	<b>21,000 MT</b> in-quota tariff €379/MT (20% of MFN rate)	<b>21,000 MT</b> in-quota tariff €95/MT (5% of MFN rate)
			<b>14,000 MT</b> in-quota tariff €569/MT (30% of MFN rate)	
Cheese	WTO access	<b>6,031 MT</b> <b>in two quotas</b> in-quota tariff €170.5/MT	<b>6,031 MT</b> 0% in-quota tariff; product coverage expanded to all cheese types	
	FTA access		<b>8,333 MT</b> 0% in-quota tariff	<b>25,000 MT</b> 0% in-quota tariff
High Protein Whey	FTA access	Access via tariffs	<b>1,167 MT</b> 0% in-quota tariff	<b>3,500 MT</b> 0% in-quota tariff
Milk Powders	FTA access	Limited access	<b>5,000 MT</b> in-quota tariff €261/MT (20% of MFN rate)	<b>15,000 MT</b> in-quota tariff €261/MT (20% of MFN rate)
Sheep meat <sup>i</sup>	WTO access	<b>125,769 MT</b> 0% in-quota duty	<b>125,769 MT</b> 0% in-quota tariff (Unchanged)	
	FTA access fresh/chilled		<b>4,433 MT</b> 0% in-quota tariff	<b>13,300 MT</b> 0% in-quota tariff
	FTA access frozen		<b>8,233 MT</b> 0% in-quota tariff	<b>24,700 MT</b> 0% in-quota tariff
Beef <sup>ii</sup>	WTO access	<b>1,102 MT</b> 20% in-quota tariff	<b>1,102 MT</b> 7.5% in-quota tariff	
	FTA access		<b>3,333 MT</b> 7.5% in-quota tariff	<b>10,000 MT</b> 7.5% in-quota tariff

i) WTO and FTA quota volumes for sheep meat are in carcass weight equivalent.

ii) WTO quota volumes for beef are in product weight; FTA quota volumes are in carcass weight equivalent.

## Imports from the EU

The EU is New Zealand's second-largest source of goods imports, at approximately \$11.4 billion in 2022. While around 60% of EU goods already enter New Zealand duty free, the remainder are subject to import duties of up to 5-10%. Estimated import duties were approximately NZ\$74 million per year over the past three years, from 2020-2022.

All New Zealand customs duties on imports originating in the EU will be eliminated at entry into force of the NZ-EU FTA, putting the EU on a par with other New Zealand FTA partners including Australia, ASEAN, China, Korea, the United Kingdom and CPTPP Parties (with the final tranche of CPTPP tariffs phasing out in 2024).

New Zealand businesses and consumers imports a range of goods and services and the removal of these duties has advantage for New Zealand. Consumers may benefit from cheaper imported products, in particular industrial products (including motor homes, plastics, furniture, kitchen appliances and other machinery, motorboats and other vessels), agricultural products (meat, dairy, horticulture and other agricultural products including chocolate), footwear and apparel, and cosmetics.

The removal of these duties should reduce prices and make a contribution to easing the cost of living in New Zealand. In addition, businesses in New Zealand may benefit from cheaper inputs for incorporation into final products sold domestically and/or re-exported, and greater flexibility in sourcing and resilience in managing supply chains.

### The cost of not entering into an FTA with the EU

Without an FTA with the EU, New Zealand goods exporters would continue to trade at a disadvantage into the EU relative to many other trading partners. This would continue to constrain New Zealand's ability to protect and grow market share relative to other competitors in the EU market, the world's third-largest. Over the last 20 years, while imports of goods from around the globe by the EU's 27 Member States have grown by over 170%, its imports from New Zealand have grown by just 20% – meaning New Zealand's market share in the EU has more than halved.<sup>43</sup> Not entering into an FTA with the EU would remove the opportunity to arrest this decline and grow New Zealand's exports to the EU, and take away the export diversification opportunity for many sectors of the New Zealand economy.

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<sup>43</sup> These import statistics are for the current membership of the EU (i.e. 27 members excluding the United Kingdom). EU goods imports from New Zealand were NZ\$3.82 billion in 2003, and \$4.6 billion in 2022, up just 21% in 20 years. Over the same period, EU imports globally grew from at a time when EU imports globally grew from NZ\$1.82 trillion to NZ4.98 trillion.

### Other advantages: chapter text

In addition to increased market access opportunities, the National Treatment and Market Access for Goods chapter includes a range of provisions to help facilitate trade in goods. In keeping with many of New Zealand's other FTAs, both Parties have agreed to:

- prohibit export duties;
- uphold WTO rules in respect of import and export restrictions;
- transparency provisions, including for fees charged in relation to the import or export of goods, and import and export licensing procedures; and
- trade-facilitative rules for temporary admission of goods, remanufactured goods, and repaired or altered goods;
- establish a Committee on Trade in Goods responsible for the effective implementation and operation of the chapter and relevant commitments, including through the establishment of contact points; and
- an annual exchange of detailed trade statistics in order to monitor the functioning of the FTA and calculate the extent to which its tariff preferences are utilised, providing the means to identify gaps in utilisation and progressively maximising the benefits of the Agreement.

### Disadvantages

No disadvantages have been identified for New Zealand from entering into an FTA with the EU in respect of the customs duty elimination commitments made by the EU to New Zealand. Where these tariff commitments have an effect, they would be beneficial: i.e. leading to improved competitiveness for New Zealand exporters into the EU market.

Yet in certain areas, the goods market access outcomes fell short of New Zealand's ambition, especially beef and dairy due to well-known EU sensitivities. For both the red meat and dairy sectors, the preferential access New Zealand secured in the FTA is subject to quota limits. These outcomes – while commercially meaningful improvements on current access for these products and often significant in terms of the share of EU imports – are not as ambitious as had been sought. In addition, the retention of an in-quota tariff for milk powder may impact the utility of that quota, and the in-quota tariff for butter will take a few years to phase down to a more consistently tradeable level.

Finally, the EU insisted on maintaining its 'entry price' system for certain horticultural goods.<sup>44</sup> The impact of this on New Zealand horticultural product exports is very limited – other than pears, all other exports will be subject to full tariff elimination. For New Zealand pears, some specific duties will

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<sup>44</sup> The entry price system – which generally levies specific duties in addition to ad-valorem tariffs on lower-priced imports only, with duties set by seasonal windows, – applies to the import of the following horticulture products, in HS code order: tomatoes, cucumbers, globe artichokes, pumpkins/squash and courgettes, oranges, mandarins, lemons, grapes, apples, pears, apricots, cherries, peaches and nectarines, plums, fruit juices, and grape must. The EU committed to eliminating all 'ad valorem' duties on these products subject to the entry price system, but should any specific duty be applicable, then that will not be removed under the FTA.

continue to apply (€1 per 100 kg in May-July only), though the more significant ad valorem component of the tariff will be eliminated year-round.<sup>45</sup>

New Zealand's commitment to eliminate all customs duties on EU goods at entry-into-force of the Agreement is estimated to result in foregone tariff revenue of approximately NZ\$74 million annually (2020-2022 average). It may also expose some New Zealand industries and sectors to marginally more competition and create adjustment effects for domestic producers as a result of increased exposure to goods imported from the EU.

Such effects are mitigated by the fact that New Zealand's economy is already largely open. Most goods imported into New Zealand already face no import tariff, with the few remaining in place set relatively low (mostly 5%, and none more than 10%). In addition, these remaining tariffs have already been eliminated for imports from other New Zealand FTA partners including Australia, ASEAN, China, Korea, the United Kingdom and CPTPP (under which a small subset of customs duties finish phasing out in 2024). Finally, the FTA also provides the ability for either Party to apply a bilateral safeguard measure in the case of any serious injury arising from the liberalisation of customs duties under the Agreement.

## 4.2 Chapter 3: Rules of Origin and Origin Procedures

The Rules of Origin (RoO) chapter establishes rules to determine whether goods traded between New Zealand and the EU are considered to "originate" in New Zealand or the Union and therefore qualify for relevant tariff preferences (described in Section 4.1 above).

Under the NZ-EU FTA Rules of Origin (Article 3.2), goods are originating if they are:

- a) Products wholly obtained in either New Zealand or the EU (such as fruits, plants or animals);
- b) animals);
- c) Products produced entirely in either New Zealand or the EU, exclusively from originating materials; or
- d) Products produced using non-originating materials (i.e., non-New Zealand or non-EU materials), provided the non-originating materials meet the criteria set out in Annex 3-B (Product-Specific Rules (PSR)).

For option (c), the PSR Schedule sets out the level of production that needs to be undertaken on a non-originating material to give it originating status; through either:

- (i) a specified change in tariff classification,
- (ii) a percentage value limit on the non-originating materials that can be used (generally 50% 'ex-works' price),

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<sup>45</sup> The impact of these specific duties mean that New Zealand pear imports into the EU, which averaged approximately NZ\$400,000 p.a. in 2019-2021, would enjoy removal of approximately three quarters of the tariffs currently applied (\$5,300 p.a.), with just over one quarter (\$2,000 p.a.) remaining.

- (iii) a specified process or processes (primarily for chemical and textile products),
- (iv) or a combination of the above.

### **Advantages**

Rules of Origin, in themselves, do not confer an advantage or disadvantage to New Zealand. They are an integral component of the goods market access provisions and set out the level of production that must be undertaken for a good to qualify for the preferential tariffs specified in the Agreement. Rules of Origin can, however, be a key determinant in how easily exporters are able to utilise the preferential market access provided in an FTA. The EU strongly adheres to its template set of product specific rules of origin, which are somewhat more restrictive than those New Zealand has negotiated under other agreements. Nevertheless, New Zealand was able to negotiate rules that most exporters should be able to meet.

The method for evidencing origin, i.e., the documentation required of a trader seeking preferential tariff treatment, is through a statement of origin by the exporter, or by an importer declaration. This is New Zealand's preferred approach and sharply reduces transaction costs for businesses taking advantage of tariff preferences.

Storage or the splitting of consignments of originating products may take place outside New Zealand or the EU provided those products are not (a) cleared for home use in that non-Party, or (b) transformed in any way, or (c) subjected to operations other than to preserve them in good condition or to add or affix marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party.

### **Disadvantages**

There are more restrictive origin rules for fish and seafood, processed agricultural products, textiles, and manufactured products than New Zealand had sought and appear in New Zealand's other trade agreements. Mitigations have, however, been agreed as detailed in the subsequent paragraph. Such restrictive rules of origin include:

- *For fish and seafood*, the fishing vessel in which they are caught is subject to domestic ownership requirements (detailed in Article 3.4.2).
- *For processed agricultural products*, there are restrictions on the amount of non-originating dairy, grain and sugar materials that can be used, which producers will have to navigate.
- *For textiles and apparel*, producers must complete two transforming processes
- *For manufactured products* classified in Chapters 84, 85 and 90, consistent with the EU's template, manufacture solely from non-originating parts is not permitted; and the origin threshold for manufactured goods generally requires that the value of non-originating materials must not

exceed 50% of the ex-works price of the product (expressed as “MaxNOM 50% (EWP)” in Annex 3B).

The impacts of these stricter rules are mitigated by:

- For *fish and seafood*, while only those fish and seafood products that meet the rules of origin are subject to tariff elimination, additional ‘origin quotas’ (totalling 14,000 tonnes) apply for certain specified frozen species caught in New Zealand’s Exclusive Economic Zone by vessels under demise charter<sup>46</sup>, operating under a New Zealand fishing permit. These quotas will be managed on a first-come first-served basis.
- Importantly too, a growth provision applies to these origin quotas: if more than 80% of an origin quota assigned to a product is used during a calendar year, the origin quota allocation will be increased by 10% for the following calendar year, with volumes able to increase by a maximum of 30% over 6 years. After 3 years, either Party may request a review of the origin quota for fish and seafood products to determine if there is a need to increase or maintain the quantity, change the scope, or apportion or change any apportionment between the products covered by the quota. Further details on the origin quotas, including product scope, are in Appendix 3-B-1.
- For *processed agricultural products*, the amount of the restrictions (by weight) has been negotiated at a level that should not unduly affect New Zealand producers’ ability to reach the origin threshold.
- For *textiles*, the provision of an ‘origin quota’ under which apparel producers who cannot meet the two-step transformation rule can nonetheless export products to the EU duty-free under a ‘cut-and-sew’ rule (change of chapter rule) up to an annual quota ceiling of €1.2 million for garments classified in Harmonised Systems (HS) Chapter 61, and €1 million for garments classified in HS Chapter 62. This quota will be managed on a first-come first-served basis and may be reviewed on request after 3 years. Textile producers can also use the cumulation of origin provisions (full accumulation) to meet the origin threshold. For example, European fabric which has not met the origin criteria (i.e., woven from non-originating yarn) can be used in combination with New Zealand garment making to meet the two-step rule for garments. Further details are in Appendix 3-B-1.
- For *manufactured products*, over 60% percent of New Zealand’s manufactured products currently enter the EU duty-free (and 99.99% will do so from entry into force). Those products already able to enter duty-free will not have to meet new origin requirements. More liberal rules were achieved for a small number of products<sup>47</sup> where it was identified that the rule of origin (i.e. that the value of non-originating materials must not exceed 50% of the ex-works price of the product) would be challenging due to business model and supply chain constraints. For many businesses, the 50% threshold poses no difficulties.

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<sup>46</sup> A demise chapter is when the owner of the boat leases it to a charterer who provides crew, storage facilities (etc) as well as funding all costs of operation.

<sup>47</sup> The tariff subheadings for these products are: 8411.12, 8412.29, 8413.81, 8422.30-8422.40, 8423.82-8423.89, 8424.89, 8446.29, 8462.22 - 8462.29, 8462.42 - 8462.90, 8481.80, 8512.20, 8535.90, 8536.30, 8536.50, 8536.90, 8539.51, and 94.05.

### **4.3 Chapter 4: Customs and Trade Facilitation**

The Customs Procedures and Trade Facilitation chapter establishes the framework the Parties' customs authorities operate in to facilitate trade. The chapter builds on the commitments in the WTO agreement on Trade Facilitation and extends these obligations in some areas.

Collectively, these commitments are aimed at facilitating the flow of goods across borders, including through ensuring customs procedures and practices are consistent and transparent, and expediting certain forms of trade.

The Chapter also builds on the cooperation already established between customs authorities under the Agreement between New Zealand and the European Union on cooperation and mutual administrative assistance in customs matters, done at Brussels on 3 July 2017.

#### **4.3.1 Advantages**

The enhanced commitments in this chapter will benefit exporters through increased efficiency at the border and expedited release of goods.

The Chapter also contains specific provisions to ensure the consistent application of customs procedures and processes (Article 4.3.2), increasing certainty for traders. It also provides that Parties will simplify and review requirements and formalities wherever possible with a view to the rapid release and clearance of goods (Article 4.3.3).

The Agreement requires the Parties to publish easily accessible information, including online, on a wide range of trade-related areas (Article 4.11). This information includes:

- import, export and transit procedures (including required forms and documents);
- rates of duties, taxes imposed on or in connection with importation, exportation or transit;
- any fees and charges imposed by Government agencies imposed on or in connection with importation, exportation or transit;
- import and export restrictions and prohibitions;
- appeal and review procedures.

Further, each Party shall endeavour to make public new legislation, regulations and general procedures relating to the requirements for import, export and transit of goods prior to their application (Article 4.11.2). To the extent possible, the Parties must also ensure there is a reasonable time period between the publication of new or amended legislation, regulations and general procedures, fees or charges, and their entry into force (Article 4.11.3).

The Agreement requires the Parties to provide advance rulings on the origin, classification and, if permitted by a Party's laws and regulations, the appropriate method or criteria to be used for

determining the value, of goods (Article 4.12.2). The EU does not currently issue valuation rulings, but is in the process of going through the domestic processes to enable it to do so in the future. Advance rulings provide greater certainty and predictability for New Zealand exporters making compliance with Customs laws, regulations, and requirements easier. New Zealand businesses often report that uncertainty about the treatment of their goods can represent a significant cost or barrier to trade. The Agreement provides for written advance rulings to be issued without delay and normally within 150 days, provided all necessary information has been received (Article 4.12.10).

The Chapter provides for the prompt release of goods, within a period that is no longer than necessary to ensure compliance with a Party's laws and regulations and, to the extent possible, upon arrival of the goods (Article 4.4.1(a)). The Parties will provide for advance electronic submission and processing of documentation and any other required information prior to the arrival of the goods, to enable release of goods on arrival (Article 4.4.1(b)).

In the case of perishable goods, such as seafood or fresh fruit and vegetables, consignments containing such goods will be given appropriate priority by a Party when scheduling and performing any examinations that may be required (Article 4.5.2). Further, at the request of the economic operator and where practicable and consistent with domestic legislation, a Party shall provide for clearance of perishable goods outside of normal business hours, and allow them to be moved to, and cleared at, the premises of the economic operator (Article 4.5.3).

The improved predictability and transparency of importing and exporting processes are particularly significant for economies such as New Zealand with a large proportion of SMEs. This is because higher trade administration and transaction costs are a bigger challenge for SMEs than for larger enterprises.

#### **4.3.2 Disadvantages**

No disadvantages have been identified for New Zealand resulting from the Customs and Trade Facilitation Chapter.

#### **4.4 Chapter 5: Trade Remedies**

Trade remedies allow governments to provide temporary relief to domestic industry from injurious trade practices such as unfair competition from abroad or an unexpected surge in imports. WTO rules cover three types of trade remedy:

- Anti-dumping duties: these are applied, in certain circumstances, if the “export price” on an imported good is lower than its “normal value”. An “export price” is the price an importer pays for the goods. The “normal value” is the price the goods sell for in the country of export;
- Subsidies and countervailing measures: WTO rules seek to limit trade-distorting subsidies, and allow governments to impose additional tariffs/duties (known as countervailing duties) to offset the use of certain subsidies by other countries;

- Safeguard action: temporary measures applied to allow domestic producers to adjust to sudden surges in imports;

Under the NZ-EU FTA, New Zealand and the EU agree that both retain their rights and obligations under the relevant WTO agreements. The FTA includes additional provision for transparency and best practice in trade remedy investigations. This includes providing for the application of the “lesser duty rule” when imposing antidumping duties<sup>48</sup>, and the consideration of the “public interest” during antidumping and countervailing investigations. These provisions reaffirm New Zealand’s current policy and practice.

The chapter also includes a general injury-based bilateral safeguard measure (BSM). This involves a temporary adjustment to the customs duty applying to the good concerned to address the injury. A Party can apply a safeguard mechanism on imported goods from the other if, as a result of a tariff reduction or elimination under the FTA, there is such an increase in imports that it causes or threatens to cause serious injury to the Party’s domestic industry. The chapter sets out the conditions and procedures for such measures.

New Zealand has also agreed to include an additional safeguard mechanism provision that applies to the EU’s outermost regions (such as French Guiana, and the Canary Islands) that has a slightly lower injury threshold, namely ‘serious deterioration’.

### **Advantages**

The Trade Remedies chapter protects the interests of New Zealand exporters faced with trade remedy actions in the EU. It reaffirms that WTO rules will apply to the application of global safeguards and to the administration of anti-dumping and countervailing duties on trade between the Parties. It includes additional provisions for the fair, robust and transparent conduct of investigations, which support New Zealand’s current practice. It also provides the opportunity for New Zealand to apply a BSM in the event of serious injury or threat of serious injury from an increase in imports from the EU.

### **Disadvantages**

The Trade Remedies chapter will impose some additional procedural obligations described above. These are all in line with New Zealand’s current policy and practice. The FTA also introduces a bilateral safeguard measure, including an outermost regions safeguard measure. This is a new measure for New Zealand, however, New Zealand does not have significant bilateral trade with these regions.<sup>49</sup>

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<sup>48</sup> This means that when one Party applies an anti-dumping duty, the amount of that duty cannot be more than the margin of dumping. Alternatively, where the injury to the domestic industry can be removed by a duty smaller than the margin of dumping the Party shall apply this amount; i.e. the ‘lesser duty’.

<sup>49</sup> Of the nine outermost regions, New Zealand’s most significant trading partners are the French overseas departments of Reunion, Guadeloupe, and Martinique. On average in 2016 to 2020, the trade value to these markets was \$10.6 million, \$5.8 million, and \$3.9 million (primarily in meat products).

As is sometimes the case in FTA negotiations, the reduction (or elimination) of tariffs was only agreed on particular products of key export interest to New Zealand in conjunction with the bilateral safeguard measure. Under the FTA, a BSM can be applied for a period of 7 years from entry-into-force of the FTA, an outcome New Zealand accepted as part of the final negotiated package. If applied, a Party could utilise a safeguard measure to temporarily limit the agreed market access outcomes.<sup>50</sup>

The Trade Remedies chapter mitigates the risk of the application of a safeguard measure to some extent — and hence protects market access outcomes for New Zealand exporters — by establishing clear processes to discipline the ability of the EU to take safeguard measure actions. Such actions, (other than the outermost regions bilateral safeguard measure) will also be available to New Zealand in the case of serious injury to New Zealand’s domestic industry arising from tariff liberalisation under the Agreement. (Note that while New Zealand has similar provisions in other FTAs, to date there has not been a need to utilise these.)

#### **4.5 Chapter 6: Sanitary and Phytosanitary Measures**

The Sanitary and Phytosanitary (SPS) chapter builds on the close, effective cooperation and trust established between relevant competent authorities under the existing world leading NZ-EU Sanitary Agreement (covering animals and animal products) by extending commitments under the FTA to processed foods and plant products. These commitments fall within current New Zealand policy and regulatory settings.

##### **Advantages**

This chapter recognises the principle of equivalence of SPS measures where the exporting country objectively demonstrates that its measures achieve the importing country’s appropriate level of protection.

Under the chapter, each side will accept the other’s determinations on pest-free areas, places of production and production sites. Phytosanitary regional conditions can therefore be recognised in a way that enables both sides to take into account the pest status of areas from which goods may be sourced, while protecting plant life and health.

For low risk processed foods, official certification will only be required in cases where this is justified by risk analysis. Approval processes for establishments and facilities within the scope of the chapter will not be required. Both of these provisions acknowledges the robustness of each other’s SPS regimes.

This chapter provides for audits to verify that all or part of the regulatory control programme of the exporting Party’s competent authority is functioning as intended and an obligation to ensure that any

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<sup>50</sup> A bilateral safeguard measure cannot be applied a) further than necessary to prevent or remedy the serious injury to the domestic industry, b) for more than two years, c) and past the seven year limit.

measure taken as a consequence of an audit is proportionate to the risk(s) identified. Any audit costs would be borne by the auditing Party.

This chapter also recognises the importing Party's right to carry out import checks based on the SPS risks associated with imports; and a commitment to carry out these checks without undue delay; and with minimum trade-disrupting effects. Both sides continue to be able to adopt emergency measures to address urgent problems of human or plant health protection. The chapter provides mechanisms to discuss and resolve incidents where either side considers that a measure or draft measure, or its implementation, is inconsistent with the obligations in the chapter.

The chapter contains a commitment to enhance cooperation on the issue of antimicrobial resistance both bilaterally and in relevant international fora. This has a particular focus on addressing the unnecessary use of antibiotic agents in the rearing of animals for food production and protecting the efficacy of antibiotic agents that are critical for human health.

### **Disadvantages**

There are no significant disadvantages identified for New Zealand from this chapter. All the disciplines in the chapter are consistent with current New Zealand regulatory settings.

## **4.6 Chapter 7: Sustainable Food Systems**

The Sustainable Food Systems (SFS) Chapter sets out first-of-its-kind cooperation provisions on sustainable food systems.

Internationally, the scope of SFS remains contested. For the purposes of the chapter the EU and New Zealand have defined SFS as food systems which ensure access to safe, nutritious, and sufficient food all year round in such a way that the economic, social, cultural, and environmental bases to generate food security and nutrition for future generations are not compromised.

On that basis, the chapter provides a platform for cooperation on the Parties' respective efforts to improve sustainability of their food systems while noting that each Party's environmental, social, economic, and cultural contexts are different, and that priorities for cooperation may change over time as the understanding and treatment of food systems develops.

### **Advantages**

The principal advantage of this chapter for New Zealand is the flexible platform it provides for Government-to-Government cooperation and the fact that the EU will now be obliged to work with New Zealand on this set of issues. This provides us with a formal framework through which we may be able to help influence the evolving – and at times challenging - EU approach.

New Zealand and the EU are ambitious partners on sustainability and are both committed to the development of sustainable, inclusive, healthy, and resilient food systems. Given our different contexts and approaches to sustainability in food systems, there will be mutual and potentially broader benefit from the cooperation generated by the SFS Chapter.

New Zealand will be the first country to have a SFS Chapter with the EU. Its implementation will provide a valuable platform to demonstrate New Zealand's unique approach to sustainable food systems and the sustainability credentials of New Zealand's food system. As the EU increasingly brings in new regulations and makes changes to the domestic agricultural policy to foster global sustainability outcomes, the chapter will, as noted above, enable New Zealand to engage directly with the EU on the development of its approach and advocate for policies that are evidence-based and recognise different social, geographical, and economic contexts.

Importantly, the chapter will support the delivery of New Zealand's Trade for All agenda by promoting the role of trade and cooperation in areas such as:

- reducing the adverse environmental effects of policies and measures linked to the food system;
- indigenous knowledge, participation, and leadership in food systems;
- food production methods and practices which aim to improve sustainability;
- efficient use of natural resources and agricultural inputs; and
- the environmental and climate impacts of food production, including on agricultural greenhouse gas emissions, carbon sinks, and biodiversity loss.

In line with the cooperation focus of the chapter, it is not subject to formal dispute settlement under the Agreement. By providing the Sub-committee established under the chapter with the discretion to establish its own priorities, the chapter ensures cooperation activities can reflect changing understandings of food systems and domestic settings over time.

### **Disadvantages**

There are no disadvantages for New Zealand in the SFS Chapter.

All the commitments in the chapter are consistent with New Zealand's current legislative settings and the chapter explicitly affirms each Parties' right to regulate and take action to achieve its public policy objectives.

## 4.7 Chapter 8: Animal Welfare

The NZ-EU FTA is New Zealand's second FTA (the first was with the UK) to include a stand-alone chapter on animal welfare of farmed animals. Its objective is to further enhance cooperation between the EU and New Zealand – both Parties with a keen interest in and internationally recognised high standards of animal welfare.

A Joint Working Group on Animal Welfare is established under the chapter and will act as the forum to coordinate and manage cooperation between the Parties in the development and promotion of science-based animal welfare standards, including in international bodies.

### Advantages

Inclusion of a specific chapter on animal welfare underlines the importance New Zealand attaches to this issue. The chapter makes clear that while there are differences in farming practices and systems between New Zealand and the EU, both Parties recognise the high standards the other has adopted in this area and that the systems each has in place for delivering on these high standards achieve comparable outcomes for the welfare of farmed animals. This is important, given the differences in the farming environments between New Zealand and the EU, and in responding to the interest that stakeholders on each side have in seeing robust and science-based animal welfare standards maintained.

New Zealand exporters will benefit from the clear indication this chapter provides that the standards and systems New Zealand applies to promote the welfare of farmed animals are accepted as delivering comparable outcomes to the standards and systems that apply in the EU.

A further advantage to the chapter is the establishment of a dedicated Joint Working Group to advance cooperation between New Zealand and the EU in the area of animal welfare. This includes an undertaking to work together on these issues in relevant international bodies, including the World Animal Health Organisation.

### Disadvantages

There are no disadvantages in this chapter for New Zealand. In the context of future FTA partners, the NZ-EU FTA chapter on animal welfare provides a helpful precedent in the explicit recognition it contains of comparability of animal welfare standards and outcomes, despite differences in farming practices, as well as the focus it has on practical cooperation.

## 4.8 Chapter 9: Technical Barriers to Trade

The Technical Barriers to Trade (TBT) chapter is designed to facilitate trade in goods between New Zealand and the EU by removing unnecessary barriers to trade. The chapter includes various

mechanisms that will help support such outcomes including promotion of cooperation between the Parties on areas of mutual interest. The TBT Chapter broadly aligns with New Zealand's current policy settings, existing regulatory arrangements, and the outcomes in the TBT chapters of previously-agreed FTAs.

The chapter preserve each Party's ability to adopt regulatory measures that fulfil legitimate objectives, including protection of health, safety, the environment, or national security.

### **Advantages**

Differing regulatory requirements across countries can create barriers and increase costs for businesses trying to trade in multiple markets. The TBT chapter aims to address these and prevent or eliminate unnecessary technical barriers to trade.

The chapter builds on the disciplines of the WTO TBT Agreement, among other things, through enhanced commitments around undertaking impact assessment of planned technical regulations and reviewing technical regulations from time to time.

The commitments largely reflect existing EU practice so, for the most part, do not confer additional benefits on New Zealand. They do however ensure that EU practice will continue. There are several elements of the chapter that confer advantages on New Zealand in terms of facilitating the exchange of information and collaborating on areas of mutual interest.

The chapter provides for the Parties to cooperate and exchange information on market surveillance, safety and compliance of non-food products. This includes the option to exchange selected information on consumer products on an ad hoc basis or more systematically under an arrangement. Such information exchange would give New Zealand access to EU expertise, and information relating to the safety of goods.

Commitments on marking and labelling are designed to facilitate the movement of goods by providing certainty and flexibility on labelling requirements for New Zealand businesses.

Recognising the importance of cooperating and collaborating on areas of mutual interest, in particular emerging areas such as digital solutions, there is a dedicated article on Cooperation to facilitate this exchange between the Parties.

In line with New Zealand's policy on prohibiting animal testing, the chapter endorses the approach and commits both Parties to work together to actively support and promote research, development and alternative methods to animal testing.

## Disadvantages

The TBT chapter is not expected to result in any significant disadvantage to New Zealand's ability to develop and implement technical regulations, standards and conformity assessment procedures.

Overall, the chapter is consistent with New Zealand's existing regulatory settings and international trade obligations. It aligns with commitments in other FTAs, including the NZ-UK FTA and CPTPP.

There is a provision that New Zealand has agreed to for the first time in Article 9.7.5 on Conformity assessment. This applies when New Zealand decides to require other than first-party conformity assessment for products. In that case, the obligation requires New Zealand to accept certification and test reports from accredited or otherwise recognised EU conformity assessment bodies for the areas listed in Annex A to the chapter. In relation to electrical safety and electromagnetic compatibility, New Zealand must accept certificates and test reports issued by EU conformity assessment bodies under the International Electrotechnical Commission scheme.

These commitments are novel to New Zealand, outside of a formal Mutual Recognition Agreement, and place some constraint on the choice of recognised conformity assessment bodies, as EU conformity assessment bodies must be included. However, this is unlikely to be a problem in practice as New Zealand would generally look to the EU as a system in which there is a high degree of confidence. Domestic agencies will consider these obligations as they develop or review technical regulations in the covered areas over time.

## 4.9 Chapter 9: Technical Barriers to Trade – Motor Vehicles and Equipment Annex

The Motor Vehicles and Equipment Annex (MV Annex) sits under the TBT Chapter, and concerns the technical regulations, standards, and conformity assessment procedures for motor vehicles, equipment and parts thereof. Consistent with the objectives of the TBT Chapter, it aims to prevent unnecessary technical barriers to trade by promoting compatibility and convergence of regulation based on international standards and to promote recognition of approvals based on particular schemes. It also aims to promote a mutual commitment to ensure the protection of human health, safety and the environment, and to enhance cooperation.

### Advantages

The MV Annex will deliver advantages where New Zealand wishes to export motor vehicles and equipment to the EU. At this stage trade of that sort is minimal, but it is possible that niche products or specialist high tech components might be developed in the future. In that case, the commitments around the convergence of regulatory requirements and market access will facilitate trade into the EU market.

The commitments around accepting a product incorporating a new technology or feature would also ensure innovative New Zealand products should secure facilitated access to the EU market.

The MV Annex also provides for cooperation and the exchange of information and for the Parties to work together in areas of mutual interest in relevant international standardising bodies. This will enable New Zealand to benefit from the EU's experience in this area.

### **Disadvantages**

The MV Annex does limit to some extent the way that New Zealand regulates motor vehicles for the New Zealand market. However, this is not likely to be a substantive issue in practice.

## **4.10 Chapter 9: Wine and Spirits Annex**

New Zealand and the EU have committed to a Wine and Spirits annex to facilitate trade in wine and spirits produced in each of their territories. This will benefit New Zealand winemakers as the EU remains an important market for New Zealand wine with exports of approximately NZ\$209 million in 2022. It will also provide improved certainty for New Zealand's small but growing spirits industry.

The Annex is accompanied by three declarations: a joint declaration relating to allergen labelling, and two New Zealand declarations relating respectively to winemaking practices and EU use of label terms in New Zealand.

### **Advantages**

The advantages of the Wine and Spirits Annex for New Zealand include:

- significantly increasing the number of winemaking practices and physical winemaking processes our winemakers can use in line with New Zealand laws and requirements (as opposed to EU requirements) and still be able to export wine to the EU. This will improve access conditions and increase certainty and enhance flexibility for winemakers;
- a process of adding new items to the list of permitted winemaking practices when agreed by both Parties;
- widening the alcohol range our winemakers can use when labelling their product as 'wine' in the EU (7% actual to 20% total alcoholic strength) compared to the current range of 8.5% actual to 15% total alcoholic strength as regulated in the EU. This increases flexibility and enables access of a wider proportion of New Zealand wines that can be sold in the EU labelled as 'wine';
- improving certainty for winemakers in relation to label design by including general labelling principles and by providing for a standstill on new precise placement requirements for mandatory information;
- improving winemakers' flexibility in relation to label design including in relation to alcohol content representation on the label, and by aligning multi-variety labelling rules with existing New Zealand

domestic requirements for New Zealand wine, including the requirement that if a wine is a blend of grape varieties, at least 85% of the wine must be from those varieties (the 85% rule);

- reducing the costs arising from routine certification requirements entering the EU market by agreeing a simplified regime for New Zealand's bottled wine exports. Bulk wine will remain subject to existing full certificate requirements; and
- improving certainty for spirits producers on certain labelling provisions. For example, the Annex clarifies that certain types of date marking are not required on spirits labels.

The outcomes agreed in the Wine and Spirits Annex can be accommodated under New Zealand's current laws and are consistent with current policy settings, as well as wine specific Agreements and Protocols New Zealand is a Party to in the World Wine Trade Group (WWTG).

Necessary policy space has been safeguarded. For example, Parties retain the right to implement measures necessary to protect human or plant life or health and it is confirmed that importing party's rules apply unless specified otherwise in the annex.

#### **Disadvantages**

Fully de-alcoholised wines are not included in the scope of the Annex and these wines will remain subject to each importing Party's rules. New Zealand will be, however, able to propose further discussions on de-alcoholised wines in the Committee on Wine and Spirits.

#### **4.11 Chapter 10: Investment Liberalisation and Trade in Services**

The Investment Liberalisation and Trade in Services Chapter will establish a high quality and balanced framework of services and investment obligations to govern the investment and trade in services relationships between New Zealand and the EU. The chapter is designed to facilitate the flow of services and investment between New Zealand and the EU, with a stable and transparent framework of rules. The obligations contained in the chapter and New Zealand's specific reservations are similar to New Zealand's existing services trade and investment obligations in other recent Free Trade Agreements (including the CPTPP and NZ-UK FTA). Consistent with government policy, the NZ-EU FTA does not include Investor-State Dispute Settlement (ISDS).

As with other modern FTAs, services and investment market access commitments are recorded in the NZ-EU FTA through a 'negative list' framework. This means that the obligations in the chapter will apply across the economy, except in regards to those sectors or sub-sectors that are identified in each Party's schedule of non-conforming measures (Annex 10 C 1-2). By identifying sectors that the Government intends to exclude from certain obligations, New Zealand is better able to protect sensitive policy areas and preserve space for government to regulate in the future. This format provides exporters and investors a simple way to determine whether the services and investment chapters apply to their area

of business between New Zealand and the EU, and the specific nature of any restrictions that may apply.

## **Investment Liberalisation**

### **Advantages**

The NZ-EU FTA will benefit New Zealand investors by providing greater transparency and improved conditions when making investments and doing business with the EU. Improved conditions for investment are also important for many New Zealand goods and services exporters, who increasingly look to undertake activities to support their international businesses (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service).

New Zealand's stock of outward direct investment (ODI) to the EU was NZ\$7.1 billion in 2021. The NZ-EU FTA will help to further reduce barriers to investment and support New Zealand investors to better navigate the EU regulatory system.

The stock of foreign direct investment (FDI) from the EU was NZ\$15.5 billion in 2021 making it New Zealand's second largest source of FDI. This investment is a crucial source of capital to keep building New Zealand's competitive and productive economy. Concluding a high-quality and modern investment outcome with the EU will continue to signal to EU investors that New Zealand is an attractive, stable and transparent investment environment.

The EU has also committed to extend to New Zealand any future investment market opening agreed in subsequent FTAs through a most favoured nation clause (a commitment New Zealand also made to the EU), future proofing the FTA outcomes. As a result, any benefits the EU extends to future partners (e.g. Australia) in these areas will automatically be extended to New Zealand.

### **Investment Protections**

The specific advantages provided by the investment obligations to New Zealand investors in the EU, and EU investors in New Zealand, include:

- non-discrimination: provides that New Zealand investors and investments cannot be discriminated against by the EU compared to its own domestic EU investors in like circumstances, or against investors from any other country. Without these obligations, New Zealand investors could be treated less favourably than other investors (e.g. they could face more onerous investment authorisation requirements) at any stage of their investment's lifecycle, which could put them at a competitive disadvantage.
- greater control over investments: New Zealand investors will be able to retain greater control of their investments in the EU as the section limits the EU's ability to impose or enforce performance requirements as a condition of investing (such as a requirement to transfer technology to the EU or to use a certain percentage of EU goods). These types of requirements can be particularly

onerous for small and medium size enterprises. The section also provides certainty that transfers relating to a covered investment will be able to be made freely and without delay. The NZ-EU FTA will also allow investors to appoint their preferred candidates to governance and senior management positions.

### **Disadvantages**

The obligations of the Investment section are designed to facilitate and protect investment flows between New Zealand and the EU and do not create any additional regulatory requirements for New Zealand. This is because our existing agreements and customary international law are already reflected in New Zealand's investment regime.

### **New Zealand Investment Screening Thresholds**

As part of a negotiated outcome on improved investment opportunities, New Zealand agreed a preferential investment screening threshold for the EU. Under the NZ-EU FTA, the threshold above which a non-government investor must get approval to invest significant business assets in New Zealand will increase from \$NZ100 million to NZ\$200 million. This brings the EU in line with preferential investment screening commitments made in other FTAs, for example CPTPP. This means a lower levels of oversight for certain EU investments than is currently the case. New Zealand was able to address any associated risk through specific reservations (non-conforming measures), exceptions and safeguards. New Zealand will be unable to reduce this threshold in the future.

Other than this specific threshold, the NZ-EU FTA would not have any further implications or required amendments for the investments currently screened under the Overseas Investment Act 2005. The NZ-EU FTA, for example, does not alter the restrictions in the Overseas Investment Act on overseas people from buying residential land. The New Zealand Government retains the ability to approve the acquisition or control of certain categories of land that are regarded as sensitive or other investments that require specific approval according to New Zealand's overseas investment legislation.

Consistent with other FTAs including CPTPP and the NZ-UKFTA, New Zealand will make commitments not to impose particular requirements on investments, like the hiring of a given number of New Zealand nationals, or imposing conditions on the nationality or residency of senior management or board of directors linked to an investment. However, where New Zealand has identified sectors where there is a need for current or future policy flexibility, (including in sensitive areas such as health, public education and social security) we have taken reservations in our market access schedule (Annex I and II, Cross-Border Trade in Services and Investment Non-Confirming Measures). These reflect the same types of reservations New Zealand has included in previous FTAs This balances New Zealand's commitment to high-quality investment rules and our need to preserve future policy space in certain areas of the economy.

## Cross-Border Trade in Services

The Cross-Border Trade in Services section seeks to facilitate the expansion of trade in services, including in sectors such as professional and business services, environmental services, educational services and transport services, as well as services that support New Zealand's goods trade with the EU. The section consists of substantive obligations, such as National Treatment, which requires the EU to treat New Zealand services providers in a no less favourable manner than its domestic services providers, and vice versa; Most Favoured Nation treatment, which requires the EU to provide New Zealand services providers treatment no less favourable than it provides to other foreign suppliers, and vice versa; and Local Presence, which prohibits requirements that service providers physically establish their operations in a Party's territory.

Services provided in the exercise of governmental authority, some air transport services, audio-visual services, and government procurement are specifically excluded from the chapter. The chapter includes market access schedules that detail which sectors are liberalised and open to overseas service providers, and those which are still protected. For example New Zealand's healthcare and public education are excluded from many of the obligations set out in this chapter. Financial and telecommunications services are covered in separate sections (below), as are broader commitments on domestic regulation.

## Advantages

The EU is New Zealand's six-largest services export market. In the year to March 2020, prior to the COVID-19 pandemic, New Zealand exported \$1.87 billion of services to the EU, including knowledge-intensive services such as IT, insurance and pension services, charges for the use of intellectual property, and other business services. New Zealand services suppliers – both those currently active in the EU market and those looking to develop their trade in the EU – will benefit from the greater certainty and predictability of access that the EU's commitments under the EU-NZ FTA will provide. This will make it easier for New Zealand service exporters, such as providers of professional, business, education, environmental, transportation and distribution services, to identify and take up new opportunities in the EU market and increase their competitiveness and profitability.

This is particularly the case for New Zealand services suppliers' active in sectors or sub-sectors where the EU's commitments go beyond those made in its WTO GATS schedule<sup>51</sup>. These include areas such as aviation services, including ground handling services and services such as aerial firefighting, flight training, aerial spraying and other airborne agricultural, industrial and inspection services. In particular, New Zealand was able to secure new commitments, which the EU has not previously made, in the area of "other education services" – a category that includes language education and sports and recreation education. Importantly these new commitments apply across twenty EU member states, rather than individual commitments, thereby ensuring improved access through greater certainty.

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<sup>51</sup> The World Trade Organization General Agreement on Trade in Services is a 1995 WTO agreement that serves as a baseline for New Zealand's trade in services commitments.

Improved commitments for services are also important for many New Zealand goods exporters, both concerning their own services related activities where applicable, for example the marketing and sales of New Zealand products, and to provide access to competitive services in support of their goods exports, including in the areas of transport, ICT and business and professional services.

In addition, the core obligations prevent the EU imposing a local presence requirement on New Zealand services suppliers, apart from in the few instances where this has been specifically identified in the EU's list of non-conforming measures (e.g. for intellectual property agency services). This is of particular importance to New Zealand services suppliers wanting to provide services cross-border, without having to establish a (likely costly) presence in the EU. These core obligations are supported by other disciplines such as provisions to enable the free transfer of payments and to promote recognition of qualifications and licensing arrangements.

Given the EU's prominence as a global services exporter, and the fact that the EU is New Zealand's second largest source of services imports (worth \$3.2 billion in 2022), the FTA will increase opportunities for knowledge and technology transfer and overcome to some extent the deterrent effect that New Zealand's small market may currently have on expansion of services imports. The EU has also committed to extend to New Zealand any future services market opening agreed in subsequent FTAs through a most favoured nation clause (a commitment New Zealand also made to the EU), future proofing the FTA outcomes. As a result, any benefits the EU extends to future partners (e.g. Australia) in these areas will automatically be extended to New Zealand.

### **Disadvantages**

The core obligations in the Cross-Border Trade in Services section are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in its other recent FTAs, including the NZ-UKFTA. There are no disadvantages arising from replicating these obligations in the NZ-EU FTA context.

In those services sectors or sub-sectors where New Zealand has made more advanced market access or other commitments under the Cross-Border Trade in Services section to the EU than offered to other trading partners (e.g. environmental services), none of these go beyond existing New Zealand regulatory settings, so would not entail any change to regulations. In return, the EU has also made commitments that go beyond its existing GATS commitments in a number of areas of New Zealand commercial interest (e.g. education services) and this delivers additional certainty and predictability for New Zealand services suppliers seeking to operate in the EU market.

### **Entry and Temporary Stay of Natural Persons (including Annex 10-C & D)**

#### **Advantages**

The Entry and Temporary Stay of Natural Persons section seeks to facilitate the entry and temporary stay of business people. New Zealanders travelling for business purposes will benefit from the commitments to ensure expeditious and transparent application procedures for obtaining visas to the EU. The section also contains a commitment by both sides that the fees charged for any immigration formality (e.g. visas) will be reasonable and will not unduly impair or delay the business activities of those applying for temporary entry.

The section contains a commitment to transparency, which provides for the two sides to publish all relevant information regarding temporary entry for businesspersons in the covered categories. This includes ensuring information is publicly available concerning the required documentation and conditions for each category, the relevant application fees and indicative timeframes for processing, the maximum length of stay under the different categories and any conditions related to extension or renewal of temporary entry, as well as available review or appeal procedures. This will allow New Zealand business people to be better informed as to the temporary entry access available and requirements applying to their specific business activities in the EU.

Each side has made commitments to provide temporary entry to each other's business people across an expanded range of categories or services. New Zealand and the EU have agreed they will not set any numerical limits on the total number of individuals in each category of business people to be granted temporary entry. Nor will either side impose 'economic needs tests' (a test to confirm if the skills sought can be found within the market) on the temporary entry of such business persons, other than those clearly set out in their schedules of commitments.

New Zealand has reserved its right to continue to apply an 'economic needs test' to the temporary entry of EU contractual services suppliers – business people that are entering New Zealand to complete a short-term contract. This is consistent with current New Zealand policy. Both Parties have also underlined that nothing in the section prevents either government from applying measures to protect the integrity of their border or to ensure the orderly movement of people across their borders.

### **Disadvantages**

It is still relatively rare for New Zealand to have made commitments regarding contractual service suppliers, due to concerns regarding the potential impact such commitments may have on our local employment market. To date, the NZ-UK FTA is the only other agreement to contain such commitments. To ensure the impact of these new commitments is manageable, specific safeguards have been put in place. These safeguards include a maximum twelve-month visit period and an economic needs test. Contractual services suppliers seeking temporary entry to New Zealand must also; be employed by an enterprise in the EU for at least one year prior to their application, be employed on conditions that at least meet minimum New Zealand employment standards, and meet other conditions too.

## **Domestic Regulation**

### **Advantages**

The Domestic Regulation section of the FTA aims to ensure that the measures each Party takes regarding authorisation to supply services – specifically those concerning licensing requirements and procedures, qualification requirements and procedures, and technical standards – are developed and administered in a reasonable, transparent, objective, and impartial manner. The section draws from and builds on the requirements in Article VI.4 of the GATS. There is also a requirement to provide for review of any administrative decisions taken under such measures.

New Zealand services suppliers benefit from a regulatory environment based on clear, objective and impartial rules for, and decisions on, matters affecting trade in services in international markets. This is particularly the case given the high number of SMEs across New Zealand's services sector and the asymmetry this gives rise to when New Zealand services suppliers are competing against much larger companies operating in the EU. Therefore, the Domestic Regulation section sets out core principles for licensing and qualification requirements and procedures, as well as technical standards, should be developed and administered in such a way as not to create a discriminatory barrier to foreign services suppliers. This is important for New Zealand services exporters.

### **Disadvantages**

The obligations on New Zealand in this section are consistent with similar commitments New Zealand has made in the WTO in the Domestic Regulation Joint Statement Initiative, and in its other recent FTAs, including the NZ-UKFTA. As such, there are no disadvantage to New Zealand from this section, with all provisions in the section consistent with current New Zealand regulatory settings.

## **Telecommunication Services**

### **Advantages**

The Telecommunications section sets out regulatory disciplines that underpin effective market access and competitive markets in telecommunications services between New Zealand and the EU. The EU and New Zealand recognise that telecommunications services are an important infrastructure enabler for trade in goods and services, as well as a distinct services sector in its own right. Better connectivity helps facilitate services delivery and digital trade, and enables more inclusive participation in global trade. The section builds on the disciplines developed in the GATS Telecommunications Annex, extending and updating these original GATS regulatory disciplines to reflect the developments in approaches to the regulation of markets since the conclusion of the GATS in the 1990s, including through drawing on concepts and approaches in the more recent CPTPP chapter on Telecommunications. All the disciplines in the section are consistent with current New Zealand regulatory settings.

The section provides a clear indication to international service suppliers and investors that New Zealand has in place a pro-competitive regulatory framework in the telecommunications sector that is consistent with international practice and focussed on the long-term benefits to end-users of telecommunications services. This forms part of the environment that supports the attraction of leading technology, capable of generating wider economic development in New Zealand. It also provides New Zealand telecommunications services suppliers with greater certainty that telecommunications regulation will be transparent, objective and non-discriminatory. Disciplines that ensure telecommunications services are readily accessible and competitive provide value not only for telecommunications suppliers, but also for New Zealand businesses operating offshore, whether to facilitate operations, enable service delivery or to connect with customers.

The section recognises that the cost of international mobile roaming is a significant practical issue for business and consumers in today's globally inter-connected world. It includes an undertaking for the Parties to work together to promote transparent and reasonable rates, and enable consumers to be well informed and be able to use technological alternatives.

#### **Disadvantages**

The obligations in the telecommunications section are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in its other recent FTAs, including the NZ-UKFTA. There are no disadvantages arising from replicating these obligations in the NZ-EU FTA.

#### **Financial Services**

##### **Advantages**

The Financial Services section in the NZ-EU FTA establishes a framework of rules governing the cross-border trade in financial services between the Parties. Financial services are an important underlying service essential to all international trade and investment. The inclusion of a separate section of commitments on financial services, similar to that found in CPTPP, recognises the importance of financial services in this regard. Specific investment-related provisions that apply in the case of the Financial Services section are also listed. This is New Zealand's preferred format, as it provides a simple outcome for businesses, providing clarity that the section commitments will apply to every area, except those detailed in the 'negative list' of non-conforming measures, contained in Annex 10-A and 10-B. At the same time, the list of non-conforming measures under the Cross-Border Trade in Services and Investment sections in relation to the provisions on market access, national treatment and senior managers and boards of directors also apply to the Financial Services section.

The framework of rules provided by the Financial Services section helps underpin financial services-related trade and investment activity between the two sides, through providing increased certainty and predictability to financial services suppliers and their consumers regarding the rules and requirements that apply in this area.

The section includes market access commitments to ensure access for each other's financial service suppliers by, among other things, not imposing quantitative restrictions on the number of established financial services suppliers; the value of transactions; or by requiring a particular type of legal entity or joint venture to provide the service. The section's commitments also ensure that once established as a financial service provider, New Zealand or EU suppliers of financial services into each other's markets would not be disadvantaged compared to other providers of the same or similar services under other trade agreements, subject to limited exceptions. The obligation relating to portfolio management, which reflects existing New Zealand policy, will also reduce barriers to trade for New Zealand and EU suppliers in each other's markets. Specific commitments are also included in the section that will promote transparency, which is particularly important in the financial services sector given that regulation is often highly technical.

### **Disadvantages**

New Zealand already has an open and transparent financial services policy regime. This, together with the policy space preserved under the NZ-EU FTA to regulate for prudential reasons, means that the commitments New Zealand has agreed to in the financial services section are within our current regulatory settings, and that there are no disadvantages for New Zealand from agreeing to these commitments. Further exceptions are included in New Zealand's non-conforming measures schedule (as outlined in Section 5 of this NIA).

The obligations in the Financial Services section are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in its other recent FTAs, including the NZ-UKFTA. There are no disadvantages arising from replicating these obligations in the NZ-EU FTA.

## **International Maritime Transport Services**

### **Advantages**

This section contains a non-discrimination commitment, which requires both Parties to provide international maritime transport service suppliers of the EU and New Zealand treatment no less favourable than that given to domestic suppliers, with respect to access and the fees and charges for the use of ports, port infrastructure and services (such as pilotage, provisioning, fuelling and watering, and shore-based operational services essential to ship operations, etc), the use of maritime auxiliary services, and facilities for loading and unloading. These commitments ensure New Zealand suppliers in the maritime sector have certainty and clear understanding of the EU regulatory environment, allowing them to further develop their businesses during this period of supply chain uncertainties.

### **Disadvantages**

The commitments contained within the International Maritime Transport Services section are consistent with existing New Zealand policy and regulatory settings, so will not require changes to our laws or regulations. The obligations in the Financial Services section are consistent with similar

commitments New Zealand has made in its other recent FTAs, including the NZ-UKFTA. There are no disadvantages arising from replicating these obligations in the NZ-EU FTA.

#### **4.12 Chapter 11: Capital Movements, Payments and Transfers and Temporary Safeguard Measures**

##### **Advantages**

This Chapter will benefit New Zealand investors by ensuring that each Party is obliged to permit transfers to be made freely and without delay in a freely useable currency, in accordance with the Articles of Agreement of the International Monetary Fund. Each Party must also allow for the free movement of capital for the purpose of investment liberalisation and other transactions as provided for under the Trade in Services, Investments Liberalisation, and Digital Chapters.

##### **Disadvantages**

The Capital Movements, Payments and Transfers Chapter does not present any disadvantages to New Zealand. New Zealand already has similar commitments and these are consistent with our existing regulatory settings, so will not require changes to our laws or regulations. The obligations in Chapter 11 are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in its other recent FTAs, including the NZ-UKFTA. There are no disadvantages arising from replicating these obligations in the NZ-EU FTA.

#### **4.13 Chapter 12: Digital Trade**

New Zealand and the EU support modern digital trade rules. These benefit both New Zealand businesses and New Zealand consumers as they engage in the rapidly growing area of digital trade.

##### **Advantages**

The advantages of this chapter for New Zealand include:

- Promoting user confidence in digital trade, including through commitments the EU and New Zealand have made not to impose customs duties on electronic transactions (so electronic purchases of goods or services don't attract customs duties), to support consumer protection for the users of digital trade and to assist consumers in dealing with unsolicited direct marketing communications (Spam);
- Enhancing common approaches and inter-operability in regulatory frameworks to make it easier for users of digital trade. This includes through promoting the validity and acceptance of electronic contracts, of electronic authentication and supporting e-invoicing and its use, as well as to enhance paperless trading by increasing availability and acceptance of electronic trade administrative documents;

- Avoiding unnecessary barriers to digital trade. This includes preventing costly measures that would require the specific use of data centres in the EU for storing or processing data as a condition of participating in digital trade. It also precludes unnecessary requirements to transfer or provide access to the source code of software as a condition for the import, export, distribution, sale or use of such software, to ensure exporters have appropriate protection for their proprietary source code. There is also a new commitment to avoid greater licencing requirements for online service suppliers than offline service suppliers.

In order to balance these obligations, the chapter is also careful to preserve appropriate regulatory policy space. The chapter explicitly reaffirms the right of New Zealand (and the EU) to regulate in the public interest, including to take whatever measures they deem necessary for the protection of personal data and privacy, as well as government information.

Not only does the chapter reaffirm the right of the Parties to regulate to achieve legitimate policy objectives, it specifically record that the General Exceptions (which allow parties to take measures that would otherwise breach the obligations in the FTA in order meet certain policy objectives such as health, environment or public morals), apply to measures relating to the transfer of data in connection with digital trade. It also clarifies that these exceptions and the public policy objectives they reference will be interpreted in a manner that takes into account the evolutionary nature of digital technology.

In response to concerns expressed in Wai 2522<sup>52</sup>, New Zealand successfully secured the following provisions to further protect and promote the interests of Māori in the area of trade:

- the chapter explicitly provides that measures taken by New Zealand to protect or promote Māori rights, interests, duties or responsibilities, including those taken in fulfilment of the te Tiriti o Waitangi/the Treaty of Waitangi, will not be covered by the chapter. This language is in addition to the Treaty of Waitangi exception that applies to the whole FTA;
- A review of Article 12 on Cross-Border Data Flows within three years of entry into force (unless otherwise agreed) to assess the functioning of the article, and there is a commitment by the Government to engage Māori as a part of this review so that the review can take into account the continued need for New Zealand to support Māori in relation to te Tiriti o Waitangi/the Treaty of Waitangi; and
- There is also a new services and investment reservation on “trade enabled by electronic means”, which effectively gives the New Zealand Government broad policy space to breach specified obligations of the Investment Promotion and Trade Services Chapter (with the exception of Most-Favoured Nation) in pursuit of policies to protect or promote Māori interests.

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<sup>52</sup> [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjF0-a-tP7-AhWRklyBHS6EDZEQFnoECCcQAQ&url=https%3A%2F%2Fforms.justice.govt.nz%2Fsearch%2FDocuments%2FWT%2Fwt\\_DOC\\_195473606%2FReport%2520on%2520the%2520CPTPP%2520W.pdf&usg=AOvVaw3VghJxt\\_yCRSiZNdhp8U1h](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjF0-a-tP7-AhWRklyBHS6EDZEQFnoECCcQAQ&url=https%3A%2F%2Fforms.justice.govt.nz%2Fsearch%2FDocuments%2FWT%2Fwt_DOC_195473606%2FReport%2520on%2520the%2520CPTPP%2520W.pdf&usg=AOvVaw3VghJxt_yCRSiZNdhp8U1h)

Moreover, the chapter provides for broader regulatory cooperation between New Zealand and the EU on digital trade matters, including to exchange information on lessons learned and best practices.

### **Disadvantages**

Concerns have been raised in the past about the potential for certain digital trade rules, particularly relating restricting data localisation requirements, to impact on the Government's ability to regulate in this area. This concern is mitigated through the application of the cross-cutting General Exceptions, which include protecting public security or public morals and maintaining public order, the Prudential exception and the Treaty of Waitangi exception. There is also additional language on the applicability of these General Exceptions, including that they will be interpreted in a modern, digital technology relevant context.

Moreover, this chapter specifically carves two additional and broad areas (anything concerning Māori, and privacy) out of the scope of the chapter altogether. In addition, as discussed above, there are specific additional protections contained within the Chapter itself, including, for example carve-outs for information held or processed by the Government. While the protections for the regulation of public policy appear different to data rules in other FTAs the Government has retained broad protections for its ability to develop and respond to challenges in respect of data rules.

Another potential disadvantage is that, similar to the NZ-UKFTA, the audio-visual sector would be wholly carved out from these new digital trade rules, so would not gain any benefits from them (nor have any additional requirements imposed on them as a result of this chapter).

### **4.14 Chapter 13: Energy and Raw Materials**

The objectives of this chapter are to facilitate trade and investment between the Parties to promote, develop and increase energy generation from renewable sources and the sustainable production of raw materials, including through the use of green technologies.

The chapter builds on the commitment of the EU and New Zealand to cooperate on environmental matters, including the sustainable management of natural resources, as agreed in the EU-NZPARC<sup>53</sup>. The chapter reflects a shared commitment to energy and raw materials markets that are competitive, transparent and undistorted, through promoting non-discriminatory access to resources and infrastructure, while also recognising the importance of fully preserving the right of both New Zealand and the EU to regulate.

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<sup>53</sup> Article 43

## Advantages

The advantages of this chapter for New Zealand include:

- ensuring New Zealand companies and investors can gain transparent and non-discriminatory access to electricity infrastructure in the EU and that authorisations to explore or produce electricity, raw materials and hydrocarbons must be granted through a transparent process and in an objective and impartial manner;
- ensuring strong commitments for environment impact assessments in the EU and New Zealand related to the production of energy goods or raw materials;
- a new platform for the promotion of cooperation between regulators and standardisation bodies in the area of energy and efficiency and sustainable renewable energy to support climate policy;
- new opportunities for the promotion of research, development, and innovation on energy efficiency, renewable energy, and raw materials, with a partner with world-leading credentials in these areas;
- all outcomes agreed are in line with New Zealand's current domestic policy and regulatory settings, and preserve the Government's ability to effectively regulate energy and raw materials markets and to effectively regulate in relation to risk management in the energy and raw materials sectors;
- the chapter does not apply to agricultural, forestry or fisheries products.

## Disadvantages

There are no significant disadvantages for New Zealand arising from this chapter.

Where policy space has been constrained (e.g. Article 4 on Import and Export Monopolies) the outcome reflects New Zealand's long-standing policy and regulatory settings. Based on this, New Zealand is not likely to seek to create an import or export monopoly with an exclusive right in respect of energy goods or raw materials, so this provision would likely have no practical application in New Zealand.

The Article 5 commitment to not charge a higher price for the export of energy goods or raw materials than the domestic price is not a current consideration in New Zealand's energy markets. However, its potential ramifications may need to be factored in if in future New Zealand develops an export market for fuels such as hydrogen which may also be consumed domestically for nationally significant uses such as transport and industrial feedstock.

The Article 6 commitment to regulate the price of the domestic supply of energy goods and raw materials only to achieve a legitimate public policy objective, and through imposing a price that is

transparent, non-discriminatory and proportionate, provides some flexibility if this was a situation that New Zealand wanted to explore in the future. The impact of this article is likely to be slight given the provision of a legitimate public policy rationale, noting also that New Zealand does not generally regulate the domestic supply of energy goods, as issues such as energy poverty are usually dealt with through the social welfare system rather than direct pricing interventions.

#### **4.15 Chapter 14: Public Procurement**

The Public Procurement chapter establishes open, fair and transparent conditions of competition in the public procurement markets covered by the chapter. Businesses from the New Zealand and the EU are afforded treatment equal to the treatment given to domestic suppliers in bidding for government contracts covered by the chapter.

New Zealand and the EU have each negotiated a schedule that sets out government entities, procurement activities, and minimum value thresholds that together determine what procurements are subject to the commitments in the chapter (“covered procurement”). Coverage under the schedule of each Party includes central government entities, sub-central government entities and other government entities.

The chapter also includes a commitment to undertake further negotiations of sub-central and other entities with a view to achieving expanded coverage if New Zealand alters its domestic government procurement policy settings to include specific categories of entity or if entities in those categories are covered in another international trade agreement.

#### **Advantages**

The Public Procurement chapter would provide New Zealand businesses new opportunities in the form of guaranteed access<sup>54</sup> to covered government contracting opportunities in the EU, supplementing the access to EU government contracting opportunities already available to New Zealand through its membership in the WTO Agreement on Government Procurement. Procurement by government entities in the EU is substantial, totalling approximately €2 trillion or 14% of GDP each year<sup>55</sup>. By contrast, the New Zealand public sector spends approximately NZ\$51.5 billion on goods and services, including infrastructure, each year – around 20 percent of GDP<sup>56</sup>.

Governments typically buy a wide range of goods and services in a variety of sectors including health, education, housing, transport, public utilities and construction. Government contracts provide significant export opportunities for New Zealand’s high value-added specialist services and goods

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<sup>54</sup> Guaranteed access means that the access provided under the chapter cannot be removed except in accordance with the provisions of the Chapter (in which case, compensatory adjustments would be negotiated) or by withdrawal from the Treaty itself.

<sup>55</sup> [https://single-market-economy.ec.europa.eu/single-market/public-procurement\\_en#:~:text=Why%20public%20procurement%20is%20important,of%20services%2C%20works%20and%20supplies](https://single-market-economy.ec.europa.eu/single-market/public-procurement_en#:~:text=Why%20public%20procurement%20is%20important,of%20services%2C%20works%20and%20supplies)

<sup>56</sup> <https://www.procurement.govt.nz/about-us/news/growth-in-government-procurement-spend/>

manufacturers, such as communications equipment, security systems, healthcare (including IT, beds and dental equipment), and marine and aviation technology.

Both New Zealand and the EU are parties to the WTO Agreement on Government Procurement (GPA)<sup>57</sup>, under which each Party has access to the procurement covered under that agreement<sup>58</sup>. The FTA builds on the commitments that have already been made under the GPA. More specifically the FTA includes access to almost 200 additional central government entities across the EU's 27 Member States. This will give New Zealand access to full coverage of the EU's central government entities, some health-related goods by the EU's regional contracting authorities, and coverage of entities operating in the fields of airport facilities and maritime, inland port or terminal facilities.

The chapter specifically recognises that the Parties can take into account environmental, social, and labour considerations in procurement, as well as use procurement to ensure compliance with international environmental, labour and social laws, regulations, obligations and standards, provided they are not discriminatory. This confirms that New Zealand can use its procurement to promote policies such as the living wage, environmental standards, and progressive procurements to address behaviours/issues such as modern slavery.

The FTA strengthens the GPA commitment to open advertising of covered procurement opportunities by agreeing all notices will be electronic and be available free of charge on a single point of access on the internet. It allows for greater accessibility to procurement opportunities and information, including tender documents and submissions of tender responses.

### **Disadvantages**

While New Zealand's covered procurement includes entities not previously committed under the WTO GPA or another FTA, no policy or regulatory change is required to implement this as all entities committed in the FTA are already required to apply the New Zealand's domestic Government Procurement Rules to their procurement.

The FTA would place the same restrictions on certain procurement-related policy options as several of New Zealand's existing trade agreements (including the WTO GPA), for example restrictions on the ability to compel government agencies to "buy local" under explicit preferential procurement policies. These obligations are reciprocal and therefore benefit New Zealand businesses and the economy by enabling them to compete on price, quality and other outcomes rather than country of origin

The Parties must provide access to national remedies to suppliers having an interest in a particular procurement covered by the FTA, where they believe that the commitments in the chapter have not

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<sup>57</sup> The GPA is a plurilateral agreement within the framework of the WTO, meaning that not all WTO parties are parties to the Agreement. At present, the GPA has 21 parties covering 48 WTO members.

<sup>58</sup> Details on the coverage of the European Union and New Zealand under the GPA can be found at: [https://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_app\\_agree\\_e.htm](https://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm)

been applied by the procuring entity. New Zealand government agencies already accept tenders from foreign suppliers and provide rights of redress through the New Zealand courts, so the risk of any increase in legal proceedings is considered minimal.

The coverage agreed by New Zealand is the most comprehensive provided under any FTA to date. It takes account of the reciprocal size of the EU's public procurement market that has also been committed in the FTA. It is likely that future trade partners will see this as setting a precedent from which to try to secure additional coverage, potentially making future negotiations more challenging.

#### **4.16 Chapter 15: Anti-Competitive Conduct and Merger Control**

In negotiating competition chapters in our FTAs, New Zealand seeks to ensure that effective competition laws and regulations are maintained and enforced, supporting open and competitive markets. New Zealand and the EU support free and undistorted competition in their trade and investment. This shared commitment benefits all New Zealand private and public enterprises, as well as New Zealand consumers.

This chapter requires New Zealand and the EU to implement, monitor and enforce domestic competition laws that prohibit anti-competitive behaviour. The chapter includes transparency requirements for both New Zealand and the EU, providing for the resolution of anti-competitive complaints between the Parties. Alongside this, there remains agreed exemptions for Parties on grounds of public interest. The balance of these obligations ensures New Zealanders are protected from cross-border anti-competitive practices.

##### **Advantages**

The advantages of this chapter for New Zealand include:

- protecting New Zealand enterprises and investors when operating in the EU from anti-competitive behaviour through the Parties' agreement to implement and monitor competition legislation. Without the security of a strong competition regime in the EU, the benefits to New Zealand of increased flows of goods and services under this agreement could potentially be compromised by anti-competitive practices;
- ensuring competition laws are enforced and monitored on an ongoing basis through an operationally independent body. While both Parties have internationally well-regarded competition legislation, the additional security of having independent monitoring provides a safety net from anti-competitive practices for New Zealand operations in the EU as well as when EU enterprises and investors are operating in New Zealand;
- affording a pathway for enterprises and individuals to address alleged anti-competitive behaviour in the EU. Provisions in the chapter protect the right of New Zealand businesses to take actions in the EU if they encounter anti-competitive behaviour. The rights of New Zealand individuals to

pursue legal action against anti-competitive practices are protected under the chapter's inclusion of "private right of action";

- collaborating with the EU on areas of common interest to promote good competition policy and law through the sharing of information and policy settings. This collaboration will help ensure the Parties approach to competition remains aligned, maintaining a shared high-quality platform. It will also enable New Zealand and the EU to promote strong competition legislation with other trading partners.

### **Disadvantages**

There are no disadvantages that arise from this chapter for New Zealand. New Zealand has had well-developed and well-functioning competition law for a number of years. While the chapter does reference some European competition law terms and concepts, the obligations in this chapter are consistent with New Zealand's competition laws as detailed in the Commerce Act 1986. This prohibits anti-competitive conduct and provides a private right of action. The Commerce Commission is primarily responsible for enforcing the Act. As such, New Zealand will not need to amend its competition laws or policy to meet these requirements.

### **4.17 Chapter 16: Subsidies**

New Zealand and the EU recognise subsidies can be a necessary tool to achieve public policy objectives – such as social and cultural public goods. However, subsidies can also be wasteful, distort markets and interfere with price signals, leading to unfair competition in both domestic and international markets. In addition, subsidies can encourage overproduction and overconsumption that can lead to environmental harm. Accordingly, New Zealand and the EU have agreed to support the monitoring and prohibition of certain types of subsidies.

### **Advantages**

The advantages of this chapter for New Zealand include:

- commitments on transparency of subsidy programmes and the establishment of a bilateral consultation mechanism. When the details of subsidies programmes are not publicly available or easily accessible, it is difficult for governments and businesses to assess the extent of other countries' subsidies and their implications for global markets. The chapter includes commitments on transparency, including to routinely publish specific information about subsidy programmes. The chapter also establishes a bilateral consultation mechanism as a forum to raise concerns related to subsidies. This mechanism includes agriculture, a significant sector of the New Zealand economy, and one in which the EU maintains a large subsidy programme;
- commitments on harmful fisheries subsidies to reduce environmental harm and increase fair competition. New Zealand has been a long-standing and leading advocate for global fisheries subsidies reform. Fisheries subsidies can cause environmental harm and deplete fish stocks by

enabling harmful fishing practices, as well as increase unfair competition in international markets for New Zealand's unsubsidised fishing industry. To address these concerns, this chapter includes prohibitions on granting or maintaining harmful fisheries subsidies, as well as cooperation provisions to pursue further prohibitions in international organisations. This is the first time in a FTA that the EU has agreed to a fisheries subsidies prohibition;

- prohibitions on subsidies to 'zombie companies' to create fairer markets for New Zealand businesses. As a matter of prudent financial practice, New Zealand and the EU have agreed to prohibit subsidies in the form of unlimited and non-time bound guarantees of debt, and subsidies to insolvent enterprises without credible restructuring plans. Subsidies of this kind can distort markets, promote ineffective business practices, as well as be an inefficient use of taxpayer funds. This is a new commitment for New Zealand, so exceptions to preserve policy space were sought. Such exceptions mean that the prohibitions would not apply following emergency situations including natural disasters (e.g. cyclones and earthquakes), and global health or economic emergencies in order to enable the Government to support businesses through these unforeseen events.

### **Disadvantages**

There are no significant disadvantages arising from this chapter for New Zealand. That said, New Zealand has agreed for the first time in an FTA to include commitments on subsidies to service enterprises (for example transport, financial services, tourism, arts and culture). These cover transparency and consultation obligations, and prohibited subsidies in specific circumstances.

New transparency commitments for services subsidies will require an increase in efforts to ensure that existing agency and local government reporting practices meet the new requirements under the NZ-EU FTA. This will serve to strengthen New Zealand's commitment to open and transparent government, and ensure transparency for New Zealand services enterprises.

Including services enterprises within the prohibited subsidies widens the potential number of enterprises that would fall within these prohibitions. This could mean that where a company trading a service becomes insolvent and does not have a restructuring plan, the government would not be able to provide them with a subsidy. However, as above this would not apply in times of emergency, or where ensuring the delivery of the service is in the public interest.

### **4.18 Chapter 17: State-Owned Enterprises**

The objective of the State Owned Enterprises (SOEs) chapter is to ensure there is an equal footing between enterprises owned or controlled by the state, and private competitors, while recognising each Party's right to establish and maintain SOEs and monopolies. This protection is balanced with the right for both New Zealand and the EU to deliver policy objectives through enterprises owned, or given special rights or privileges, by the state.

The chapter obligations apply to all enterprises owned or designated by the state when they are operating commercially. This includes SOEs, designated monopolies, and enterprises where the state provides ‘special rights or privileges’, other than when these rights and privileges are granted according to “objective, proportional, and non-discriminatory criteria.”

### **Advantages**

The advantages of this chapter for New Zealand include:

- ensuring New Zealand companies and investors can operate commercially within the EU on an equal footing with EU SOEs, designated monopolies, or enterprises that are granted special rights or privileges by the state. Both Parties are required to operate in accordance with commercial considerations and national treatment when acting commercially with the other Party;
- maintaining the right of New Zealand’s SOEs and designated monopolies to continue operating with their existing commercial models;
- protecting the ability of New Zealand to deliver key policy priorities through existing SOEs, designated monopolies, and when special rights and privileges are granted to an enterprise. This includes the possibility of establishing new SOEs in the future;
- information transparency requirements that align with existing New Zealand practices.

The obligations in this chapter align with New Zealand’s existing policy and regulatory settings. A small number of quota arrangements which operate in New Zealand, and were not intended to be inadvertently covered by the chapter obligations, have been explicitly carved out of the chapter.

New Zealand’s existing arrangements for the export of kiwifruit are also carved out of the chapter obligations. This ensures New Zealand’s arrangements for the export of Kiwifruit are not required to change as a result of the obligations in this chapter.

The chapter obligations do not apply to local and regional councils. This ensures the ‘arms-length’ relationship between central government and local government is maintained. The Chapter also explicitly carves out government procurement.

The chapter is explicit in detailing the need for regulatory bodies established by the state to be independent, act impartially, and in a non-discriminatory manner. New Zealand (or the EU) can request information on a SOE, designated monopoly or the granting of special rights or privileges if it is believed chapter obligations are not being adhered to, resulting in New Zealand’s commercial interests being adversely affected. This provides an avenue for New Zealand to hold the EU to account and to enable a ‘level playing field’ for our companies and investments.

## Disadvantages

There are no significant disadvantages for New Zealand arising from this chapter. New Zealand SOEs and designated monopolies are already set up to operate on a level playing field with privately owned companies and are subject to domestic competition laws.

The chapter's approach is in line with current practices the New Zealand's State-Owned Enterprises Act 1986. New Zealand is already subject to similar commitments arising from other FTAs, including the NZ-UK FTA and the CPTPP.

The inclusion of 'enterprise granted special rights or privileges' is novel in New Zealand FTAs and will apply new obligations to these entities. The agreed definition of this group of enterprises carves out situations when the special rights and privileges are provided using "objective, proportional and non-discriminatory criteria". The use of such criteria aligns with New Zealand current practices and means the capture of entities under this definition is expected to be minimal. New Zealand included a "for greater certainty" footnote in the chapter which explicitly confirmed the granting of a quota allocation, licence or permit in relation to either a scarce resource or the distribution of export products to markets where tariff quotas, country-specific preferences or other measures are in force does not constitute a special right or privilege under the chapter.

### 4.19 Chapter 18: Intellectual Property

The Intellectual Property (IP) Chapter aims to promote the creation, production, dissemination and commercialisation of innovative and creative products and services within and between the Parties.

The chapter:

- includes comprehensive provisions covering the protection of copyright and related rights, trademarks, geographical indications, designs, and trade secrets, to support innovative products and services and to provide certainty for the trade in such products and services between the Parties;
- provides for ongoing cooperation between the Parties, including in relation to intellectual property related aspects of genetic resources, traditional knowledge and traditional cultural expressions.

Many of the obligations contained in the chapter are similar to those contained in existing international IP agreements and recent New Zealand FTAs or reflect existing policy settings. The chapter does not impact the operation of PHARMAC nor require changes to patent or other IP protections that would directly impact the affordability of medicines, veterinary medicines or agricultural chemicals.

Taken in isolation, the IP Chapter is likely to result in a small net cost to New Zealand, including as a result of copyright changes and the obligation to protect 1,976 EU GIs. However, these costs need to

be assessed in relation to the overall net benefit to New Zealand of the FTA, particularly in relation to the goods market access benefits.

### **Advantages**

Notwithstanding the assessment that the Chapter as a whole is likely to result in a net cost, there will be some benefits for New Zealanders arising directly from new copyright and GIs obligations. These include benefits for:

- creators, producers and performers and for copyright owners and licensees arising from the earlier implementation of extended terms of copyright protection;
- copyright owners and content providers arising from increased protection of technological protection measures;
- visual artist from the implementation of a reciprocal visual artists resale royalty regime;
- wine producers and future New Zealand GI owners through the availability of a mechanism for potentially protecting their GIs within the EU market.

### **Disadvantages**

Most requirements in the chapter have been agreed in previous international agreements such as the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPs), the CPTPP and the NZ-UK FTA, and therefore will not result in any new or additional constraints on the development of IP policies. New constraints will only arise in relation to the new copyright and GI obligations described below, that go beyond our existing domestic settings and international obligations.

The chapter provides “a floor, not a ceiling” for IP protections. This means New Zealand can provide more extensive protections than those set out in the chapter, including to respond to te Tiriti obligations identified in the Waitangi Tribunal’s Wai262 report, *Ko Aotearoa Tenei*. In addition, the General Exception provisions<sup>59</sup> provide New Zealand flexibility to respond to te Tiriti obligations and other public policy considerations when applying the IP Chapter obligations. The Parties have also agreed specific flexibilities for New Zealand to protect Māori rights, interests, duties and responsibilities, in relation to the granting of plant variety rights as provided under the Plant Variety Rights Act 2022.

### **Commitments also covered by the NZ-UK FTA**

The chapter includes commitments that go beyond New Zealand’s existing law, that have also been agreed as part of the NZ-UK FTA which entered into force on 31 May 2023. These include:

- New Zealand is to introduce an artist’s resale right (ARR) scheme within 2 years of entry-into-force of NZ-UK FTA, which will come into force before the same obligation arises in the NZ-EU FTA. An

ARR scheme will enable visual artists to receive a royalty on the resale of their art works in the secondary art market for as long as the artwork remains protected by copyright. The Ministry of Culture and Heritage (MCH) has commenced consultation and policy development work for the introduction of the scheme. The scheme will enable visual artists to receive a royalty on the resale of their works in the secondary art market, both within New Zealand and reciprocally in the UK and EU. This will allow artists to benefit from increased value of their works from the time of first sale and provide greater equality for visual artists. An ARR will also help artists to track the ownership history, transmission, and location of an art object.

- However, the ARR scheme will impose compliance costs on galleries, auction houses and any collection agency involved in the administration of the scheme, including in relation to the collection of royalties, the identification of relevant artists (or their heirs/estates) and the forwarding of royalty payments. These costs are expected to be modest. MCH estimates that the median compliance cost for galleries and auction houses will be \$180-\$400 per year. They also anticipate that the scheme will become self-sustaining with administration costs covered by a fee deducted from the royalties collected.
- New Zealand has agreed to extend performers' property rights under the Copyright Act to include the playing in public of sound recordings of their performances. This new right mirrors an existing right given to producers of such sound recordings. The impact of the change is expected to be minimal. There may be benefits for some performers through additional revenue from the licensing of the right to play sound recordings in public. However, in other cases it is likely that producers will simply extend their existing standard form contracts with performers to apply to these new rights, without additional compensation.
- New Zealand has agreed to make all reasonable efforts to join the Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement) which provides an international regime for the protection of industrial designs in multiple countries and regions with minimal formalities. A separate NIA and Regulatory Impact Assessment would be required to support any future decision to join the Hague Agreement.

## **Geographical indications**

### **Advantages**

From entry-into-force the EU will protect 23 New Zealand wine and spirits GIs<sup>60</sup> including the wine GIs "Marlborough" and "Central Otago". This means only producers from within the applicable regions defined by these GIs will be able to use those names on wine or spirits sold in the EU.

We have also agreed a process for further GIs to be protected under the FTA. Each party can nominate up to 30 additional GIs to be protected by the other party every 3 years. However, protection is not guaranteed. The nominated GIs must already be protected in its home territory (so New Zealand can

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<sup>60</sup> Those registered in early 2019 under the Geographical Indications (Wine and Spirits) Act 2006 Act.

only nominate GIs that are already protected here) and will be subject to an examination and public opposition process within the other Party.

The grounds for opposition include where the nominated GI is: an existing trade mark, a common descriptive name for the relevant product, a plant variety name, an animal breed or is offensive. Ultimately, the protection of any new GI under the FTA will need to be agreed by both Parties. Despite these requirements, the process will provide New Zealand producers who have developed new GIs, a route for protecting those GIs in the EU without needing to use the EU's domestic GIs registration procedures.

### **Disadvantages**

New Zealand will provide GI protection for 1,976 EU GIs, including Feta, Gorgonzola, Gruyere, Port, Sherry and Prosecco, for the exclusive use of applicable EU producers.

The protection will generally apply from entry-into-force of the FTA. However, we have agreed that existing producers who have been using the term "Gruyere" in New Zealand for at least 5 years prior to entry-into-force, can continue to do so indefinitely despite its protection as a GI. Similarly, existing producers who have used the term "parmesan" for at least 5 years can continue to do so notwithstanding the protection provided in the Chapter, including the protection of the GI "Parmigiano Reggiano".

We have also agreed that, for certain other names, a transition period will apply to allow current use to be phased out over time. For example, existing producers that have consistently used the term 'Feta' or 'Port' on their products in New Zealand will have 9 years after entry into force of the Agreement to phase out that use. A 5-year transition will apply for existing users of 'Sherry', 'Madeira', 'Prosecco', 'Grappa', 'Gorgonzola', 'Bayerisches Bier' and 'Münchener Bier'. In addition, any stock labelled with a protected EU GI at the date the protection comes into force, will be able to be sold until that stock is exhausted.

As discussed above, the Agreement provides for New Zealand protecting up to 30 new EU GIs every 3 years. However, any new GIs must first be examined and subject to a public process which allows people to object to protection where the nominated GI is being used by New Zealand producers as, for example, a trademark, common descriptive name for the relevant product or a plant varietal name or animal breed. Objections can also be raised if the name (or its translation) is offensive, including to Māori. In addition, ultimately New Zealand would need to agree to any new GI protected under the FTA.

The parties will provide for the administrative enforcement of agreed GIs "ex officio or on request of an interested party" by "appropriate administrative and judicial steps". This means, in addition to civil enforcement, a government agency needs to be able to take appropriate steps to enforce GI protection, either on its own initiative or in response to a request from an interested person. While

the cost of providing administrative enforcement is likely to be low, it is difficult to accurately estimate that cost. It is estimated that costs may initially be higher as work is needed to respond to issues arising as the market becomes accustomed to the new protections, although these costs should quickly reduce over time.

Changes are also proposed for the civil enforcement of GIs. Under the current Geographical Indications (Wine and Spirits) Registration Act 2006 (GI Act), an infringement of a registered GI is deemed to be an infringement of section 9 of Fair Trading Act 1986. The Fair Trading Act would allow the Commerce Commission to take action to enforce a registered GI. However, alongside the preparatory work to implement the FTA GI obligations, MBIE has reviewed and proposed changes to the current civil enforcement provisions under the GI Act, including in relation to how and by whom civil administrative enforcement should be provided for.

New Zealand will need to expand the application of Customs Notices currently used to request that Customs Services detain goods at the border that are suspected of infringing copyright or trade mark rights. Such notices will also apply to GI infringing goods.

Modelling to assess EU proposals on geographical indications (GIs) from 2017 suggested costs to fully implement the FTA commitments of up to \$22.6 million (these will likely have increased in the intervening period, but are still likely to be below \$30 million). Most of these costs would be felt by affected producers, importers and exporters who currently use terms such as 'feta' and 'prosecco' but will have to relabel products and then compete with EU products in the New Zealand markets that are able to continue to use such terms as GIs. Some exceptions to EU GI protections were secured to help mitigate costs, including by ensuring that some existing users of the names 'gruyere' and 'parmesan' can continue to use those names and to provide and users of other names that are currently being used in New Zealand will have a 9 year (port and feta) or 5 year (including prosecco, sherry and gorgonzola) transition period before the EU protections apply.

In addition, MBIE has estimated that there will also be a cost of approximately \$20,000 for the Intellectual Property Office of New Zealand to expand the GIs register to include the EU GIs New Zealand must protect, plus ongoing administrative costs of \$10,000 per annum to maintain the expanded register.

### **Copyright and related rights**

The FTA requirements impact New Zealand law and policy on copyright and related rights, in relation to copyright term, technological protection measures and New Zealand's membership of the Beijing Treaty. This section describes these requirements and their advantages and disadvantages.

### **Copyright term**

New Zealand has agreed to extend the current term of protection for copyright and related rights by 20 years<sup>61</sup>. Although the same obligation exists under the NZ-UK FTA, New Zealand will need to implement the change within 4 years after entry-into-force of the NZ-EU FTA rather than after 15 years, as required under the NZ-UK FTA.

### Advantages

Parts of the publishing, music and broader creative sectors have advised that extending copyright term will provide commercial benefits by extending the period in which the potential royalty revenue may be generated including as a result of New Zealand law being more consistent with many of our trading partners.<sup>62</sup>

### Disadvantages

However, extending copyright term also involves:

- increased costs and reduced opportunities for New Zealanders, including in the education sector, gallery, library, archive and museum (GLAM) sector, to consume, use, make adaptations, distribute, and preserve copyright works, especially in relation to orphan works<sup>63</sup>, during the extended term;
- application on a ‘most favoured nation’ basis, so that the extended term will apply to all foreign copyright owners<sup>64</sup>, not just those from the EU; and
- benefit to foreign creators, copyright owners and licensees, producers and performers more than those in New Zealand, because New Zealand is a net importer of copyright works and as a result there will be net outflow of copyright royalties from the New Zealand economy.

There is no evidence that increasing the term of protection incentivises either the creation of new works or the dissemination of older works (which are the primary policy goals of copyright protection). It is also estimated that more than 98% of copyright works are not being used commercially at the end of their current term and, therefore, their copyright owners are unlikely to benefit financially from the term extension.

A 2019 MBIE-commissioned report on the impact of extending the term of protection estimated a total net economic impact, in present value terms, of between \$15 million in costs and a marginal benefit. The report notes that, after examining the effects on imports, exports, and the cost to consumers of an extension of copyright term in respect of prices “we find a maximum net loss in welfare of \$13.7 million in the books sector and \$1.7 million for music sector”.

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<sup>61</sup> Once implemented, the copyright term for works such as books, screenplays, lyrics and artistic works will change from “life of the author plus 50 years” to “life of the author plus 70 years”. Where the term of protection is not based on the life of a person (such as in the case of a producer’s and performer’s rights in a sound recording) the term will increase from the current 50 years to 70 years.

<sup>62</sup> Some economies, like the EU, whose domestic law provides for life plus 70 years protection, limit the protection of New Zealand produced works to life plus 50 years, because that is the term of protection New Zealand gives to European produced works. Therefore, extending the term of protection here will also extend the term of protection for New Zealand produced works in the EU and elsewhere.

<sup>63</sup> An orphan work is one in which either the copyright owner is not known or, if known, is no longer contactable. The older a copyright work, the more likely it will be an orphan work.

<sup>64</sup> NZ could limit this to reciprocating countries that provide at least equivalent terms of protection.

However, the research did not address impacts on films and other artistic works. It also did not address the cultural and social costs of delaying access to older works, particularly those that are no longer commercially available. These include, amongst other things, the opportunity costs of people not being able to access or make use of knowledge and culture contained in copyright works and the increased costs to the galleries, libraries, archives and museums (GLAM sector) in managing their collections, including by copying, preserving and making digital copies of items available to the public. These costs increase significantly for 'orphan works' where the relevant right holder cannot be identified or contacted to seek any needed permissions (extending the term of copyright protection will increase the number of orphan works and therefore costs within the sector). Implementing the copyright term changes as part of a wider review of the Copyright Act will provide an opportunity to mitigate some potential cost of the copyright term changes, including by providing appropriate flexibilities to the GLAM sector.

While the authors of the report considered it provided the best point in time estimate of costs, they also highlighted the difficulty in estimating the long run effects of copyright term extension due to a number of inherent limitations with the analysis. These include:

- the effects of rapidly changing technology and consumption habits;
- sensitivity of the outcome to the methodology chosen; and
- limited data availability (their analysis was limited to literary works and sound recordings as there was insufficient data to consider television programs, movies, artistic or other works).

### **Technological protection measures (TPM)**

Within 4 years of the FTA entering into force, New Zealand has agreed to extend protection of technological protection measures (TPMs), or "digital locks", used to prohibit people copying or accessing works protected by copyright (TPM work). New Zealand currently regulates the supply of devices, services or information used to circumvent a TPM, and only where that TPM prohibits copying of the underlying copyright work. The Copyright Act will need to be amended to also prohibit the act of circumventing a TPM used to block access to, or copying of, a TPM work. However, we will be able to provide exceptions to these protections to allow people to make use of the existing exceptions and limitations to copyright protection. For example, we will be able to limit TPM protection to allow for research and private study or for libraries to access and copy works in ways that are permitted under the Copyright Act.

### **Advantages**

Enhanced protections may benefit businesses that use TPMs, such as online content providers wanting to ensure consumers pay to access that content. The enhanced protection may also create greater business certainty around the development and introduction of new electronic distribution services and greater digital dissemination of foreign copyright works within New Zealand. However, there is no

evidence to date that the absence of the enhanced TPM protections has inhibited the development of a competitive online market for content in New Zealand.

### **Disadvantages**

The disadvantages of enhanced TPM protections include:

- use by foreign content providers to prevent New Zealand consumers accessing their content at all or at a fair price comparable to the price paid by overseas consumers;
- restricting access to lawfully purchased content according to the particular type of device the consumer owns;
- limiting the ability of people to maintain and repair devices, appliances and other products with embedded software by preventing access to that software for diagnostic purposes or repair; and
- reducing access to knowledge and culture, particularly where TPM technology becomes obsolete and no longer supported by manufacturers or distributors.

### **Beijing Treaty**

New Zealand has agreed to make all reasonable efforts to join the Beijing Treaty on Audio-visual Performances (Beijing Treaty). Parties to the Beijing Treaty must provide performers certain economic and moral rights in relation to audio-visual recordings of their performances. New Zealand law already provides performers certain moral rights in relation to audio-visual recordings (films), but only provides economic rights in relation to sound recordings, not audio-visual recordings. However, given almost all audio-visual recordings include a sound recording component, our current law already applies to at least that element of an audio-visual recording. Any expansion of our law to audio-visual recordings is unlikely to have a significant economic impact. Such an expansion has been considered as part of the Copyright Act review.

Given the FTA obligation, further consideration of joining the Beijing Treaty and expanding the economic rights of performers to also apply to audio-visual recordings will now be undertaken. A separate NIA and Regulatory Impact Assessment would be required to support any future decision to join the Beijing Treaty.

## 4.20 Chapter 19: Trade and Sustainable Development

New Zealand and the EU strongly support the achievement of sustainable development objectives through trade. The Trade and Sustainable Development (TSD) chapter of the FTA promotes strong labour, gender equality, environment, and climate change outcomes. It sets a new benchmark and provides a platform for more engagement and cooperation to address trade-related sustainable development issues with some of the world's most progressive economies.

### Multilateral Labour Standards and Agreements

#### Advantages

The chapter contains high-quality provisions to promote mutually supportive trade and labour policies and practices through reinforcing and implementing internationally recognised labour rights, encouraging high levels of labour protection, promoting decent work, and providing for cooperation and dialogue between the Parties.

Under the chapter, the Parties commit to respect, promote and realise the Fundamental International Labour Organisation (ILO) principles and rights at work, namely the rights to freedom of association, collective bargaining, the elimination of forced labour and child labour, and the elimination of discrimination at work<sup>65</sup>.

The chapter's labour provisions will help ensure a more level playing field for New Zealand exporters, importers and their employees by setting enforceable labour obligations for both parties and requiring that they not undermine their respective labour laws or fail to enforce them to encourage trade or investment. Equally, the chapter recognises that labour laws or other measures should not be used as a means of trade protectionism through disguised restrictions on trade or investment.

The chapter commits the Parties to maintain an effective labour inspection system and to adopt and implement measures and policies regarding occupational health and safety. In addition, the Parties agree to promote the objectives of Decent Work, particularly with regard to decent working conditions and social dialogue on labour matters, further reinforcing the pursuit of high-quality labour outcomes.

The chapter also provides for the Parties to work together on trade and labour related matters, both bilaterally and in broader forums, including in the ILO. Cooperation with the EU - an advanced economic entity with a comprehensive system of labour protections - has the potential benefit to New Zealand of access to a range of policy perspectives, as well as the ability to access a larger resource base for cooperative activities. Joint cooperation in international fora will also improve New Zealand's visibility and leverage in those fora.

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<sup>65</sup> The decision of the ILO in 2022 to add a new fundamental right to a safe and healthy working environment is also noted, alongside the means by which this may be added to the chapter once the FTA comes into effect.

## **Disadvantages**

New commitments to make continued and sustained efforts to ratify any unratified fundamental ILO Conventions will require New Zealand to undertake an assessment of New Zealand's law, policy and practice with a view to ratification of ILO Convention 138 on Minimum Age and Convention 87 on Freedom and Association and Protection of the Right to Organise (as well as Convention 187 on Promotional Framework for Occupational Safety and Health Convention if the chapter is amended to refer to the updated ILO Declaration). It is anticipated that ratification of the unratified Fundamental Conventions is likely to require some policy and legislative change.

Nevertheless, working towards ratification of the outstanding ILO Conventions will reinforce New Zealand's strong commitment to the International Labour Organisation, and any change to New Zealand's policy and legislative framework would occur in consultation with tripartite partners.

## **Trade and Gender Equality**

### **Advantages**

The strong outcomes in the Trade and Gender Equality article will help elevate the importance of gender equality and women's economic empowerment for New Zealand's economic policy and well-being.

The Agreement does this by holding New Zealand and the EU to a high level of accountability in meeting international obligations to address gender equality or women's rights. The Agreement prevents Parties from using gender equality related laws or measures in a manner that would constitute a disguised restriction on trade or investment.

The Agreement will also help facilitate and build an agenda for ensuring gender equality in trade, in particular, women's economic empowerment in trade policy making including efforts to break down barriers to trade. In this way the chapter reinforces New Zealand's membership of the Global Trade and Gender Arrangement<sup>66</sup>. Consistent with the Government's priorities to actively reflect and promote our commitments under the Trade for All agenda and Te Tiriti O Waitangi/The Treaty of Waitangi, the FTA acknowledges the importance of facilitating cooperation between relevant stakeholders of New Zealand and the EU, including wāhine Māori, to access and benefit from the opportunities created by the Agreement. The FTA also provides opportunities for cooperation activities of mutual interest, promoting the exchange of information and best practice examples.

Finally, these strong commitments are reinforced with application of dispute settlement to the chapter (short of trade sanctions), a first for any New Zealand or EU FTA.

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<sup>66</sup> At the time of publication members include: Canada, Chile, Colombia, Costa Rica, Ecuador, Mexico, New Zealand and Peru.

## **Disadvantages**

There are no significant disadvantages in the Trade and Gender Equality article.

## **Trade and Environment**

### **Advantages**

The TSD Chapter is one of the most comprehensive environment outcomes included in any of New Zealand's FTAs. The articles on environment in the TSD chapter provide a valuable avenue for New Zealand to advance our environmental and conservation interests internationally, including through working collaboratively with the EU across a range of levels.

In addition to the important obligations to promote high levels of environmental protection and effective enforcement of environmental laws, there are obligations that require each Party to take measures to combat illegal wildlife trade, including through seeking to reduce demand for illegal wildlife products and promoting trade in products that have been made from sustainable biological resources. This will support New Zealand in efforts to combat the illegal trade of protected wildlife.

In line with New Zealand's Trade for All agenda and Te Tiriti O Waitangi/The Treaty of Waitangi, the role of indigenous peoples and local communities embodying traditional lifestyles in contributing to the conservation and sustainable use of biological diversity is explicitly acknowledged in the chapter.

New Zealand and the EU commit to combatting illegal logging and related trade and promoting the conservation and sustainable management of forests. There is agreement that trade only occur in forest products harvested from sustainably managed forests and in accordance with domestic laws. Agreement to exchange information and strengthen cooperation on trade related aspects of sustainable forest management and deforestation free supply chains allows New Zealand to enhance our engagement and cooperation with the EU to find effective and constructive solutions to this pressing global issue.

The TSD chapter confirms the need to end harmful practices such as subsidies that contribute to overfishing, overcapacity, and Illegal, Unreported, and Unregulated Fishing (IUU). Along with acknowledging the harm done by IUU fishing, each Party commits to deterring their flagged vessels from supporting or engaging in IUU fishing as well as cooperating to facilitate electronic certification systems to exclude IUU products from trade flows. The Parties also agreed to strengthen cooperation on trade-related aspects of fisheries and aquaculture both bilaterally, and in international fora.

## Disadvantages

There are no significant disadvantages in the trade and environment articles<sup>67</sup> of the agreement

## Trade and Climate Change

### Advantages

One of the important features of the Chapter are the strong commitments both the EU and New Zealand have made regarding the Paris Agreement. Reflecting a shared commitment to international legal norms and action on climate change, New Zealand and the EU have committed to refrain from actions or omissions which materially defeat the object and purpose of the Paris Agreement.

The Chapter includes obligations to promote mutual supportiveness between trade and climate policies, promote emissions trading and facilitate the removal of obstacles to trade and investment in goods and services of particular relevance for climate change mitigation and adaptation. It includes a list of climate-friendly goods for which tariffs will go to zero on entry into force of the Agreement and liberalises a list of environmental services. It also provides a basis for closer cooperation and policy dialogue between the EU and New Zealand on trade-related aspects of climate change policies.

Fossil Fuel Subsidy Reform is an area where New Zealand takes a leadership role globally in encouraging countries to commit to eliminate harmful fossil fuel subsidies. The article on trade and fossil fuel subsidy reform in the chapter is the first time the EU has agreed to such an article in any FTA. It provides for strengthened cooperation on trade-related aspects of fossil fuel subsidy measures both bilaterally and in international forums and includes a commitment to work to reform and progressively reduce fossil fuel subsidies in a way that is appropriate to national circumstances.

### Disadvantages

There are no significant disadvantages arising from the Trade and Climate Change Articles<sup>68</sup> of the agreement, which are consistent with existing policy settings (including those established through the Paris Agreement).

The Chapter includes the potential for either Party to use the lever of sanctions under the FTA with respect to actions or omissions by the other Party which materially defeat the object and purpose of the Paris Agreement. This does not pose a significant risk for New Zealand, which is implementing its Paris Agreement commitments. Nothing in the Chapter changes the nature of the Paris Agreement commitments themselves, for example emissions reduction targets set through Nationally Determined Contributions (NDCs), which are non-binding.

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<sup>67</sup> Trade and Environment Articles include: Article 19.5 Multilateral environmental agreements and international environmental governance; Article 19.8 Trade and biological diversity; Article 19.9 Trade and Forests; Article 19.10 Trade and sustainable management of fisheries and aquaculture

<sup>68</sup> Trade and climate change articles include Article 19.6 Trade and climate change; Article 19.7 Trade and fossil fuel subsidy reform

The dispute settlement mechanism for the FTA applies to all of the obligations in the TSD chapter, but the option of final recourse to trade sanctions as part of dispute settlement proceedings applies to only the following obligations:<sup>69</sup>

- possible breaches of ILO fundamental labour rights (Article 19.3(3)); and
- refraining from any act or omission that materially defeats the object and purpose of the Paris Agreement (Article 19.6(3)).

New Zealand's preference would be to have the option of trade sanctions in dispute settlement proceedings if there is a breach of any obligation in the chapter, but the two obligations referred to above are the first time the EU has agreed to trade sanctions in an FTA if there is a breach of a labour or climate change obligation.

#### **4.21 Chapter 20: Māori Trade and Economic Cooperation**

This is a dedicated chapter focused on enhancing Māori trade and economic cooperation. The purpose is for the Parties to cooperate to enable and advance Māori economic aspirations and well-being.

##### **Advantages**

The Chapter highlights the important contribution that increased Māori engagement and a te ao Māori perspective can bring to enhancing trade, investment, innovation, cultural, people-to-people links and wellbeing. This is consistent with New Zealand's Trade for All policy agenda, which seeks to ensure that trade benefits are more accessible across society as a whole, including for Māori, women and SMEs.

The chapter recognises the particular challenges that Māori face, including for Māori-led enterprises, in seeking to access the trade and economic benefits under the Agreement. As discussed in Section 7 of this NIA, Māori export businesses are likely to be smaller than non-Māori owned firms, which can compound challenges associated with trade due to more limited capacity and resources. Responding to this the Chapter includes a commitment to cooperate to enable Māori to benefit more fully from the trade, investment, innovation and wider economic opportunities in the NZ-EU trade relationship (which will be enhanced by the FTA).

The chapter recognises the central importance of the te Tiriti o Waitangi/the Treaty of Waitangi for New Zealand and Māori, and underlines the importance of ensuring that trade cooperation is implemented in a manner that is consistent with te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

The chapter identifies a number of cooperation areas. These include:

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<sup>69</sup> Under Article 26.16(2) (Temporary remedies) of the Dispute Settlement Chapter.

- collaborating to enhance the ability for Māori-owned enterprises to access and benefit from the trade and investment opportunities created by this Agreement;
- collaborating to develop links between the EU and Māori-owned enterprises, with a particular focus on SMEs, to facilitate access to new and existing supply chains, enable and strengthen opportunities for digital trade, and facilitate cooperation between enterprises on trade in Māori products;
- supporting science, research and innovation links, as appropriate between the EU and Māori communities, pursuant to the Agreement on Scientific and Technological Cooperation between the EU and New Zealand; and
- cooperating and exchanging information and experience on Geographical Indications.

The FTA's Trade Committee will supervise and facilitate the chapter's implementation and application. In addition, there will be an opportunity for Māori participation in the Domestic Advisory Group (DAG) and Civil Society Forum (CSF), both of which can receive recommendations and conduct a dialogue on the chapter.

The chapter contains a number of Māori concepts and definitions, including te ao Māori, mātauranga Māori, tikanga Māori, kaupapa Māori, Māori approaches to wellbeing, and tāonga. The purpose of these concepts and definitions is to guide the application of the chapter.

In addition, with Mānuka honey and other products given tariff free treatment in the FTA, the chapter also includes a definition for Mānuka as a "Māori word used exclusively for the tree *Leptospermum scoparium* grown in Aotearoa New Zealand and products including honey and oil deriving from that tree. Mānuka (and its spelling variations including "Manuka" and "Maanuka") is culturally important to Māori as a tāonga and traditional medicine".

Officials engaged closely with Treaty partner representative groups to develop consultation processes that enabled Māori to have direct input and influence on the cooperation chapter. Proposed text was developed in partnership between officials and Māori trade entities, including Ngā Toki Whakarururanga, Te Taumata, the Federation of Māori Authorities and the National Iwi Chairs' Forum. The chapter represents Māori inputs, aspirations and expectations within the context of this particular negotiation and with regard to the interests and position of the EU.

The provisions in the chapter, including acknowledging the value of cooperation to promote and advance Māori trade interests, helps to set new standards for trade agreements, including for indigenous peoples internationally.

## Disadvantages

We assess that there are no evident disadvantages to New Zealand from this chapter. Indeed, securing a dedicated chapter recognising the importance of Māori interests was a major priority for New Zealand, and represents the first time the EU has agreed to such an outcome in an FTA.

An important challenge in making the most of the benefits of the chapter will be in resourcing the follow up needed to maximise the outcomes for and with Māori. This will not only be the case in regard to government resourcing, but will also potentially present some challenges for Māori, including Māori-led small and medium enterprises, wāhine Māori and smaller and more remote Māori communities.

## 4.22 Chapter 21: Small and Medium-Sized Enterprises

This chapter requires each Party to make information relevant to small and medium sized enterprises (SMEs) easily accessible in digital form. This includes information about the Agreement, as well as information designed for SMEs that will be useful for those SMEs that are interested in benefitting from opportunities under the Agreement.

The chapter also establishes a SMEs contact point that is responsible, among other things, for ensuring the needs of SMEs are taken into account in the implementation of the Agreement.

## Advantages

This dedicated SMEs chapter has the potential to benefit New Zealand SMEs interested in exporting to the EU. The commitments on access to information largely reflect what both Parties are already doing. The chapter future proofs these commitments by not limiting access to particular forms of technology (such as a website), allowing both Parties to deliver access to the information through future digital media.

The details of the Agreement will be incorporated into the EU's Access2Markets portal which facilitates access to detailed product-specific information for importers to the EU. Access to similar information will be provided through New Zealand's Tariff Finder<sup>70</sup>.

## Disadvantages

There are no disadvantages to New Zealand under this chapter. The commitments in respect of information provision align with the practice in New Zealand of ensuring businesses have good access to information. They also align with existing commitments in other FTAs.

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<sup>70</sup> <https://www.tariff-finder.govt.nz/>

### **4.23 Chapter 22: Good Regulatory Practice and Regulatory Cooperation**

The Good Regulatory Practice and Regulatory Cooperation chapter is a cross-cutting chapter that contains commitments on good regulatory practice in the development and review of regulatory measures. It also provides for a simple mechanism to facilitate regulatory cooperation between the Parties. The chapter does not affect the right of each Party to determine its own approach to good regulatory practice and regulatory cooperation. It also does not affect the right of each Party to identify its regulatory priorities and to take regulatory action at the levels it considers appropriate.

The good regulatory practice commitments in this chapter are also generally consistent with New Zealand's existing policies and practice, and obligations New Zealand already has under other international agreements, although New Zealand will need to better formalise and document some of its processes, such as the publication of annual list(s) of planned major regulations to be made by Order in Council.

#### **Advantages**

From a New Zealand perspective, the key benefit of this chapter is the designation of contact points to coordinate voluntary regulatory cooperation activities between the Parties. Given the significance of the EU as a regulator of global trade, these activities could help reduce barriers to trade and investment for business and help improve the effectiveness of domestic regulation.

Contact points should make it easier to engage the relevant EU authorities when NZ proposes a regulatory cooperation activity, and vice versa.

#### **Disadvantages**

The commitments in the chapter are relatively prescriptive, although commitments have been negotiated as far as possible to accommodate New Zealand's need for flexibility, reflecting our smaller size and different constitutional arrangements as compared to the EU. Nonetheless, there remains a small risk that the good regulatory practice obligations may not be:

- as flexible as desirable for New Zealand in particular situations; or
- sufficiently future proof in all areas to support the potential evolution in expectations for good regulatory practice over time.

The obligations in the chapter do not extend to regulatory measures, practices or approaches of EU Member States.

#### **4.24 Chapter 23: Transparency**

The Transparency Chapter includes transparency provisions intended to assist businesses operating in the EU. It imposes procedural requirements with a view to ensuring that Parties administer measures covered by the Agreement in a consistent, impartial, and reasonable manner.

##### **Advantages**

The Chapter requires the Parties to promptly publish its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by the Agreement (and where feasible online).

The Parties must maintain judicial, arbitral or administrative tribunals or procedures for the prompt review and, if warranted, correction of administrative decisions with respect to any matter covered by the FTA.

The Parties must maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations with respect to any matter covered by the FTA. Upon request of a Party, the other Party shall promptly provide information and respond to questions.

##### **Disadvantages**

The Transparency chapter contains provisions that are consistent with existing policy and practice. As a result, there would be no disadvantage to New Zealand committing to these provisions.

#### **4.25 Legal and Institutional Provisions**

FTAs include legal and institutional provisions that cover matters such as how and when the agreement will enter into force, how it will relate to other international agreements already in place, how Parties should resolve issues in the event of a dispute, and what exceptions are allowed. In the NZ-EU FTA, the legal and institutional provisions are covered by chapters on Initial Provisions, Institutional Provisions, Exceptions and General Provisions, Dispute Settlement, and Final Provisions.

##### **Advantages**

The Exceptions chapter sets out a number of exceptions which provide additional safeguards that ensure as far as possible that the Agreement does not impair a government's ability to make policy and undertake measures to further that policy. These exceptions should be seen in addition to the specific flexibilities and safeguards negotiated in different areas of the Agreement. The obligations in the Agreement have been drafted so as not to impair the ability of countries to regulate and take other measures in the public interest, but should there be a situation where such government action (or inaction) would breach an obligation, then the Exceptions Chapter provides a safety net. If a situation

arises in which a country is shown to have violated an obligation, it is then up to that country to prove that a relevant exception applies.

Taken together and as a whole, the exceptions will allow New Zealand to benefit from the negotiated outcomes of the Agreement, while being assured the Government can continue to implement policies through certain measures that would otherwise constitute violations of the Agreement's obligations. This 'advantage' is broad-ranging in its application as the exceptions cover a wide variety of policy areas that are critical for government, including the Treaty of Waitangi, health, environment, security, and taxation.

The chapter adopts in part the WTO approach to preserving public policy space. It does so by incorporating the General Agreement on Tariffs and Trade (GATT) general exceptions (Article XX), which allow the Parties to, for example, adopt measures necessary to protect public morals; or measures (including environmental measures) necessary to protect human, animal or plant life or health; or measures related to the conservation of exhaustible natural resources, provided that a measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade. There are also general exceptions that are identical to the General Agreement on Trade in Services (GATS) general exceptions, with an additional exception for measures necessary to protect public security.

Other key aspects of the chapter include:

- Importantly for New Zealand, the FTA includes a Tiriti o Waitangi/Treaty of Waitangi exception. This allows New Zealand to take measures it deemed necessary to accord more favourable treatment to Māori in respect of matters covered by the Agreement, including in fulfilment of its obligations under te Tiriti o Waitangi/the Treaty of Waitangi. It also states that the interpretation of te Tiriti o Waitangi/the Treaty of Waitangi is not subject to dispute settlement.
- The security exception is a separate and different exception to the general exception referred to above. This allows Parties to adopt non-discriminatory measures necessary to protect public security. The security exception is identical to the WTO security exception. The exception would allow a Party to take any action which it considered necessary for the protection of its essential security interests in certain circumstances. Those circumstances include the protection of information, measures taken in a time of war or other emergency in international relations, or any action taken in accordance with the United Nations Charter for the maintenance of international peace and security.
- The taxation exception sets out the scope of application of the Agreement's obligations to taxation measures and provides various exceptions and policy space for governments in this area.

- The balance of payments exception provides policy flexibility in the case of serious balance of payments or external financial difficulties. It places limitations on when the Parties could put in place restrictive measures on payments or transfers relating to the movements of capital, and on payments or transfers for current account transactions. Under the Agreement, such measures cannot be applied to payments or transfers relating to foreign direct investment, must not exceed what is necessary to deal with the circumstances, must not be used to avoid necessary macroeconomic adjustments, and in the case of capital outflows, must not interfere with an investor's ability to earn a market rate of return on any restricted assets in New Zealand. Further, a measure must be temporary and phased out progressively as the circumstances described in the exception improve.

The Dispute Settlement chapter (which applies to the majority of chapters) includes some mechanisms that vary from New Zealand's previous FTA practice and WTO procedures, but it achieves the same overall outcome of providing effective, efficient, fair and transparent processes for the resolution of a dispute. The chapter requires the Parties to make every attempt to resolve disputes through cooperation and consultations before resorting to the procedures provided for in the chapter. However, if resolution cannot be reached, a Party may invoke the provisions of the chapter that provide for compulsory dispute settlement procedures.

Under the Dispute Settlement chapter, the New Zealand Government will be able to pursue a matter to formal dispute resolution should the EU (including an EU Member State) fail to act consistently with its obligations under the Agreement. This would help ensure the advantages gained across the Agreement were accessible to New Zealand goods and services exporters. For example, if New Zealand brought a successful claim against the EU, and the EU did not bring the relevant measure into compliance with the Agreement, New Zealand could impose increased tariffs on products from the EU in order to induce it to bring the measure into compliance. This form of robust, transparent dispute settlement procedure is considered to be to New Zealand's advantage, particularly as a strong rules-based system has historically proved to the advantage of smaller trading nations like New Zealand.

### **Disadvantages**

The legal and institutional provisions in the Agreement do not present any disadvantages to New Zealand. As noted with respect to the Dispute Settlement chapter, legal and institutional procedures are by their nature reciprocal, and measures taken by the New Zealand Government would be subject to the same dispute settlement procedures as are available for New Zealand. Historically, New Zealand has been subject to only one complaint by a trading partner. This was under the GATT dispute settlement system.<sup>71</sup> To date New Zealand has not been subject to any complaints under the WTO agreements or our FTAs, reflecting our transparent and rules-abiding approach.

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<sup>71</sup> Panel Report, *New Zealand – Imports of Electrical Transformers from Finland*, adopted 18 July 1985, BISD 32S/55.

## 5 Legal Obligations for New Zealand of the Treaty Action, Reservations to the Treaty, Dispute Settlement Mechanisms

### 5.1 Chapter 1: Initial Provisions

The Initial Provisions Chapter sets out how the NZ-EU FTA will interact with other international agreements. The objectives of the Agreement are to liberalise and facilitate trade and investment, as well as to promote a closer economic relationship between the Parties. The chapter sets out general definitions as well as definitions in relation to the WTO Agreement.

Article 1.5 states that the Parties intend the NZ-EU FTA to coexist with existing bilateral agreements between the Parties, and that this Agreement will be an integral part of overall bilateral relations, as governed under the Partnership Agreement, and part of the common institutional framework. If there are inconsistencies with a provision of another agreement of both Parties (not including the WTO Agreement), the Parties must consult to find a mutually satisfactory solution. This consultation can also arise from matters as a result of amendments to the Agreement.

### 5.2 Chapter 2: National Treatment and Market Access for Goods

Under the National Treatment and Market Access for Goods chapter, New Zealand and the EU have agreed:

- to accord national treatment to the goods of the other Party in relation to internal taxation and regulation, as per WTO rules – i.e. to treat them no less favourably than the same or similar domestically produced goods (Article 2.4);
- to eliminate or reduce customs duties on goods originating in the other Party, as set out in each Party's tariff schedule, and not to increase these (Article 2.5 - 2.6, and Annex 2-A and Appendices 2-A-1 and 2-A-2);
- not to adopt or maintain any export duty, tax or other charge (Article 2.7);
- to ensure that all fees and other charges imposed in relation to the import or export of goods are limited to the approximate cost of services rendered and not based on the value of the good, and are published transparently (Article 2.8);
- not to levy customs duties on products temporarily exported for repair or alteration (Article 2.9);
- not to treat remanufactured goods less favourably than equivalent goods in new condition (Article 2.10);
- not to adopt or maintain prohibitions or restrictions on the import of goods from, or export of goods to, the other Party, except as permitted by WTO rules; and not to apply export or import price requirements or import licencing conditional on performance requirements (Article 2.11);

- to accept the origin mark 'Made in the EU' under conditions no less favourable than those displaying a member state of the EU, if a mark of origin is required (Article 2.12);
- to ensure that import licensing procedures are implemented transparently and predictably, and in accordance with the WTO Import Licensing Agreement; and to notify any new procedure without undue delay, as well as engage with the other Party on such issues upon request (Article 2.13);
- to notify all existing export licencing procedures within 30 days of entry-into-force of the Agreement, and ensure that any new or modified export licencing procedures are published swiftly, providing detail on the goods subject to such a licence, the process for applying for one and any relevant eligibility criteria, details of contact points and the relevant administrative body to which any application must be submitted, and a description of the measure being implemented through the export licencing measure (Article 2.14);
- to annually exchange comprehensive import statistics for the purposes of monitoring the functioning of the Agreement and calculating preference utilisation rates (Article 2.15);
- to grant temporary admission of the following goods, free of import duties and taxes, subject to specified conditions: professional equipment, including for visiting press; goods intended for exhibit or use at meetings or fairs; commercial samples and advertising films and recordings for prospective customers; and goods for sports purposes (Article 2.16);
- to grant duty-free entry of commercial samples of negligible value and printed advertising material, in accordance with each Party's laws, regulations or procedures (Article 2.17);
- to cooperate in preventing, detecting and combating breaches of customs legislation related to preferential treatment granted under this chapter; that each Party may temporarily suspend the relevant preferential treatment for the goods concerned where that Party finds there have been systematic and sectoral breaches of customs legislation causing significant loss of revenue to that Party in relation to those goods, and the other Party repeatedly and unjustifiably fails to cooperate with respect to those breaches; that any such decision to temporarily suspend preferential treatment shall be published; and that if an importer is denied preference for their goods due to such a suspension, but is able to demonstrate that the goods concerned are compliant, any excess duties paid shall be able to be recovered (Article 2.18);
- to establish a Committee on Trade in Goods to promote trade between the Parties, including through consultation on accelerating tariff elimination, addressing barriers to trade in goods, ensuring the obligations of each Party are not altered through changes to tariff classifications, monitoring preference utilisation, and working with other relevant committees or subsidiary bodies (Article 2.19); and
- to designate a contact point to facilitate communication on matters covered by this chapter, and to notify the other Party accordingly (Article 2.20).

### 5.3 Chapter 3: Rules of Origin and Origin Procedures

The Rules of Origin (RoO) chapter establishes the rules for determining whether goods traded between the EU and New Zealand are considered to ‘originate’ in the EU or New Zealand. Goods must qualify as ‘originating’ in order to qualify for the benefits, including preferential tariff rates, under the Agreement.

#### Section A: Rules of Origin

Article 3.2 provides three avenues through which products can qualify as ‘originating’. A product will qualify as originating if it:

- is wholly obtained (Article 3.4);
- is produced exclusively from originating materials (Article 3.2.1(b)); or
- incorporates non-originating materials provided they satisfy the requirements of Annex 3-B (the Product Specific Rules (PSR)) (Article 3.2.1(c)).

When a product has acquired originating status, the non-originating materials used in the production of the product shall not be considered non-originating when that new product is incorporated as a material in another product (Article 3.2.2).

The main methods set out in the PSR Annex for determining whether a good qualifies as originating under Article 3.2.1(c) are:

- Change in tariff classification (CTC): under this approach, a good will qualify as originating if the non-EU or non-New Zealand materials used in its production have undergone a specified change in tariff classification;
- Maximum Non-Originating Material value content (MaxNOM): this approach, which is provided as an alternative option primarily for industrial products, is based on the maximum value of non-originating materials that can be used by producers, expressed as a percentage (generally 50%) of the ex-works price of the exported product. For more details on the definition of, and calculation method for, MaxNOM and the ex-works price, see Annex 3-A, Note 4;
- A specified process that confers origin: this approach is primarily used for textiles and apparel, and as an alternative rule for chemical products.

Where the PSR Annex has more than one rule for a product:

- these can be co-equal (“or”), meaning that an exporter or manufacturer can elect to use either the CTC, MaxNOM, or process rule, depending on which approach best suits their business model;
- or

- these can be cumulative (“and”), meaning that all identified rules must be met (for further details, see Annex 3-A, Note 2.3 and 2.4).

Article 3.3 provides for the cumulation of both materials and processing (full cumulation) between the EU and New Zealand when determining the origin of goods. The processes undertaken by the exporting Party must, however, go beyond the operations referred to in Article 3.6 (Insufficient working or processing), and an exporter must be able to provide supporting evidence, on request, if cumulation of processing has been used to meet the origin threshold.

Article 3.4 sets out the types of products that are deemed to be wholly obtained products. For fish products taken from the sea outside the territorial seas of the EU or New Zealand, there are vessel ownership requirements - namely 50% ownership by nationals, or ownership by legal persons that have their head office and their main place of business in a Member State of the EU or New Zealand and are at least 50% owned by a by public entities, nationals or legal persons of the EU or New Zealand. (Article 3.4.2(c)).

Article 3.5 provides for a small tolerance (10% by value of the ex-works price) for a good to be considered originating even if it does not meet the applicable change in tariff classification requirement. This tolerance provision also applies to products that are subject to a “wholly obtained” rule in the PSR Annex (Article 3.5.3). Separate tolerance rules for textiles are stipulated in Notes 6 and 7 of Annex 3-A. (Article 3.5.1(b)).

Article 3.6 lists specific processes or activities that are not sufficient to give a non-originating material origin status.

Article 3.7 clarifies that when a consignment consists of a number of identical products, the origin criteria apply to each individual product.

Articles 3.8 to 3.13 set out how packaging; accessories; spare parts; tools; and instructional and other information that is normally provided with a good; sets; neutral elements (indirect products used in production); and fungible materials and products will be treated when determining origin.

Article 3.14 establishes that an originating product that is returned to a Party shall lose its originating status unless it is the same good as that exported and has not undergone any operation other than that necessary to preserve it in good condition, while in the non-Party or while being exported.

Article 3.15 provides that a product may not be altered, transformed in any way, or subjected to operations other than to preserve them in good condition or then add or affix marks, labels, seals or any other documentation to ensure compliance with specific domestic requirements of the importing Party, during transit. Storage or exhibition of originating products, and the splitting of consignments may take place in a non-Party provided those products are not cleared for home use in that non-Party (Articles 3.15.2 and 3.15.3).

## Separate origin quota

Separate origin quotas are provided, with a less restrictive rule of origin, for a limited number of products.

Fish and Seafood: Separate origin quotas of a cumulative 14,000 tonnes per annum are provided for certain frozen fish species taken by foreign chartered vessels operating in the Exclusive Economic Zone of New Zealand. These vessels must be registered in New Zealand, entitled to and flying the flag of New Zealand and operating under a New Zealand fishing permit. These quotas will be managed on a first-come first-served basis.

If more than 80% of an origin quota assigned to a product is used during a calendar year, the origin quota allocation will be increased by 10% for the following calendar year to a maximum of 30% over 6 years. After 3 years, either Party may request a review of the quota for fish and seafood products to determine if there is a need to increase or maintain the quantity, change the scope, or apportion or

Harmonised System classification (HS 2022)	Product description	Alternative product specific rule <sup>6</sup>	Annual quota (metric tonnes, net weight)
0303 54	Mackerel ( <i>Scomber scombrus</i> , <i>Scomber australasicus</i> , <i>Scomber japonicus</i> )	Fishing and freezing	500
0303 55	Jack and horse mackerel ( <i>Trachurus</i> spp.)		
0303 66	Frozen hake	Fishing and freezing	5,500
0303 68	Frozen blue whiting		
0303 69	Frozen fish of the families bregmacerotidae, eulichthyidae, gadidae, macrouridae, melanonidae, merlucciidae, moridae and muraenolepididae (excl. cod, haddock, coalfish, hake, alaska pollock and blue whiting)		
0303 89	Frozen fish, n.e.s.		
0307 43	Cuttle fish and squid, frozen, with or without shell	Fishing and freezing	8,000

change any apportionment between the products covered by the quota. (Annex 3-A).

Textiles and apparel: A separate annual quota of € 1.2 million (for garments classified in HS Chapter 61) and € 1 million (for garments classified in HS Chapter 62) is available to New Zealand exporters under a 'cut-and-sew' rule. This quota will be managed on a first-come first-served basis and may be reviewed, on request, after three years. A separate origin quota of € 562,000 per annum is also

available for fabric of heading 5903, under a change in tariff heading rule, under similar administration and review provisions.

## **Section B: Origin Procedures**

Section B sets out procedures each Party must apply to implement the origin requirements in the chapter. These requirements are summarised below.

Article 3.16 establishes that a claim for preferential tariff treatment may be based on either:

- a statement on the origin that the product is originating made out by the exporter; in which case the importer must keep the statement, and provide a copy thereof on request; (Article 3.16.4) or
- the importer's knowledge that the product is originating; in which case the importer must hold all of the relevant information supporting the claim (Article 3.21.1(b)).

Article 3.17 provides that preferential tariff treatment shall be granted, and any excess customs duties paid shall be repaid or remitted, if the importer did not make a claim for preferential tariff treatment at the time of importation, provided that the product would have qualified for preferential tariff treatment when it was imported. The importing Party may require that the importer makes a claim for preferential tariff treatment and provide the basis for the claim, no later than 3 years after the date of importation.

Article 3.18 sets out that the statement on origin shall be made out in one of the linguistic versions included in Annex 3-C on an invoice or on any other document that describes the originating product in sufficient detail to enable its identification. A translation cannot be demanded. The statement is valid for 1 year from the date made out and may apply to a single shipment or multiple shipments of identical products.

A Party can deny access to preferential tariff rates where the requirements of the chapter are not met (Article 3.25) but shall not reject a claim due to minor errors or minor discrepancies in the statement of origin (Article 3.19).

Articles 3.23 through 3.25 set out the procedures for verifying a claim for preferential treatment and provide the framework for administrative cooperation and consultation between the customs authorities of the Parties in the event a claim is to be denied.

Under Article 3.26, each Party must maintain the confidentiality of any information collected. Importantly an exporter who has made out a statement on origin cannot be forced to provide information to the customs authority of the importing Party (Article 3.24.6). In such circumstances, the customs authority of the exporting Party may be requested to undertake the verification on behalf of the importing Party and provide an opinion to the customs authority of the importing Party.

Article 3.27 requires that to ensure the effective enforcement of the chapter, each Party be able to impose administrative measures, and where appropriate sanctions, in accordance with its laws and regulations for violations of the obligations under this chapter.

#### **5.4 Chapter 4: Customs and Trade Facilitation**

This chapter includes a range of obligations in respect of customs administration and trade facilitation, including customs cooperation. These commitments fall within current New Zealand policy settings and include:

- ensuring customs procedures and laws are applied in a manner that is predictable, consistent, transparent, and non-discriminatory (Article 4.3). This includes ensuring comprehensive information on customs laws and requirements is easily accessible and published online (Article 4.11), and the issuing of advance rulings (Article 4.12). There is also a commitment to establish enquiry points to answer enquiries from traders and provide access to trade documents (Article 4.11.5);
- ensuring the expeditious clearance and release of goods. Each Party is required to adopt or maintain procedures providing for advance electronic submission and processing of information before the physical arrival of imported goods to enable the release of the goods on arrival (Article 4.4.1(b)). All imported goods will be released within a period that is no longer than necessary to ensure compliance with its laws and regulations and, to the extent possible, upon arrival of the goods (Article 4.4.1(a));
- perishable goods will be given appropriate priority when scheduling any required examinations (Article 4.5.2). Further, at the request of the economic operator and where practicable and consistent with domestic legislation, Parties will provide for the clearance of a consignment of perishable goods outside of normal business hours, and will allow consignments of perishable goods to be moved to, and cleared at, the premises of the economic operator (Article 4.5.3);
- encouraging cooperation between the Parties' customs agencies on customs-related matters, to further develop trade facilitation while ensuring compliance with respective customs laws and procedures (Article 4.2);
- ensuring the ability to seek review and appeal any decision made by customs authorities, and for the outcome of the review or appeal to be provided in writing, including the reasoning behind the outcome of the review and appeal (Article 4.16);
- adopting or maintaining a risk management system for assessment and targeting that enables respective customs administrations to focus inspection activities on high-risk consignments and expedite the release of low-risk consignments while avoiding arbitrary or unjustifiable discrimination (Article 4.8).

## 5.5 Chapter 5: Trade Remedies

This chapter preserves the ability of either Party to take anti-dumping, countervailing, and global safeguard actions under WTO rules. It also establishes a transitional bilateral safeguard mechanism (BSM), available to both New Zealand and the EU, and an outermost region safeguard measure that can apply against New Zealand goods in EU outermost regions. The legal obligations are noted below.

### Section A: General Principles

The provision for dispute settlement in Chapter 26 of the NZ-EU FTA will not apply to actions under ‘Section B: Anti-Dumping and Countervailing Duties’ and ‘Section C: Global Safeguard Measures’.

Additionally, the preferential rules of origin in Chapter 3, will not apply to the Chapter.

### Section B: Anti-Dumping and Countervailing Duties

- Section B of the chapter provides for transparency rules concerning anti-dumping and countervailing investigations, including (Article 5.3):
- Disclosure of essential facts and considerations used in determining whether to apply definitive measures, as soon as possible after the imposition of those measures.
- This chapter also builds on WTO rules, by providing for the application of the “lesser duty rule” when imposing antidumping, and consideration of the “public interest” during antidumping and countervailing investigations.
- Section C: Global Safeguard Measures
- Articles 5.6.1-5.6.3 contain enhanced transparency requirements when conducting global safeguard investigations, including immediately notifying the other of the initiation of any investigation.
- Section D: Bilateral Safeguard Measures
- Section D of the chapter contains the bilateral safeguard mechanism (BSM). It enables either side to temporarily suspend customs duties reductions or increase the duty rate if there is a serious injury (or a threat of serious injury) to the domestic industry of a Party, as a result of an increase in imports of a good from the other Party (Articles 5.8.1 – 5.8.2(b)). The requirements for the application of a BSM include:
  - to only apply a BSM to the extent and for as long as necessary to prevent or remedy the serious injury or threat of serious injury (Article 5.9.1(a));
  - not to apply a BSM beyond 7 years after the FTA enters into force (Article 5.9.1(c));
  - not to apply a BSM for longer than 2 years (Article 5.9.1(b)), with a possible 1 year extension following further investigation (Article 5.9.2(a)-(b));

- to return to the custom-duty rate for the good that would have applied had the safeguard measure not been put in place, at the end of this period (Article 5.9.3);
- not to apply multiple safeguard measures (e.g. a BSM, provisional BSM, outermost regions safeguard measure, safeguard measure under the WTO Safeguards Agreement) on the same good at the same time (Article 5.9.5);
- to only apply a BSM after an investigation has been carried out (Article 5.14.1); but where delay would cause damage that is difficult to repair, a provisional BSM can be applied for no more than 200 days (Article 5.10.1-2));
- to refund the customs duty imposed as a result of a provisional BSM if the investigation later finds that the increased imports did not cause serious injury or a threat of serious injury was not warranted (Article 5.10.3);
- to promptly notify the other Party if a BSM investigation is initiated (Article 5.15.1. (a), or if a provisional BSM is applied or a BSM is applied, extended, or modified (Article 15.1.(c)-(d), with specified content for any notice of a BSM being applied or extended (Article 5.15(3)(a)-(e).

#### **Outermost regions safeguard measure**

Under the outermost regions safeguard measure, if a New Zealand product is being imported into one or more of the EU's outermost regions<sup>72</sup> in such increased quantities and under such conditions as to cause or threaten to cause serious deterioration in the economic situation of the outmost region or regions, the EU, after considering alternatives, may exceptionally apply a BSM limited to the region or regions concerned. (Article 5.11.1).

A determination of 'serious deterioration' must be based on objective factors, including assessing the increase in the volume of imports in absolute or relative terms to the domestic production and to imports from other sources (Article 5.11.2(a)), and the effect of such imports on the situation of the relevant industry or economic sector, including in terms of levels of sales, production, financial situation, and employment (Article 5.11.2(b)).

## **5.6 Chapter 6: Sanitary and Phytosanitary Measures**

The chapter applies to all sanitary and phytosanitary (SPS) measures that may, directly or indirectly, affect trade while protecting human, animal, and plant life and health. It also applies to cooperation on antimicrobial resistance (AMR). It does not, however, apply to a sanitary measure or good covered by the NZ-EU Sanitary Agreement (Article 6.2). These commitments include:

- to recognise the concepts of Pest Free Areas, Pest Free Places of Production, and Pest Free Production Sites, as specified in relevant International Plant Protection Convention (IPPC) Standards (IPSM) (Article 6.5);

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<sup>72</sup> At the time of the Agreement, the outermost regions of the EU are Guadeloupe, French Guiana, Martinique, Reunion, Mayotte, St. Martin, the Azores, Madeira, and the Canary Islands.

- to recognise the concept of protected zones within the territory of the EU as equivalent to a pest free area as specified in the International Standards for Phytosanitary Measures IPPC ISPM 4 ("Requirements for the establishment of pest free areas") (Article 6.5);
- to recognise the equivalence of sanitary or phytosanitary measures, even if the measures differ from those established by the importing Party providing they achieve the importing Party's appropriate level of protection (Article 6.6);
- without prejudice to Article 6.10 (Emergency measures), to recognise as equivalent the official controls for trade provided that there are no significant changes in the official control systems that would lower the level of assurance (Article 6.7);
- to accept each other's lists of establishments that are subject to SPS measures for trade without any subsequent approval processes (Article 6.7);
- without prejudice to Article 6.10 (Emergency measures), to not refuse or stop the importation of a good solely for the reason of undertaking a review of SPS measure(s), if the importation of the good was/is occurring prior to the review being initiated (Article 6.7);
- recognition by both Parties that official health certification for processed foods is unwarranted unless it is justified by a risk analysis (Article 6.8);
- to notify any significant findings of epidemiological or food safety importance that may relate to a product being traded (Article 6.9);
- to conduct technical consultations where there are significant concerns with an SPS measure and an obligation to respond within 30 days (Article 6.9);
- an obligation, where an emergency measure seriously disrupts or suspends trade, to as soon as practically possible revoke that measure or provide relevant scientific and technical justification for its continuation (Article 6.10);
- provisions to carry out audits to verify that all or part of the regulatory control programme of the exporting Party's competent authority is functioning as intended and an obligation to ensure that any measure taken as a consequence of an audit is proportionate to the risk(s) identified. Any audit costs would be borne by the auditing Party (Article 6.11);
- recognition that the importing Party has the right to carry out import checks based on the SPS risks associated with imports and a commitment to carry out these checks without undue delay and with minimum trade disrupting effects (Article 6.12);
- recognition that pre-market authorisation processes in the area of the food chain for the likes of; GMOs, genetically modified food, feed, and feed additives, and novel foods, must be based on robust science and conducted in a transparent manner to build and maintain public trust and confidence, together with co-operation in this area (Article 6.13);
- to enhance cooperation on antimicrobial resistance both bilaterally and in relevant international fora with a particular focus on addressing the unnecessary use of antimicrobial agents in the

rearing of animals for food production and protecting the efficacy of antibiotic agents that are critical for human use (Article 6.14);

- recognition that antimicrobial regulatory standards, guidelines, and surveillance systems deliver comparable controls and health outcomes (Article 6.14);
- to exchange relevant information and cooperate to deter practices that are, or appear to be, non-compliant with SPS measures or that mislead consumers and other relevant stakeholders (Article 6.15).

## **5.7 Chapter 7: Sustainable Food Systems**

Under the Sustainable Food Systems Chapter, New Zealand and the EU have undertaken:

- to cooperate to address matters of joint or common interest related to the implementation of the chapter, either bilaterally or in international fora;
- to establish a Subcommittee on Sustainable Food Systems, comprised of representatives of the EU and New Zealand with responsibility for matters covered by the SFS Chapter;
- to designate a Contact Point to facilitate communication between the Parties;
- through the Sub-committee, to monitor and oversee the implementation of the chapter and examine all matters which arise in relation to its implementation;
- to establish an annual working plan with actions, objectives, and milestones;
- to meet as a Subcommittee within one year of entry into force and thereafter as mutually agreed.

to recognise, by their nature, the cooperation activities under the chapter do not affect the independence of each Party's national or regional agencies. Nothing in the chapter can oblige a Party to:

- modify its export requirements;
- deviate from domestic procedures for preparing and adopting regulatory measures;
- take action that would undermine or impede the timely adoption of regulatory measures to achieve public policy objectives; or
- adopt any particular regulatory outcome.

## **5.8 Chapter 8: Animal Welfare**

The objective of the Animal Welfare chapter is to promote cooperation between the EU and New Zealand on the animal welfare of farmed animals. It recognises the two Parties' commitment to high standards of animal welfare.

The chapter records the understanding the two Parties have that animals are sentient beings and notes the interest both sides have in animal welfare.

An important key principle underpinning this chapter is the recognition in Article 8.2.2 that, although the farming practices in each Party differ substantively, each Party's respective standards and associated systems supporting them provide comparable outcomes.

Under Article 8.2 the Parties are to continue to undertake further cooperation on animal welfare. In particular, they undertake to exchange information, expertise, and experience in the animal welfare field with the objective of facilitating the development of science based animal welfare standards.

This Article also includes an undertaking to continue to work together in international fora to promote the development of science-based animal welfare standards. In that regard, specific mention is made of work in the World Animal Health Organisation (WOAH), with a focus on animal welfare standards for farmed animals.

A Joint Working Group (JWG) is to be set up under Article 8.3 to provide a forum for the cooperation envisaged under the chapter.

## **5.9 Chapter 9: Technical Barriers to Trade**

The Technical Barriers to Trade (TBT) chapter reaffirms and builds on the obligations of the WTO Agreement on Technical Barriers to Trade. Certain key provisions of the TBT Agreement are incorporated into the NZ-EU FTA, so are subject to dispute settlement under the FTA.

Under the TBT chapter, New Zealand and the EU have agreed to:

### **Technical regulations**

- endeavour to carry out impact assessments of planned technical regulations that are covered by Chapter 22 (Good Regulatory Practice and Regulatory Cooperation) that may have a significant impact on trade (Article 9.4.1). This commitment applies to conformity assessment procedures that are part of such planned technical regulations;
- where an impact assessment is carried out, to assess feasible and appropriate regulatory and non-regulatory options that may fulfil the Party's legitimate objectives (Article 9.4.2);
- review their technical regulations from time to time. In so doing, to positively consider increasing convergence with relevant international standards (Article 9.4.3).
- unless urgent public policy reasons apply, when developing certain major technical regulations, to allow people from the other Party to provide input through a public consultation process on terms no less favourable than for a Party's own people (Article 9.4.4);

## Standards

- identify and explain reasons for any substantial deviation from the relevant international standard, on request, if a Party has not used international standards as a basis for its technical regulation (Article 9.5.3);
- encourage the standardising bodies within its territory, and any regional standardising bodies to which it belongs, to review national and regional standards with a view to increasing convergence with relevant international standards, and cooperate with relevant international standardising bodies including at the regional level in international standardisation activities (Article 9.6.1);

## Conformity Assessment

- if a conformity assessment is required to demonstrate that a product meets the requirements of a technical regulation to: select the conformity assessment procedure that is proportionate to the risk involved, accept the use of Supplier's Declaration of Conformity, where appropriate, and on request, explain the reason for selecting particular conformity assessment procedures for specific products (Article 9.7.1);
- if a third-party conformity assessment is required to demonstrate that a product meets the requirements of a technical regulation, and this is not reserved to a governmental body, to:
  - preference the use of accreditation to qualify conformity assessment bodies;
  - use international standards for accreditation and conformity assessment;
  - use international agreements involving the Parties' accreditation bodies, where practicable, and encourage the use of functioning international agreements or arrangements to facilitate the acceptance of conformity assessment results;
  - ensure its rules and procedures do not unnecessarily restrict choice amongst conformity assessment bodies designated for particular products or sets of products;
  - ensure the activities of its accreditation bodies are consistent with international standards for accreditation, including in relation to conflicts of interest;
  - ensure its conformity assessment bodies prevent conflicts of interest affecting the outcome of conformity assessment;
  - allow conformity assessment bodies to use subcontractors to perform testing or inspections, including subcontractors of the other Party;
  - ensure details, including the scope of the delegation, of conformity assessment bodies, are published online. (Article 9.7.3);
- if conformity assessment is required to be performed by specified government authorities, limit the conformity assessment fees to the approximate cost of the services only, and on request, explain how the fees are limited to the cost of the service and make fees available if not published already (Article 9.7.4):

**Supplier's declaration of conformity (Annex A)**

- if New Zealand requires non-first party conformity assessment to demonstrate that a product meets the requirements of New Zealand's technical regulations in the fields listed in Annex 9-A (Acceptance of conformity assessment documents), New Zealand will accept:
  - certificates and test reports issued by EU conformity bodies that have been accredited by an accreditation body that is a member of the mutual recognition arrangements of specified international organisations, or that are otherwise recognised in New Zealand's technical regulations;
  - for electrical safety and electromagnetic compatibility aspects, certificates, and test reports issued by conformity assessment bodies located in the EU and under the International Electrotechnical Commission scheme. (Article 9.7.5);
- cooperate on mutual recognition in accordance with the existing Agreement on Mutual Recognition between the EU and New Zealand. The Parties may also decide to extend its scope (Article 9.7.7);
- in Annex A, where a Party changes testing requirements, to notify the other at an early stage and take that other Party's comments into account in devising any such requirements.

**Transparency**

- consistent with expectations and rules of the WTO TBT Agreement, to allow comments on notified draft technical regulations and conformity assessment procedures (Article 9.8.1), respond to comments received (Article 9.8.3) and publish technical regulations and conformity assessment procedures (9.8.6 & 9.8.7);
- if the notified text is not available in one of the official WTO languages, to provide a detailed description of the proposed measure in the WTO format (Article 9.8.2);
- make publicly available its responses to significant or substantive issues presented in comments from other WTO Members on its TBT notification of a proposed measure (Article 9.8.4);
- provide information, if requested, on the objectives and rationale for a proposed measure (Article 9.8.5);
- consider a request of the other Party for an extension of time between when the measure is adopted and its entry into force, if received prior to the end of the comment period, and if the delay would not affect the objectives of the regulation (Article 9.8.9).

**Marking and labelling**

- the following if a Party requires mandatory marking or labelling of products:
  - to the extent possible, only require information relevant to consumers or users of the product, or to indicate conformity with mandatory technical requirements;
  - not require prior approval or registration of markings or labels for products, or a fee, as a precondition to selling products that otherwise comply with mandatory technical

requirements, unless necessary, given the risk of the products or the risk of claims made on the markings or labels to human, animal or plant health or life, the environment or national safety;

- if economic operators are required to use a unique identification number, issue a number to operators from the other Party without undue delay and on a non-discriminatory basis;
- subject to meeting certain requirements, permit:
  - information in other languages, as well as the language of the importing Party;
  - internationally accepted nomenclatures, symbols, and graphics;
  - additional information to that required in the importing Party.
- accept that labelling may take place in the territory of the importing Party, rather than in the exporting Party unless labelling in the exporting Party is necessary in view of legitimate policy objectives;
- if legitimate objectives are not compromised, endeavour to accept non-permanent or detachable labels or their inclusion in accompanying documentation, rather than requiring them to be physically attached. (Article 9.9.2).
- labelling and marking requirements not applying to medicinal products and medical devices (Article 9.9.3).

### **Cooperation**

- ensure market surveillance functions are conducted impartially and independently from conformity assessment functions to avoid conflicts of interest, and the absence of any interest that would affect the impartiality of market surveillance authorities (Article 9.10.3);
- cooperate and exchange information on a range of specific areas concerning market surveillance, safety and compliance of non-food products. This includes product recalls, and emerging issues of significant health and safety relevance (Article 9.10.4);
- exchange selected information from their respective systems on consumer products, either on an ad hoc basis, or systematically based on an arrangement established under the auspices of the Agreement (Article 9.10.5);
- use the information obtained in paragraphs 4 to 6 of Article 9.10, for the sole purpose of protection of consumers, health, safety or the environment and treat as confidential (Article 9.10.7 & 9.10.8);
- cooperate on an area of mutual interest with a view to reducing or eliminating technical barriers to trade (Article 9.12).

### **Technical discussions and consultations**

- meet to discuss, if requested, concerns raised about a proposed technical regulation or conformity assessment procedure that might significantly affect trade between the Parties within

60 days after the date of the request with the intent to resolve the matter as soon as possible. If the matter is considered urgent, a Party may request an expedited timeframe (Article 9.11.3).

### **Prohibition on animal testing**

- continue to actively support and promote research and development of alternatives to animal testing. The Parties agree to accept test results from a validated alternative to animal testing to assess the safety of cosmetic products. In addition, a Party must not require a cosmetic product to be tested on animals to determine the safety of that product (Article 9.13).

### **TBT chapter coordinator**

- nominate a TBT Chapter coordinator and inform the others of any changes. The TBT Chapter coordinators are required to work jointly to facilitate the implementation of the TBT chapter and cooperation between the Parties on TBT matters (Article 9.14).

## **5.10 Chapter 9: Technical Barriers to Trade – Motor Vehicles and Equipment Annex**

Under the Motor Vehicles (MV) Annex, New Zealand and the EU have agreed:

- that the Annex applies to categories of motor vehicles, equipment, and parts thereof except for the categories of vehicles listed in Appendix 9-B-1 (Excluded vehicle categories) (Article 2);
- to use UN Regulations or the General Technical Regulations (GTRs) under the 1958 and 1998 Agreements as the basis for its technical regulations, markings or conformity assessment procedures, except where a specific UN Regulation or GTR would be ineffective or inappropriate to fulfil legitimate objectives (Article 5.1(a));
- to identify and explain reasons for any substantial deviation, on request, if a Party introduces a technical regulation, marking or conformity assessment procedure that is not based on UN Regulations or the GTR (Article 5.2);
- not to introduce or maintain technical regulations, markings or conformity assessment procedures that prohibit, restrict or increase the burden of importing and putting products on the market that are type-approved under UN Regulations, unless explicitly foreseen by the UN Regulations (Article 5.3);
- to accept, on market, products that are covered by a valid UN type-approvals certificate issued by either Party, or a valid EU type-approval certificate, as compliant with their domestic technical regulations, markings and conformity assessment procedures, without imposing further requirements (Article 6.1).
- to accept valid UN type approval certificates issued under the latest version of the UN Regulations, if those UN regulations are applied by the accepting Party (Article 6.2);
- not to prevent or restrict access to its market of a product covered by this Annex and approved by the exporting Party on the grounds that the product incorporates a new technology or a new

feature that the importing Party has not yet regulated (Article 7.1). Notwithstanding this commitment, an importing Party may restrict access to its market of such a product, if the new technology or feature would create a risk to human health, safety, the environment or transport infrastructure, or be inconsistent with existing domestic environmental standards and infrastructure (Article 7.2);

- to notify immediately the decision to the exporting Party, if the importing Party decides to restrict access or require withdrawal from its market of a non-regulated product. The importing party is required to include all relevant scientific or technical information considered in its decision in the notification (Article 7.3);
- not to treat remanufactured equipment or parts of the other Party less favourably than equivalent equipment or parts in new condition (Article 8.1);
- not to apply import or export prohibitions or restrictions on used equipment or parts on remanufactured equipment or parts (Article 8.2);
- to refrain from undermining the benefits to the other Party under this Annex through regulatory measures specific to the products covered by the Annex. This does not affect the right of a Party to adopt measures necessary for road safety, protections for health, the environment and transport infrastructure, and the prevention of deceptive practices (Article 9);
- to cooperate and exchange information on matters relevant to the implementation of the Annex and to also work together, as appropriate, to progress areas of mutual interest in relevant international standardising bodies (Article 10).

### **5.11 Chapter 9: Technical Barriers to Trade - Wine and Spirits Annex**

Under the Annex, New Zealand and the EU have agreed:

- to retain the right to apply measures necessary to protect human or plant life and health (Article 3);
- to confirm that unless otherwise specified, importation and marketing of wine and spirits are conducted in line with the importing Party's law. The meaning of marketing is clarified in a footnote (Article 5);
- to permit importation and marketing of wine produced in the other party in accordance with the exporting Party's product definitions specified in relevant appendices (Article 6(1)(a) and Appendix 9-E-1; Article 6(2)(a) and Appendix 9-E-4);
- to permit importation and marketing of wine produced in the other Party in accordance with the winemaking practices authorised in the exporting Party's law as referred to in relevant appendices, in so far as these practices are recommended and published by the International Organisation of Vine and Wine (OIV) (Article 6(1)(b) and Appendix 9-E-2; Article 6(2)(b) and Appendix 9-E-5. Physical winemaking processes remain subject to the exporting Party's law as specified (Footnote 24 and Footnote 27). Nevertheless, the EU will meet prescribed limits for two

winemaking practices specified in the annex in line with New Zealand law for as long as those limits differ from those as recommended and published by the OIV (Footnote 26);

- to permit importation and marketing of wine produced in the other Party in accordance with winemaking practices otherwise agreed as listed in respective appendices. (Article 6(1)(c) and Appendix 9-E-3; Article 6(2)(c) and Appendix 9-E-6);
- to a process enabling modifications of the above appendices, and to review and discuss implementation issues relating to Article 6 (Article 6(3) to 6(6) and Article 16);
- to several general labelling requirements including the Parties' ability to require truthfulness of information (Article 7(1)) language and legibility of labelling information (Article 7(2) and (3)), that Parties permit information to be repeated whether or not in the same form and permit the use of supplementary labels (Article 7(4) and (6)), and a right for Parties to prohibit certain label claims for health and safety reasons (Article 7(5));
- to retain the right for Parties to specify mandatory labelling items, but to not require new specific location requirements for such information while preserving the right for Parties to require that information is presented in conjunction/in a certain proximity to one another (Article 8);
- to specifications for certain items of mandatory information:
  - the EU has agreed that New Zealand winemakers can use the word 'wine' as the product name on the EU market, if the wine has an alcohol range from 7% (actual alcohol content) to 20% (total alcohol content) (Article 9(1));
  - the Parties agree to permit presentation of actual alcohol content using decimal points, using words such as %alc/vol or %/vol, and to apply agreed tolerance levels for such labelling. (Article 9(2)(3) and (4));
  - the Parties agree to having the right to require lot identification labelling and to prohibit defacement of such information with certain legitimate exceptions. (Article 9(5)(6) and (7));
- to permit optional information to be provided but not to restrict placement of such information, while retaining a Party's ability to require that information is presented in conjunction/in certain proximity to one another (Article 10);
- to specifications for certain items of optional information:
  - the Parties agree to allow vintage labelling for wine in line with the exporting Party's law provided that 85% of such wine is from that vintage. New Zealand agrees to permit wines produced in the EU that are traditionally obtained from grapes harvested in January or February to use the previous year as vintage year. (Article 11(1) and (2));
  - the Parties agree to permit variety labelling for wine in line with the exporting Party's rules, if such wine conforms to varietal composition permitted in line with exporting law and at least 85% of such wine is from stated variety or varieties. Multi-variety labelling is subject to further conditions including that each variety listed is in greater proportion in the wine than varieties not listed and that such varieties are listed in descending order. (Article 11 (3) and (4));

- to not submit wine from the other Party to more restrictive certification systems or far reaching certification requirements than those in place at entry into force of the Agreement (Article 12(1)). In addition, the EU agrees to permit simplified certification for New Zealand bottled wine as specified in relevant appendices. (Article 12(2), Appendix 9-E-7 and Appendix 9-E-8). In the event of questions of test results, OIV recommended and published references methods must be applied unless those do not exist, in which case ISO standards apply, unless the relevant competent authorities agree to a different approach. (Article 12(3));
- to not require certain date marking information for wine with certain exceptions (Article 13);
- to apply the general labelling requirements, lot identification labelling specifications and date marking provisions to spirits. (Article 14);
- to permit sale of existing stock (until exhausted) that has been produced or labelled in line with requirements in place at entry into force (Article 15);
- to set up a Committee on Wine and Spirits to administer the Annex. (Article 16);
- to provide the other Party with a contact point to facilitate communications between the Parties on matters relating to the annex. (Article 17).

New Zealand and the EU also agreed to three declarations relating to the obligations Wine and Spirits Annex (Appendix 9-E-9).

Under the first declaration New Zealand is to endeavour to seek removal of prescribed limits in the Australia New Zealand Food Standards Code of two substances used in winemaking, with the caveat that New Zealand cannot pre-empt the outcome or timeframes of this process because the limits are set by Food Standards Australia New Zealand.

The second is a joint declaration on allergen labelling. It acknowledges each Party's right to regulate such information and provides an undertaking to work cooperatively with the aim of reaching, if possible, a mutually acceptable outcome on allergen labelling requirements.

The last declaration confirms that sparkling wines produced in the EU may be described in New Zealand with the terms 'brut nature' and 'extra brut', provided such use is not false or misleading under the Fair Trading Act 1986 and provided such use meets requirements under the Food Act 2014.

## **5.12 Chapter 10: Investment Liberalisation and Trade in Services**

The obligations in the Investment Section should be read in the context of the broader Agreement, including the preamble language noting the Parties' recognition of their inherent right to regulate and their resolve to preserve flexibility to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives.

Each Party's negative list of services and investment market access commitments has two parts, Annex I, and Annex II:

- **Annex I** sets out existing measures (laws, regulations, decisions, practices, and procedures) that each Party retains the right to maintain in their present form. Measures in Annex I:
  - may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic services suppliers or investors;
  - are subject to a 'stand-still' commitment that means the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed in Annex I;
  - are subject to a 'ratchet' mechanism that means both Parties commit that, if they liberalise a listed measures, that liberalisation will be automatically 'locked' into the FTA.
- **Annex II** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain any measures that would ordinarily breach one or more of the reservable obligations.<sup>73</sup> For measures in Annex II:
  - the listing Party retains the full right to regulate in a manner that would ordinarily breach the obligations listed against, as it deems necessary;
  - the 'stand-still' commitment does not apply; and
  - the 'ratchet' mechanism does not apply.

If a Party does not list any restrictions for a particular sector it means that subject to any other exceptions that may be applicable, the Party has committed to not applying any measures that would be inconsistent with the obligations contained within the Investment Liberalisation and Trade in Services Chapter and is committed to keeping that market open for the other Party's services suppliers and investors.

### **Reservable Obligations**

The obligations that the New Zealand Government owes to investors and investments, and service providers, under the NZ-EU FTA are of two kinds: those in respect of which Parties may enter reservations; and those that are derived from obligations owed at customary international law and in respect of which Parties may not enter reservations. Reservable obligations include:

- **Market Access:** Under Articles 10.5 and 10.14 neither side can impose certain quantitative limitations, including economic needs tests, on investments or investors (10.5) or services or services suppliers (10.14) of the other Party;

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<sup>73</sup> The reservable obligations for investment are; national treatment, most-favoured-nation treatment, senior management and boards of directors and prohibition of performance requirements.

- National Treatment: Articles 10.6 and 10.15 provides that each Party must treat investments and investors of the other Party (10.6) and their services and services suppliers (10.15) no less favourably than it treats its own investors and investments or service and service suppliers in like circumstances;
- Most-Favoured-Nation (MFN) Treatment: Under Articles 10.7 and 10.17, each Party must treat the other Party's investments and investors (10.7) and their services and services suppliers (10.17) no less favourably than those from any other country. This obligation means that investors or service suppliers from the EU would receive the benefits of any additional liberalisation that New Zealand might provide to third countries in future trade agreements, and vice versa;
- Performance Requirements; Under Article 10.9 neither side can impose discriminatory conditions on foreign investors, such as local content requirements; or requirements to generate local employment, to export sales or technology transfer requirements, to locate production in a certain place, to use or purchase local goods or services, or to export a given level of production. Performance requirements commitments build on WTO commitments and apply to all investments;
- There are a number of exceptions to the performance requirements obligation which preserve policy flexibility for governments, including for measures necessary to protect health and the environment. In particular, certain performance requirements are not prohibited if:
  - they are consistent with the WTO TRIPS Agreement;
  - they are imposed or enforced by a court, tribunal or competition authority to remedy a practice that has been determined anticompetitive;
  - they are imposed or enforced by a tribunal as equitable remuneration under copyright laws;
  - they are qualification requirements for goods and services with respect to export promotion and foreign aid programmes;
  - they relate to government procurement; or
  - they are imposed by an importing Party relating to the content of goods as necessary to qualify for preferential tariffs or preferential quotas (Article 10.9.6).
- Senior Management and Boards of Directors: Under Article 10.8, neither side can require the appointment to senior management or board of director positions persons of a particular nationality or who are resident in a particular territory. New Zealand protects relevant policy space through its schedule of non-conforming measures;
- Local presence: Under Article 10.15, neither side can require that a service supplier of the other Party have a representative office or any form of an enterprise (e.g. branch), or be resident in its territory in order to supply a service.

### **Non- reservable obligations**

Below is the list of obligations contained in the Investment Liberalisation and Trade in Services for which Parties may not enter reservations.

### Chapter-wide

- Denial of Benefits: Article 10.12 allows Parties to deny the benefits of the chapter to an investor of another Party if the denying Party adopts or maintains certain measures related to the maintenance of international peace and security, including the protection of human rights;

### Domestic regulations

- Electronic applications and acceptance of copies: Under Article 10.29 each side endeavours to accept electronic applications and/or accept copies of documents that are authenticated in accordance with its law;
- Mutual recognition of professional qualifications: Article 10.39 acknowledges that each side may recognise the education or experience obtained, requirements met or licenses or certification granted by a non-Party as meeting the standards it requires for authorisation, licensing or certification of a services supplier and that this recognition can be conferred in a variety of ways, including unilateral recognition, mutual recognition or harmonisation. In such cases, the recognition available to the non-Party is not automatically extended to the other side, but each side must provide adequate opportunity to the other to either accede to or negotiate comparable recognition arrangements to those in place with a non-Party.

### Telecommunications

- Interconnection with major suppliers (Article 10.55): ensures that each side's public telecommunications suppliers provide the other Party's telecommunications suppliers access to their networks at a fair and reasonable cost and in a timely manner;
- Scarce Resources (Article 10.57): ensures fair and transparent procedures for the allocation and use of scarce resources (such as 4G and 5G spectrum frequencies) related to telecommunications;
- Number Portability (Article 10.59): ensures that each side's public telecommunications service suppliers provide number portability to the other Party's mobile services suppliers operating in their territory.

### Financial Services

- Prudential carve-out (Article 10.64): This allows either side to adopt prudential measures including for the protection of investors, depositors, policy-holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of their financial system;
- Financial services new to the territory of a Party (Article 10.67): This article obliges each Party to allow financial services suppliers of the other Party to supply any new financial services that it would allow its own financial services suppliers, in like circumstances, to provide.

### **International Maritime Transport Services**

Each Party shall not restrict access to international maritime markets and ensure trade occurs on a commercial and non-discriminatory basis, by ensuring EU flagged vessels are treated no less favourably than New Zealand flagged vessels. This includes providing access to ports and the use of port infrastructure and services, and customs facilities and the assignment of berths for loading/unloading.

### **Entry and Temporary Stay of Natural Persons**

Each Party must allow the following categories of natural persons to temporarily enter their territory for business purposes:

- intra-corporate transferees (ICTs) (Annex X-C-III; Article 10) – an executive, manager or specialist transferred by their companies to perform specific roles. ICTs are eligible for initial periods of stay of up to three years;
- independent professionals (Annex X-C-IV; Article 13) – self-employed business people with advanced technical or professional skills, providing services under contract in certain professional services sectors. Independent professionals are eligible for periods of stay of up to 12 months;
- business visitors (Annex X-C-III; Article 9) – people conducting certain specified activities, including in relation to the establishment of a business or investment, or those whose services are required as part of a contract to supply equipment. Business visitors are eligible for periods of stay of up to 90 days in every 12 consecutive months;
- contractual service suppliers (Annex X-C-IV; Article 12) – natural persons providing services under contract in certain designated services sectors. Contractual service suppliers will be eligible for periods of stay of up to 12 months, subject to an economic means test to ensure the labour market is not negatively impacted.

### **Exclusions**

There are a number of areas that are explicitly excluded from the coverage of the chapter. These are activities performed in the exercise of government authority, audio-visual services, and some air services (Article 10.2);

Article 10.19 also allows each side to deny the benefits of the chapter to a service supplier if the enterprise concerned is owned or controlled by a non-Party or a person of a non-Party or if that side maintains a measure prohibiting transactions with the enterprise, or which would otherwise be circumvented if the enterprise was to benefit from the chapter.

### **Reservations**

Articles 10.10 (Investment) and 10.18 (Services) allows each side to maintain or adopt measures that are inconsistent with the core obligations listed above (i.e. “non-conforming measures”). Both New

Zealand and the EU have identified their non-conforming measures in individual Schedules that are contained in two Annexes to the Agreement. These are listed in a 'negative list' format (Annex I and Annex II, Cross-Border Trade in Services and Investment Non-Confirming Measures). Annex I and Annex II are described in Section [5.12] above.

### **5.13 Chapter 11: Capital Movements, Payments and Transfers and Temporary Safeguard Measures**

#### **Payments, transfers, capital movements**

New Zealand and the EU are both obliged to permit transfers to be made freely and without delay into and out of their territories, and in a freely useable currency, in accordance with the Articles of Agreement of the International Monetary Fund (IMF) (Article 11.1). They must also allow for the free movement of capital for the purpose of investment liberalisation and other transactions as provided for under the Trade in Services, Investments Liberalisation, and Digital Trade Chapters (Article 11.2).

There are, however exceptions to this obligation that allow New Zealand or the EU to prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of their laws relating to matters including bankruptcy, insolvency, or the protection of the rights of creditors; issuing, trading, or dealing in securities, futures, options, or derivatives; criminal or penal offences; financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; ensuring compliance with orders or judgements in judicial or administrative proceedings; and social security, public retirement or compulsory savings schemes (Article 11.3).

### **5.14 Chapter 12: Digital Trade**

Under the Digital Trade Chapter, New Zealand and the EU have undertaken:

- not to require the use of local computing facilities or network elements for the processing or storage of data used in digital trade between them (Article 12.4.2 (a)-(c));
- not to condition the cross-border transfer of such data on the use of local computing facilities or network elements (Article 12.4.2 (d));
- to keep the implementation of the above provisions under review and assess the functioning of these provisions within 3 years of entry into force of the FTA, unless otherwise agreed (Article 12.4.4);
- to inform each other about their measures to ensure the protection of personal information and privacy (Article 12.5.3), as well as to publish information on these protections, including how individuals can pursue a remedy and guidance for businesses on compliance with applicable privacy requirements (Article 12.5.4);
- not to impose customs duties on electronic transactions between them (Article 12.6.1);

- to try not to impose prior authorisation requirements on the provision of services by electronic means (Article 12.7.1);
- except in specific circumstances, to enable contracts to be concluded by electronic means and not to deny legal effect to a contract because it is concluded electronically (Article 12.8);
- except in specific circumstances, not to deny the legality of electronic authentication, including electronic signatures and electronic seals, and not to prevent those engaged in electronic transactions from mutually determining the appropriate authentication methods for these transactions (Article 12.9);
- to ensure the implementation of its measures related to e-invoicing are designed to support cross-border inter-operability and to try to share best practices on e-invoicing and digital procurement systems. (Article 12.10);
- not to require transfer of or access to source code as a condition of import, export, distribution, sale or use of such software or products containing such software, except in certain circumstances (Article 12.11);
- to have in place measures to ensure the effective protection of consumers engaging in electronic commerce that is at least equivalent to that provided to consumers offline (Article 12.12);
- to have in place measures to protect users against unsolicited direct marketing communications, including to ensure such communications are not sent to users unless they have given their consent, to make sure there is clear disclosure of those on whose behalf the communications have been sent and that they contain sufficient information to enable users to stop receiving them, as well as to provide users with access to redress where the measures regulating unsolicited direct marketing communications are not complied with (Article 12.13);
- to exchange information on regulatory matters in the context of digital trade (Article 12.14);
- to try to make trade administration documents available in electronic form and to try to accept these as equivalent to paper documentation (Article 12.15).

The obligations in the chapter do not apply to: audio-visual services, government information, measures taken to protect or promote Māori rights, interests, duties or responsibilities, including in fulfilment of te Tiriti o Waitangi/the Treaty of Waitangi (Article 12.1 – Scope), or personal data and privacy (Article 12.5.2- Protection of personal data and privacy).

### 5.15 Chapter 13: Energy and Raw Materials

Under the Energy and Raw Materials Chapter, New Zealand and the EU have agreed to a number of outcomes, including:

- that the definition of energy goods and raw materials does not include agriculture, forestry or fisheries products (Article 3);
- to not create import or export monopolies for energy goods or raw materials (Article 4);
- to not charge a higher price for the export of energy goods or raw materials than the domestic price (Article 5);
- to only regulate the domestic price of energy goods or raw materials in order to achieve a legitimate public policy objective and if the price is transparent, non-discriminatory and proportionate (Article 6);
- that, if an authorisation for the exploration and production of energy goods or raw materials is required, it shall be granted in accordance with the requirements of the Domestic Regulation section of the FTA, and be through a transparent process with the opportunity for review or appeal (Article 7.1/ 7.4). The exception would be authorisations for hydrocarbons that have not previously resulted in a grant, where the area is available on a permanent basis for exploration or production, and where the authorisation granted has been relinquished before the date of extinction (Article 7(2));
- that both Parties shall ensure that environmental impact assessments are required for activities related to the production of energy goods and raw materials where such activities may have a significant impact on the environment. In these circumstances, interested persons are to be given an opportunity to participate; the findings are to be taken into account before any authorisation is issued; the findings are to be made public; and a range of factors are to be taken into account (e.g. human health, land, soil, water and climate, cultural heritage, and biodiversity) (Article 8);
- that regulatory functions related to safety and environmental protection of off-shore gas and oil operations are conducted independently, that conditions for such operations are based on high standards of safety and environmental protection, and that the Parties cooperate to promote these high standards internationally (Article 9);
- that both Parties have an independent regulatory body to resolve disputes around terms and conditions of use of electricity transmission and distribution infrastructure (Article 11);
- to promote cooperation between regulators and/ or standardisation bodies on energy efficiency and sustainable renewable energy with respect to standards, technical regulations, and conformity assessment procedures (Article 12);
- to promote cooperation on research and development on energy efficiency and renewable energy and raw materials, including through: coordinating positions in international fora, promoting corporate social responsibility and promoting the efficient use of resources (e.g. improving

production processes, design for disassembly, ease of reuse, and recycling of goods) (Articles 13 and 14).

### **5.16 Chapter 14: Public Procurement**

The Public Procurement Chapter incorporates specific provisions of the WTO Agreement on Government Procurement (GPA) and includes additional provisions negotiated by the Parties.

The obligations in the Public Procurement Chapter apply to “covered procurement”. This is defined by the commitments set out in the Annex to the chapter. These commitments set out the government entities whose procurement activities are covered, the goods and services (including construction services) covered by the chapter, the value threshold at which the obligations take effect, and general notes that relate to coverage. In addition, the Scope and Coverage provision (Article 2 GPA - Scope and Coverage) excludes various activities from the application of the obligations. There are also general exceptions related to security and certain legitimate public policy purposes (Article 3 GPA - Security and General Exceptions).

In addition to commitments to non-discrimination and national treatment, commitments to integrity and the use of electronic means (Article 4 - General Principles), the chapter sets out a number of transparency commitments and wide range of procedural disciplines.

The transparency obligations relate to the publication of information on the procurement regime (Article 6 GPA - Information on the Procurement System) and transparency of procurement opportunities and processes (Article 7 GPA - Notices). Specifically, tender opportunities covered by the chapter must be published on the internet (Article 14.2 – Additional Disciplines); the tender documents must meet certain standards in respect of the information included (Article 10 GPA – Technical Specifications and Tender Documentation) and time frames are prescribed for advertising contract opportunities (Article 11 GPA – Time Periods). Similarly there are specific requirements in respect of tendering methods (Article 14.2 – Additional disciplines), qualification to participate and circumstances under which suppliers can be disqualified from participating (Article 8 GPA – Conditions for Participation, Article 9 GPA – Qualification of Suppliers and Article 14.2 – Additional Disciplines) and the chapter recognises a range of situations where open advertising is not required (Article 13 GPA – Limited Tendering).

The chapter specifically permits Parties to take account of environmental, social, and labour considerations provided they are non-discriminatory and transparent. It also permits the use of procurement to promote compliance with international environmental, labour, and social laws, regulations, obligations, and standards (Article 14.2 Additional Disciplines).

The chapter also contains other obligations including: the exchange of statistics every 2 years (Article 14.3 – Exchange of Statistics); the provision, on request, of information regarding a procurement

process (Article 17 GPA – Disclosure of Information); provisions for modifying and rectifying coverage (Article 14.4 – Modifications and Rectifications to Coverage) and enabling suppliers to challenge a procurement process (Article 18 GPA – Domestic Review Procedures).

### **5.17 Chapter 15: Anti-Competitive Conduct and Merger Control**

Under this chapter, New Zealand and the EU have agreed to a range of commitments, including:

- to adopt or implement competition law that addresses anticompetitive horizontal and vertical agreements; abuses by enterprises in dominant positions; Or concentrations between enterprises (mergers or acquisitions) that impede effective competition, in particular when this results in the creation or strengthening of a dominant position (Article 15.3.1);
- to provide an exclusion for when there is an overriding public service requirement that means competition laws would obstruct the delivery of a role or task of public interest (Article 15.3.2);
- to implement competition laws through an operationally independent authority that can enforce competition law (Article 15.4.1);
- to ensure the application of the law is transparent (Article 15.4.2) and information about competition law is publically available (Article 15.4.3);
- to apply and enforce competition laws in a non-discriminatory manner (Article 15.4.4);
- to provide a process for a fair hearing before any sanction or remedy is imposed (15.4.5) as well as providing a process enabling judicial review of any such decision (Article 15.4.7);
- to protect the right of any person to seek redress caused by the competition law enforced by the other Party (15.5.1);
- to agree to cooperate on competition law through the sharing of information (Article 15.6.2) and through the coordination of enforcement activities (Article 15.6.3).

The obligations in the chapter are not subject to dispute settlement.

### **5.18 Chapter 16: Subsidies**

Under the Subsidies Chapter, New Zealand and the EU have undertaken:

- to include subsidies provided to services enterprises in the Chapter's definition of a subsidy (Article 16.2.1(a)); meaning that some commitments in the Chapter (such as transparency, consultations, and prohibited subsidies) will apply to services subsidies;
- not to provide (or continue to provide) harmful fisheries subsidies (Article 16.4);

- to cooperate on fulfilling UN Sustainable Development Goal 14.6, as well as on implementing the new WTO Fisheries Subsidies Agreement and in the additional negotiations for the WTO Fisheries Subsidies Agreement on outstanding issues; (Article 16.4);
- to routinely publish specific details about their subsidies (such as the purpose and amount) on a publically accessible website or through WTO notifications (Article 16.5.1(a)-(d) and Article 16.5.2(a)-(c));
- to provide extra details (such as dates and duration, and eligibility requirements) about a subsidy when requested by the other; (Article 16.5.3 and Article 16.5.4);
- to engage in consultations to discuss concerns about a subsidy that is (or could be) negatively affecting the interests of the other Party (Article 16.6.1);
- to try to eliminate or minimise any negative effects of a goods or services subsidy discussed in consultations, if after consultations the requestor of the consultations still believes the subsidy has negative effects on its interests (Article 16.6.2(a));
- to accord sympathetic consideration to concerns raised by the other Party about agricultural subsidies (and to look to the relevant provisions of the WTO Agreement on Agriculture to inform this consideration) (Article 16.6.2(b));
- except in emergency and specific circumstances not to provide subsidies to companies where the subsidy is a guarantee of debt with no limit to the amount of money or where there is no time limit on the guarantee (Article 16.7.1(a));
- except in emergency and specific circumstances and to a small or medium enterprise, not to provide subsidies to insolvent (or nearly insolvent) companies, if the company does not have a credible restructuring plan or does not also pay towards the costs of restructuring their company (Article 16.7.1.(b)(i)-(ii));
- to ensure that companies use subsidies for the purpose that the government has provided them for (Article 16.8);

The obligation to engage in consultations and the prohibited subsidies obligations do not apply to subsidies granted by local government or to subsidies to the audio-visual sector. Additionally, for subsidies granted to companies performing a role or task in the public interest (such as public transport or arts and culture), the rules of the chapter only apply to the extent that they do not obstruct the performance of this role or task.

## 5.19 Chapter 17: State-Owned Enterprises

Under the State-Owned Enterprises (SOEs) Chapter, New Zealand and the EU have undertaken:

- to apply the chapter obligations to SOEs, designated monopolies, and enterprises granted special rights or privileges when they are engaged in commercial activity that may potentially affect trade and investment (Article 17.1.1);
- to not apply the chapter obligations:
  - for New Zealand, when the enterprise is owned by a local or regional council (17.1.2);
  - the enterprise does not meet the commercial revenue threshold of less than Special Drawing Rights (SDR) 100 million (and less than SDR200 million during the first 3 years from entry into force) (Article 17.1.3);
  - the enterprise is undertaking government procurement (Article 17.1.4), or is for a service supplied by a government authority (Article 17.1.5);
  - the enterprise is supplying financial services and/or private investment to a government mandate<sup>74</sup> (Article 17.1.6);
- to continue to adhere to specific articles of WTO Agreements and Decisions that are relevant to these enterprises (Article 17.4);
- not to limit each other's ability to establish or maintain SOEs, designated monopolies or from granting enterprises special rights and privileges (with objective, proportional, and non-discriminatory criteria) (Article 17.5.1);
- to ensure that covered entities, when operating commercially, act in accordance with commercial considerations and national treatment obligations (Article 17.6);
- to ensure bodies exercising regulatory functions of the enterprises captured are independent, impartial, and non-discriminatory (Article 17.7.2);
- when requested by the other Party, and provided the request includes information on how the suspected activity is affecting trade or investment, make best efforts to provide information detailing the enterprise structure; regulatory functions; revenue and assets, and; any exemptions the entity benefits from (Article 17.8.2). This information can be publically available, and there is no requirement to disclose confidential information (Article 17.8.4).

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<sup>74</sup> This includes where financial services and private investment are supporting exports or imports, provided that these services are not intended to displace commercial financing or offered on terms no more favorable when compared to the commercial market.

## 5.20 Chapter 18: Intellectual Property

### Section A: General Provisions

The General Provisions set out the key definitions and provide a number of obligations, including that:

- the objectives of the chapter are to promote the creation, production, dissemination and commercialisation of innovative and creative products, support trade between the Parties and ensure effective protection and enforcement of IP (Article 18.1);
- the Parties must comply with their existing international obligations under the WTO TRIPs Agreement, World Intellectual Property Organization (WIPO) Copyright Treaty, WIPO Performers and Phonograms Treaty, and Marrakesh Treaty (Article 18.4.1);
- New Zealand will need to make reasonable efforts to accede to the Beijing Treaty (which relates to the rights of performers in audio-visual recordings) and the Hague Agreement (which aims to simplify the international filing and registering of industrial designs) (Article 18.3.2);
- the Parties provide for IP owners to be able to use the Patent Cooperation Treaty and Madrid Protocol to help facilitate the international filing of their patent and trade mark applications (Article 18.3.3);
- each Party can determine when IP rights are ‘exhausted’ (Article 18.4);
- each Party will provide ‘national treatment’ for the IP rules in the chapter. (18.6); and
- the Parties confirm they will comply with the WTO Declaration on the TRIPs Agreement and Public Health that clarifies how the TRIPs Agreement should be interpreted to enable WTO members to take measures to protect public health, including in a pandemic (Article 18.7).

### Section B Sub-Section 1: Copyright and Related Rights

The section sets out commitments to provide:

- authors the right to authorise or prohibit all reproduction, distribution, or communication to the public of their works as well as any rental of their phonograms, computer programmes and cinematographic works<sup>75</sup> (Article 18.8);
- performers the right to authorise or prohibit people making a “fixation” of the sounds of their performances (i.e. a sound recording), and the reproduction, distribution, broadcasting, or rental of those recordings (Article 18.9);
- producers the right to authorise or prohibit the reproduction, distribution, making available to the public and rental of their phonograms (Article 18.10);

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<sup>75</sup> Phonograms, computer programmes and cinematographic works are terms used in copyright law to refer in general terms to sound recordings, software and films respectively

- broadcasters the right to authorise or prohibit the fixation of their broadcasts, and the reproduction, making available to the public, distribution and rebroadcasting of their broadcasts (Article 18.11);
- a right to ensure performers and producers of commercially published phonograms receive a single equitable remuneration when their phonogram is broadcast or played in public. This obligation can be satisfied by providing performers and producers with exclusive rights in regard to the exploitation of their sound recordings, as is the case in New Zealand (Article 18.12); and
- adequate legal protection against someone removing or modifying electronic rights management information<sup>76</sup>, or importing, distributing or broadcasting works where such information has been removed or modified, where that person should reasonably know they are enabling or concealing copyright infringement (Article 18.18).

Both parties are required to provide protections against the unauthorised circumvention of Technological Protection Mechanisms (TPM) (or “digital-locks”) that control access to or copying of TPM protected works.<sup>77</sup> This includes protections relating to both the supply of TPM circumvention devices, services and information and the act of unauthorised circumvention of TPMs and will require changes to New Zealand’s current law.

The section also includes commitments that have also been agreed under the NZ-UK FTA. These include:

- a 20 year extension to the term of protection for copyright and related rights, (in the NZ-EU FTA, to be implemented within 4 years of the Agreement entering into force);
- provision of an artist’s resale right scheme that provides royalties to visual artists for qualifying sales of their art works in the secondary art market (Article 18.14), to be implemented within 2 years of the NZ-EU FTA entering into force; and
- extending performers’ rights in relation to sound recordings of their performance to the playing of that sound recording in public.

The Parties are required to confine any exceptions and limitations to copyright protections required under this Agreement to certain special cases which do not conflict with the normal exploitation of the work concerned and that do not prejudice the legitimate interests of the copyright owner (Article 18.16).

## **Section B Sub-Section 2: Trade marks**

The trade marks sub-section confirms that both parties shall:

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<sup>76</sup> Being information that identifies a copyright work, its owner and the terms on which it can be used.

<sup>77</sup> New Zealand will have 4 years from entry into force of the Agreement to comply with these requirements.

- maintain a trade mark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services (Article 18.19);
- allow the registration of trade marks provided that they are capable of distinguishing the goods or services of one entity from another and are able to be represented in a way that allows people to know what they are (such as designs, words, sounds, shapes, and smells) (Article 18.20);
- allow trade mark owners to prevent others from using signs that are identical or similar to their own trade mark (Article 18.21);
- provide a trade mark registration system in which decisions and reasons for declining applications are communicated in writing, decisions are subject to appeal, successful applications can be opposed, and where applications and registrations are published online (Article 18.22);
- provide protection for well-known trade marks in accordance with the WIPO Joint Recommendation Concerning the Provisions on the Protection of Well-Known Marks (Article 18.23);
- provide limited exceptions to trade mark protections that take account of the legitimate interests of the trade mark owner and of third parties (Article 18.24);
- provide that a trade mark registration can be revoked if the trade mark is not used for a period of time, the trade mark becomes a common name for a good or service, or if the use of the trade mark is likely to mislead the public (Article 18.25); and
- provide for a trade mark registration made on the basis of a bad faith application to be invalidated and, optionally, for bad faith applications to be denied registration (Article 18.26).

### **Section B Sub-Section 3: Designs**

The designs sub-section confirms that both Parties shall:

- provide adequate and effective protection of new or original industrial designs, including by ensuring owners can prevent third parties from commercially making, selling or importing articles that copy protected designs (Article 18.27);
- provide a term of protection for registered designs of at least 15 years (Article 18.28);
- allow owners of unregistered designs to prevent others from using or displaying copied designs, including by offering for sale, putting on the market, importing or exporting such products (Article 18.29);
- provide limited exceptions to design protections that take account of the legitimate interests of the owner and of third parties (Article 18.30.1);
- not provide registered protection for designs which are solely technical or functional or allow incorporation or connection to another product (Article 18.30.2); and
- ensure the subject matter of designs, whether registered or not, can be protected by copyright (Article 18.31).

## Section B Sub-Section 4: Geographical Indications

Geographical Indications (GIs) are terms that indicate a good comes from a territory, region or location and has a given quality, reputation or other characteristic essentially attributable to it coming from that place (Article 18.32). An impact analysis of the discretionary aspects legislative changes arising from the implementation of the GI obligations is set out in the below Annex to this Section 5.20.

The EU will protect 23 New Zealand wine and spirits GIs such as “Marlborough” and “Central Otago” and New Zealand will protect 1,976 EU GIs for wines, spirits, foodstuffs and other beverages such as beer<sup>78</sup>. During the negotiation, lists of names proposed by each Party were published to provide the public an opportunity to oppose their protection (Article 18.32).

Protection applies from the date the FTA enters-into-force (Article 18.35). However, the Parties agreed on transition periods to provide time before key EU GIs are fully protected in New Zealand. Where an existing producer has continuously used the relevant term, there will be a 9 year transition for ‘Feta’ and ‘Port’ and a 5 year transition for ‘Sherry’, ‘Madeira’, ‘Prosecco’, ‘Grappa’, ‘Gorgonzola’, ‘Bayerisches Bier’ and ‘Münchener Bier’, before protection applies. In addition, existing producers that have used the term “Gruyere” for at least 5 years before entry-into-force can continue to do so indefinitely despite its GI protection. Similarly, existing producers with 5 years’ use of “parmesan” can continue to use that term notwithstanding the protection provided in the Chapter, including the protection of the GI “Parmigiano Reggiano” (Annex 18B).

The Parties can agree through the Trade Committee to amend the list of GIs protected under the Agreement by adding new names or removing names that are no longer protected in their home territory. No more than 30 GIs can be added in any 3 year period. Any new names proposed for protection will be subject to an examination and public opposition process. Any protection of new GIs will be backdated to the date of publication for opposition purposes (Article 18.35).

Proposed new GIs can be opposed on the grounds that the name<sup>79</sup>:

- is identical or confusingly similar to an existing trade mark for the same or similar products;
- is identical or similar to a well-known trade mark for any product, and use of the GI would indicate a connection to the trade mark owner;
- is a common name for the relevant good;
- is the name of a plant variety or animal breed and is likely to mislead consumers about the origin of the good;
- is identical or similar to an existing GI; or

<sup>78</sup> The FTA requires we ensure interested parties are able to prevent the infringement of their GIs. The impact analysis set out in the Annex to this Section 5.20 includes an assessment of civil and administrative enforcement mechanism proposed for that purpose.

<sup>79</sup> The grounds need to be assessed based on the situation within the party in which protection is being sought. For example, an EU name proposal could be opposed on the basis it is the common name for the good in New Zealand (but not if it is only a common name in another country).

- if used or registered, that use or registration would be likely to be offensive (Article 18.33).

Each side will need to provide the legal means for any interested person to prevent unauthorised use of any GI protected under the Agreement, including any use by producers that are not from the relevant region for that GI. Protection will apply even where the infringing use identifies the true origin of the good, the GI is used in transliteration or translation, and the GI is used with terms such as “kind”, “type”, “style” or similar. Both sides will also prohibit the use of GIs that amounts to an act of unfair competition in accordance with existing obligations under the Paris Convention for the Protection of Industrial Property. This could include where someone tries to exploit the reputation of a GI in relation to an ingredient in another product (Article 18.33.1).

However, a Party will not need to protect a GI of the other Party that is no longer protected in its home territory, and the Parties must tell each other when such protection has ended. GI protection will not prevent a person using their name in trade, and nothing in the sub-section will prevent the use of the common names of relevant goods or of plant variety or animal breed names (Article 18.33.2 to 18.33.5).

Where a GI is made up of multiple components (such as “Mozzarella di Bufala Campana”) protection only applies to the GI as a whole, and not to the individual components, including where a component is a common name, the name of a plant variety or animal breed (Article 18.33.6). To assist in interpreting the Annex of protected EU GIs, some components of names that are not protected (such as “Mozzarella” or “Bufala/Bufalo”) have been underlined. However, the Parties have agreed that the underlining is neither exhaustive nor definitive. Similarly, protection will also not apply to any word (or a translation or transliteration of a word) contained in a GI, that is a common English word such as “mountain” or “river”.

Any person that meets the requirements relevant to a GI (including that they have produced the good within the relevant region) can use that GI. No additional licensing requirements will apply to any use of the GI. Parties are still able to otherwise regulate the production and marketing of goods to which a GI relates (Article 18.36).

Trade marks for goods that contain or consist of a GI for the same goods cannot be registered and a registration may be invalidated (provided the infringement is identified and actioned within 5 years of the trade mark’s registration or public use). However, any such trade mark that was applied for or registered in good faith before the date the GI was protected under the agreement can continue to co-exist with the protected GI (Article 18.37).

Each Party must provide for enforcement of the protected GIs by appropriate administrative and judicial steps. Actions can be taken by a relevant administrative agency on their own account or in response to a request from an interested party (Article 18.38)<sup>80</sup>.

The sub-section includes general rules (Article 18.39) relating to:

- how the Parties will deal with homonymous GI names<sup>81</sup>, including requiring the Parties to consult the other where another country seeks protection of a GI that is homonymous with a GI of the other Party protected under the FTA;
- changes to a product specification for a GI will be dealt with in the joint working body under the agreement, noting that the product specification will be the specification as approved in the home territory for the GI;
- protection of GIs under the Agreement can only be cancelled by the EU in relation to EU GIs, and only by New Zealand in relation to New Zealand GIs;
- if, at the date that GI protection would otherwise apply (including at the end of a transition period set out in the Annex), a producer or retailer is holding existing stock that is still labelled with that GI, they can continue to market and sell that stock until it runs out.

Each Party is required to operate and maintain a system for the registration and protection of GIs with certain minimum features (Article 18.40).

### **Section B Sub-Section 5: Protection of Undisclosed Information**

The Protection of Undisclosed Information sub-section confirms that both Parties shall:

- provide civil judicial procedures and remedies for trade secret holders to prevent their secrets being disclosed, acquired or used by others without consent or in a manner contrary to honest commercial practices, for example by being in breach of a confidentiality agreement. The sub-section also sets out practices that are considered not to be contrary to honest commercial practices, such as independent discovery or the reverse engineering of a product (Article 18.41) and lists the types of judicial actions required to be made available (Article 18.42);
- provide at least 5 years protection of undisclosed data submitted in support of an application to approve a new pharmaceutical product. (Article 18.43); and
- similarly, provide at least 10 years of protection for the undisclosed data submitted in support of an application to approve a new agricultural chemical product (Article 18.44).

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<sup>80</sup> The impact analysis set out in the Annex to this Section 5.20 includes an assessment of the proposed administration enforcement mechanism.

<sup>81</sup> Homonymous names are those having the same or similar spelling or pronunciation, but apply to different locations or regions.

## **Section B Sub-Section 6: Plant Varieties**

Each Party has agreed to provide a system to protect plant variety rights that gives effect to the International Convention for the Protection of New Varieties of Plants as lastly revised in Geneva on 19 March 1991 (UPOV 91) (Article 18.45).

The requirement to ‘give effect to’ UPOV needs to be read within the context of the Treaty of Waitangi general exception (Article 25.6) and the footnote to Article 18.45, which allows us to implement measures that we consider necessary to protect Māori rights, interests, duties and responsibilities in fulfilment of our obligations under Te Tiriti o Waitangi/the Treaty of Waitangi, provided the conditions in the general exception are met (Article 18.45).

## **Section C Sub-Section 1: Civil and Administrative Enforcement**

In the civil and administrative enforcement sub-section, the Parties reaffirm their enforcement commitment under the TRIPs Agreement and confirm that each Party shall:

- provide measures, procedures and remedies that are fair and equitable and not unnecessarily complicated, costly or time consuming, and provide measures and remedies that are effective, proportionate and dissuasive while providing safeguards against their abuse and the creation of barriers to legitimate trade (Article 18.46);
- ensure enforcement measures, procedures and remedies are available to IP holders, their licensees, or any collective rights management or other professional body authorised by the rights holder to take such action (Article 18.47);
- ensure courts are able to order provisional measures to preserve evidence relevant to an alleged IP infringement (Article 18.48);
- ensure courts can order a party to an IP infringement claim to produce relevant evidence that is under that party’s control, including financial and commercial documents where the alleged infringement is at a commercial scale (Article 18.49);
- ensure that in civil proceedings the courts can order infringers, alleged infringers or other persons to provide information in their control that is relevant to the origin and distribution networks of the infringing goods or services (Article 18.50);
- ensure that courts can order interlocutory injunctions against an alleged infringer or an intermediary whose services are being used for an infringement, to prevent imminent or ongoing infringements of IP rights, and to prevent infringing products entering or moving within channels of commerce (Article 18.51);
- where an alleged infringement is on a commercial scale, ensure the courts are able to order the seizure of the alleged infringer’s property and assets, where the applicant can demonstrate that circumstances exist that are likely to endanger the recovery of damages (Article 18.51);

- to ensure that judicial authorities may, at the request of the applicant, order the destruction or at least the removal from channels of commerce, of goods that are found to infringe (Article 18.52);
- ensure that courts can order an injunction against an infringer, or an intermediary whose services are being used for infringement, to stop further infringement. (Article 18.53);
- ensure that courts can, at the request of the person liable, order payment of pecuniary compensation (such as their profits from their infringing action) to the injured party, where the liable person acted unintentionally and without negligence (Article 18.54);
- ensure that courts can order the infringer pay the right holder appropriate damages to compensate for the injury suffered (Article 18.55);
- ensure that reasonable and proportionate legal costs and the incurred expenses of the successful party should generally be met by the unsuccessful party in enforcement proceedings (Article 18.56);
- ensure that courts can, at the request of the applicant and expense of the infringer, order that information about the decision should be published (Article 18.57);
- provide an assumption that, unless there is contrary evidence, the author named on a copyright work is the author and right holder for the purpose of enforcement. (Article 18.58); and
- to ensure that the principles in the chapter apply to any administrative procedures as well as judicial procedures (Article 18.9).

### **Section C Sub-Section 2: Border Enforcement**

The border enforcement sub-section requires the parties to provide a regime administered by customs services that provides for goods suspected of infringing copyright, designs, geographical indications or trademarks, to be temporarily detained at the border (Article 18.60.1). New Zealand will be required to extend existing border regime for copyright and trade marks to include geographical indications<sup>82</sup>. Other aspects of the sub-section require the Parties:

- provide an electronic system for the management of applications to customs authorities to detain suspected goods (Article 18.60.2);
- enable customs authorities to request that a rights holder reimburse them the costs of detaining or suspending the release of suspected goods (Article 18.60.3);
- ensure that customs authorities decide whether to grant an application to detain suspected goods within as reasonable amount of time (Article 18.60.4);
- ensure that applications to detain suspected goods can apply to multiple shipments (Article 18.60.5);

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<sup>82</sup> The impact analysis set out in the Annex to this Section 5.20 includes an assessment of the proposed border enforcement mechanism for GIs.

- ensure that customs authorities can detain suspected goods in their control, without an application from the rights holder (Article 18.60.6);
- ensure that customs authorities use risk analysis to identify suspected goods (Article 18.60.7);
- provide customs authorities with the ability to order the destruction or disposal of seized suspected goods, or to ensure that if they are not destroyed that they are disposed of outside of channels of commerce. They will also ensure that the authorities may order the destruction or disposal of suspected goods before determining whether they infringe, provided the persons concerned do not oppose the destruction of the goods (Article 18.60.8);
- ensure that customs authorities maintain communication and encourage cooperation with other authorities and stakeholders involved in the enforcement of IP rights (Article 18.60.11); and
- cooperate and share information in relation to the trade of suspected infringing goods (Article 18.60.12).

#### **Section D: Final Provisions**

The Parties have undertaken to:

- cooperate and to remain in contact in relation to the implementation of all of the obligations contained in the chapter. Areas of cooperation may include exchanges of experience in legislative progress, enforcement of IP rights and IP-related aspects of genetic resources, traditional knowledge and traditional cultural expressions, promoting protection and awareness of intellectual property rights, and technical assistance (Article 18.62);
- endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement (Article 18.63); and
- work together under the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications to effectively implement the chapter (Article 18.64).

#### **Annex to Section 5.20**

##### **Impact Analysis of discretionary aspects of the implementation of geographical indications obligations**

The analysis in this Annex has been carried out by the Ministry of Business, innovation and Employment (MBIE). The analysis includes consideration of submissions in response to a discussion document published in November 2022.

##### **Civil enforcement**

The NZ-EU FTA requires New Zealand to provide the legal means for interested parties to prevent infringement of an EU GI. In addition, the IP Chapter of the NZ-EU FTA together with the WTO TRIPS

Agreement sets out general obligations related to the enforcement of intellectual property rights, including GIs.

Three options were considered for how civil enforcement should be provided for:

- Option i (in the Fair Trading Act - status quo): continue to provide that infringement of a GI is deemed a breach of the Fair Trading Act and apply the provisions of that Act;
- Option ii (in the Trade Marks Act): provide that infringement of a GI is deemed an infringement of a trade mark under the Trade Marks Act and the provisions of that Act apply;
- Option iii (in the GIs Act – preferred option): provide specific procedures and provisions for the infringement of a GI in the GIs Act.

Submitters were unanimous in their support for the civil procedures, including remedies to address infringement, being found in the GIs Act, rather than the Fair Trading Act as it is now. Some of the reasons expressed for supporting this approach included:

- making it easier for interested persons to find and understand how registered GIs can be enforced;
- allow enforcement provisions to be more easily tailored for effective enforcement of registered GIs;
- some submitters considered that providing more tailored enforcement measure for registered GIs under the Fair Trading Act would conversely increase the complexity of that Act and therefore make the Fair Trading Act more difficult to understand;
- an approach consistent with other IP statutes and an approach taken in other jurisdictions such as Singapore.

**Recommendation:** We recommend the preferred option - provisions for civil enforcement action for infringement of a GI be set out in the GI Act.

### **Which court should hear proceedings for infringement of a registered GI?**

Three options were considered:

- Option i: not specify which court is to be used (i.e. it would be either the District Court or the High Court depending on the amount the plaintiff seeks from the defendant by way of compensation for the injury);<sup>83</sup>
- Option ii: specify the District Court;
- Option iii: specify the High Court.

Submitters were unanimous in their support for the High Court to hear and determine infringements of registered GIs. Most cited consistency with the Trade Marks Act 2002 and other registrable IP rights as the primary reason. Other reasons included that the High Court is the current forum of hearing and

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<sup>83</sup> The District Court would be limited to proceedings where the damages sought are less than \$350,000.

determining appeals related to the decisions of the Registrar of GIs and is more experienced in dealing with intellectual property matters arising from the other registrable rights (patents, designs, trade marks and plant variety rights).

One submitter preferred a specialist tribunal for hearing and determining infringements of registered GI. However, in the absence of any specialist tribunal being provided, considered the High Court as appropriate. There are no specialist tribunals for determining infringement of other IP rights, other than the Copyright Tribunal for hearing disputes involving licensing schemes.

No submitters advocated for having the District Court as the responsible court.

One submitter advocated for the Māori Appellate Court to determine infringements of GIs related to taonga species and GIs including te reo Māori, citing the PVR Act 2022 as a precedent. However, under the PVR Act the Māori Appellate Court does not have a role determining infringement of registered plant variety rights. Nor does it have any experience or expertise in determining intellectual property rights infringement issues.

**Recommendation:** The GIs Act provide for the High Court to hear and determine infringement of registered GIs.

### **Who may commence civil proceedings?**

Three options were considered:

- Option i: any person, whether a legal or natural person (status quo);
- Option ii: the person in whose name the GI is registered (the registrant);<sup>84</sup>
- Option iii: any person who has an interest in preventing or stopping a GI from being infringed (an interested person), e.g. an individual producer who uses the GI or a producer body who may oversee the use of the GI (preferred option).

Submitters largely favoured permitting any interested person to be able take civil action to enforce a GI, including the following groups:

- any person who has a commercial interest in preventing or stopping a GI from being misused;
- growers, producers, and traders in goods protected by the GI;
- individual producers authorised to use the GI;
- industry or producer bodies who are entitled to oversee the use of a GI, and their members.

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<sup>84</sup> The GIs Act deems the person who applied to register a GI the registrant for the purpose of being responsible for maintaining the registration of the GI, including paying registration renewal fees. In respect of EU GIs to be protected under EU-NZ FTA there is no registrant.

A number of submitters emphasised that providing a list of persons able to take civil action in the legislation would help provide clarity and certainty to those wanting to take enforcement action.

The courts have the ability and scope to determine who might be an 'interested person' or have appropriate standing to bring civil legal action for infringement of a registered GI. There are many Acts which refer to an 'interested person'. The High Court Rules also provide for the court to refuse vexatious or frivolous actions. On this basis we consider that there is no need to provide a definition of 'interested person'.

**Recommendation:** That the GIs Act provide for any interested person to undertake civil action to address the infringement of registered GI.

### **What remedies should the courts be able to order?**

The Fair Trading Act (status quo) provides for injunctions (restraining the defendant from further infringement of GI) and loss or damages suffered.

MBIE considered augmenting these remedies with additional remedies provided under the Trade Marks Act (the TM Act), which include:

- account of profits of the infringer;
- payment of additional damages (e.g. punitive damages for willful infringement) to deter future infringements;
- erasure or removal of infringing GI from products and their packaging;
- delivery and disposal of infringing goods.

Nearly all the submitters were in favour of providing the same remedies that are available under the TM Act for infringement of a registered TM being provided to address the infringement of registered GI.

Some submitters strongly opposed the inclusion of the financial remedies such as damages and account of profits. They considered such remedies are unnecessarily punitive for infringers of GIs and disproportionate, when they also considered that the majority of infringement would be innocent use or involve historical good faith use of terms as descriptors for a type of product. Some considered that an injunction was the only remedy necessary, while one said that for most small wineries the mere threat of legal action was sufficient to stop infringing use.

It was said that including the authority for the courts to order damages or account of profits counters the financial incentives for a person to infringe a registered GI.

Another submitter supported alignment of remedies with the Trade Marks Act, but considered that only those remedies necessary to meet the minimum requirement of NZ-EU FTA should be implemented. Although ensuring New Zealand meets its enforcement obligations under international agreements should be one of the objectives behind reviewing the enforcement provisions, we are not constrained to only providing the minimum remedies prescribed under international law.

A number of submitters discussed the likely difficulties of determining damages arising from infringement of a GI arising from the collective nature of the GI right. However, merely providing for the courts to have the authority to order payment of damages, does not mandate the courts to do so in every instance of infringement. Notwithstanding the likely difficulties of establishing damages, and therefore compensation payable, this is not a reason for excluding damages as a potential remedy. Where the plaintiff can prove damages, the courts ought to be able to order the infringer to pay compensation. Furthermore, our international obligations on enforcement measures requires that damages be available as a remedy.

**Recommendation:** The remedies to be made available to the courts to address the infringement of GIs should be based on those available under the Trade Marks Act 2002 for infringement of a registered trade mark.

#### **What should be the procedures for implementing border protection measures?**

Procedures for lodging a Customs notice in respect of trade marks and copyright are provided for in the Trade Marks Act and the Copyright Act. They enable Customs to temporarily detain suspected infringing goods for a short period of time (3 or 10 working days depending on whether the right holder has filed a notice with Customs) to allow a right holder to initiate court proceedings against the importer or exporter, for infringing a copyright or a registered trade mark.

GIs are very similar to trademarks, in that, like trade marks, GIs will appear on the labels or packaging of a product. This suggests that the procedures related to the lodging of Customs notices for trade marks are likely to work well for GIs.

The alternative would be to develop new procedures for dealing with Customs notices related to GIs. However, any such new procedures would probably not differ much from the procedures connected with trade marks related notices. Any differences may well mean increased costs and complexity for Customs and businesses filing notices with them in implementing the different procedures for GIs.

There was near unanimous support from submitters to basing the border protection measures on those provided under the Trade Marks Act. Several submitters suggested shortening the Customs detention period (10 working days, extendable to 20) to deal with the perishable nature of some types of GI products. Others suggested lengthening the detention period to facilitate overseas parties

enforcing their registered GI or to allow the best placed person to be determined for bring enforcement action.

Two submitters said that they did not support the use of border protection measures to enforce registered GIs right on goods crossing the border. One of these submitters considered that Customs seizure may not be appropriate remedy for addressing infringement of a GI (the NZ-EU FTA includes an obligation to provide border protection measures for GIs).

### **Analysis**

Registered trade marks can be applied to perishable goods and that the current period for Customs to detain suspected infringing goods is 10 days, extendable to 20, submitters wanting a shorter time period haven't provided sufficient information for there to be a persuasive case for shortening the period. Similarly in respect of those suggesting that the detention period needs to be longer, the majority of registered trade mark owners are overseas businesses. There is no information to suggest that the current detention period is unreasonable.

For those wanting additional time to decide who should best bring enforcement action, we consider that there is a need to balance the interests of legitimate importers and exporters to be able bring their products to market in a timely manner and rights holders wanting to prevent infringing goods crossing the border and reaching those markets.

**Recommendation:** That the border protection procedures as set out under the Trade Marks Act and Regulations be provided under the GIs Act and Regulations as appropriate.

### **Who should be able to lodge a Customs notice?**

Two options for who should be able to lodge a notice with Customs in respect of detaining suspected GI infringing goods were considered:

- Option i: permit anyone to lodge a Customs notice;
- Option ii: permit only interested persons, who may be a producer who uses the GI, a producer body or registrant to lodge a Customs notice (preferred option).

There was general support for requiring those providing a notice to be someone who is able to show to Customs that they are "interested person" or a justifiable interest in the use of the GI concerned. One submitter suggested limiting those who may provide a notice to industry bodies that regulate the production of the goods concerned, members of that industry and individual producers authorised to use the GI. Some submitters suggested the person who should be able to provide notice include whānau, hapū, and iwi groups, government appointed bodies, including the Commerce Commission, registered trusts, and Māori land entities.

The person who provides a notice to Customs needs to be someone with a real and effective interest in enforcing the registered GI. A key requirement for Customs accepting a notice from any person, is the requirement that this person indemnify Customs for any costs it incurs. We consider that if that person does not have a genuine interest in enforcing the GI (being prepared to pursue civil legal action and therefore meet the costs associate with taking civil action) they are unlikely to provide the required indemnity to Customs and, therefore, their notice will be refused by Customs.

**Recommendation:** That the person providing notice to Customs be an interested person as defined above for initiating civil legal action for the infringement of a registered GI.

### **Administrative Enforcement of GIs**

This section looks at administrative enforcement of GIs. Administrative enforcement will be carried out by an agency to be determined. The issues covered are:

- What investigative powers should be available?
- What remedies should the courts be able to order?

The enforcement agency will need suitable powers to investigate possible infringements of registered GIs. MBIE considers that the best option is to provide powers similar to those provided to the Commerce Commission in the Fair Trading Act. Infringement of a GIs is conduct that may potentially mislead consumers as to the origin or characteristics of a product. This is the sort of conduct that the investigative powers in the Fair Trading Act are aimed at.

The Fair Trading Act provides the Commerce Commission with the power to gather evidence and information by the following means:

- warranted search power to search any place specified in the warrant where there are reasonable grounds to believe that a search is necessary for the purpose of gathering, obtaining or recovering evidence of:
  - conduct that constitutes a contravention of the Fair Trading Act; or
  - the nature or extent of any conduct that constitutes a contravention of the Fair Trading Act;
- the power to require a person to supply information or documents or give evidence either orally or in writing.

The Commerce Commission may also authorise an employee to monitor and enforce compliance with any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety notices that apply to any relevant goods. This enables the employee to enter retail places that the public can access to inspect, photograph and purchase goods being

offered for sale, and require persons in charge of the place to provide certain information regarding the supply and dispatch of goods.

There was general support for the suggestion that the agency providing administrative enforcement of registered GIs should have investigative powers similar to those available to the Commerce Commission under the Fair Trading Act.

Several submitters were opposed to administrative enforcement being provided for registered GIs, citing inconsistency with other IP statutes. However, article 18.38 of the NZ-EU FTA requires New Zealand to provide administrative enforcement procedures for GIs.

One submitter suggested that the investigative powers should be aligned with the powers available for MBIE under the Trade Marks Act for investigating trade mark counterfeiting offences. Although the same general investigative powers for MBIE (and Customs and Police) to investigate counterfeiting offences are also provided to the Commerce Commission under the Fair Trading Act, the non-warranted search and seizure powers available to MBIE do not appear necessary or appropriate to investigate alleged infringements of GIs, particularly in an environment of low rates of GI infringement occurring or likely to occur in the future.

**Recommendation:** The agency responsible for providing administrative enforcement of registered GIs be provided with appropriate investigative powers, which may include:

- warranted search power to search any place specified in the warrant where there are reasonable grounds to believe that a search is necessary for the purpose of gathering, obtaining or recovering evidence of an infringement of a registered GI;
- the power to require a person to supply information or documents or give evidence either orally or in writing.

#### **What remedies should the courts order arising from administrative enforcement of GIs?**

MBIE proposed that the same remedies that are made available for civil enforcement be available to the agency providing administrative enforcement. We also proposed that the courts should also have the ability to order a person who has infringed a GI to pay to the Crown the profits they have derived from infringing activity, as an alternative to pay damages to lawful GI users, as a deterrent to any further misuse of the GI.

Two submitters opposed the adoption of any financial remedies. As they noted above under the discussion of civil remedies, they consider these unnecessary and disproportionate to the seriousness of the infringing action.

Although there was otherwise general support amongst submitters for aligning the availability of civil remedies with remedies arising from administrative enforcement, some considered the authority to

order damages should not be included. They noted that the courts do not award damages in the abstract and that it is damages suffered by the plaintiff that are awarded and if producers have not themselves brought action, there is no reason for administrative enforcement to seek damages for the benefit of producers.

However, we noted that the Fair Trading Act remedies for enforcement from the Commerce Commission includes payment of compensation for any injury, loss or damage to another person. In the case of infringement of a GI, if that infringement has caused injury and that injury can be proven, there seems no reason to preclude the courts from having the authority to order the infringer pay compensation to injured parties.

Other remedies proposed by submitters included orders for:

- payment of a fine to the Crown;
- corrective advertising.

We consider that introducing payment of a fine would move administrative enforcement of GIs into the realm of criminal enforcement. As noted above, we don't see any need to deter infringing activity by requiring infringers to undertake corrective advertising. Corrective advising is not a remedy provided elsewhere in our IP regulatory system.

None of the submitters commented on the proposal to include the authority for the courts to order the infringer to pay the profits of their infringing actions to the Crown as a deterrent to future infringements. Having the ability to deprive the infringer of their profits would provide a deterrent to future infringements. Receipt of the profits by the Crown would also help to indirectly offset the costs to the Crown for providing administrative enforcement.

**Recommendation:** That the courts have the authority to order the same set of remedies as a result of administrative enforcement as provided for civil enforcement, except in relation to the authority to order payment, where instead that authority would provide for account of profits to pay to the Crown.

## 5.21 Chapter 19: Trade and Sustainable Development

Under the Trade and Sustainable Development (TSD) chapter, New Zealand and the EU have made a number of commitments, including to:

- endeavour to ensure that relevant laws and policies provide for high levels of environmental and labour protection (Article 19.2.2) and gender equality (Article 19.4.5);
- not derogate from environmental and labour laws (Article 19.2.3) and gender equality laws (Article 19.4) in order to encourage trade or investment;

- not fail to enforce environmental or labour laws (Article 19.2.4) or gender equality laws (Article 19.4.5) to encourage trade or investment;
- not use environmental or labour laws (Article 19.2.6) or gender equality laws (Article 19.4.5) in a manner which constitutes a disguised trade or investment restriction.

On Multilateral Labour Standards and Agreements to:

- respect, promote and realise the principles stated in the 1998 International Labour Organization (ILO) Declaration:
  - freedom of association and the effective recognition of the right to collective bargaining;
  - the elimination of all forms of forced or compulsory labour;
  - the effective abolition of child labour;
  - the elimination of discrimination in respect of employment and occupation (Article 19.3.3);
- make continued and sustained efforts to ratify the fundamental ILO Conventions (Article 19.3.5);
- effectively implement the ILO Conventions that New Zealand and the EU have ratified and are in-force (Article 19.3.7);
- promote through national law and practice the ILO strategic objectives and, in particular, decent working conditions for all and social dialogue on labour matters (Article 19.3.8);
- adopt and implement occupational health and safety measures, including compensation in cases of occupational injury or illness and maintain an effective labour inspection system (Article 19.3.9);

In the area of trade and gender equality to:

- promote public awareness and transparency of their gender equality laws, regulations, and policies, including their impact on and relevance for inclusive economic growth and trade policy (Article 19.4.4);
- effectively implement obligations under the UN Conventions that address gender equality or women's rights to which they are a party, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (Article 19.4.6);
- work together on trade-related aspects of gender equality policies and measures, including activities for women, including workers, businesswomen and entrepreneurs, to access and benefit from the opportunities created by the Agreement (Article 19.4.7);
- facilitate cooperation between relevant stakeholders, including wāhine Māori in the case of New Zealand (Article 19.4.7).

Regarding Multilateral Environmental Agreements, to:

- effectively implement the multilateral environmental agreements, protocols and amendments that New Zealand and the EU have ratified and are in force (Article 19.5.2);

On trade and climate change to:

- effectively implement the UNFCCC and the Paris Agreement (Article 19.6.2);
- refrain from any action or omission which materially defeats the object and purpose of the Paris Agreement (Article 19.6.3);
- strengthen cooperation on a range of climate change policies and measures such as on carbon pricing, including emissions trading, and the implementation of the Paris Agreement (Article 19.6.5);

With respect to fossil fuel subsidy reform, to:

- acknowledge that fossil fuel subsidies can distort markets, disadvantage renewable and clean energy and be inconsistent with Paris Agreement goals (Article 19.7.1);
- reaffirm their commitment to work to reform and reduce fossil fuel subsidies, in accordance with national circumstances, taking into account the needs of populations affected (Article 19.7.2);
- strengthen cooperation on trade-related aspects of fossil fuel subsidy policies and measures bilaterally and in international fora, including through encouraging other WTO members to advance reform and pursue new fossil fuel subsidy disciplines in the WTO (Article 19.7.3).

In the area of trade and biological diversity, to:

- implement measures to combat illegal wildlife trade, including with respect to third countries (Article 19.8.2.a);
- take appropriate action to conserve biological diversity subject to pressures linked to trade and investment and to prevent the spread of invasive alien species (Article 19.8.2.b);
- promote trade in products derived from the sustainable use of biological resources (Article 19.8.2.c);
- recognise the importance of respecting and maintaining the knowledge and practices of indigenous peoples and communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity (Article 19.8.3);

On trade and forests to:

- combat illegal logging and related trade, including with respect to third countries (Article 19.9.2.a);

- share experience and knowledge on ways to encourage consumption and trade in products from deforestation-free supply chains (Article 19.9.3) and to strengthen cooperation on trade related aspects of forest management, minimising deforestation and the use of forests and wood based products in climate change mitigation and bio economies (Article 19.9.4).

Regarding trade and sustainable management of fisheries and aquaculture, to:

- implement long term conservation and management measures to ensure sustainable use of marine living resources (Article 19.10.3.a);
- implement an ecosystem-based approach to fisheries management to minimise the negative impacts of fishing activities on the marine ecosystem and promote the long term conservation of marine turtles, seabirds, marine mammals and other species recognised as threatened in relevant international agreements (Article 19.10.3.b);
- support monitoring, control, surveillance, compliance and enforcement to combat IUU fishing practices, including by adopting effective measures to:
  - deter vessels that are flying their flags and their nationals from supporting or engaging in IUU fishing activities, and respond to IUU fishing when it occurs;
  - facilitate electronic traceability and certification to exclude products from IUU fishing from trade flows (Article 19.10.4 a and b);

In the area of trade and investment supporting sustainable development, to:

- eliminate customs duties on environmental goods originating from the other Party on entry-into-force of the Agreement and acknowledge commitments on environmental services and manufacturing activities made in the FTA which contribute to achieving environmental and climate goals, limiting or remediating environmental damage to water, air and soil and contributing to the dissemination of technologies that mitigate climate change (an illustrative list is provided in Annex 19 (Green goods and services)) (Article 19.11.2 and 3);
- promote and facilitate trade and investment in environmental goods and services and goods that help enhance social conditions through a range of measures, such as awareness raising activities and conducive policy frameworks (Article 19.11.4);

Regarding scientific and technical information, to:

- take into account available scientific and technical information, relevant international standards, guidelines or recommendations when establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment (Article 19.13.1);
- not use the lack of full scientific certainty as a reason for preventing either Party from adopting measures to prevent damage where there is a risk of serious or irreversible damage to the environment or to occupational safety and health (Article 19.13.2);

- not apply Article 19.13.2 in a manner which constitutes an unjustifiable discrimination or disguised restriction on international trade (Article 19.13.3);

On transparency to:

- provide stakeholders with a reasonable opportunity to comment on measures aimed at protecting the environment or labour conditions that may affect trade or investment or trade or investment measures that may affect the protection of the environment or labour conditions to inform their implementation (Article 19.14.1.)
  - The chapter establishes a Committee on Trade and Sustainable Development in order to:
    - facilitate, monitor and review the implementation of the TSD Chapter (Article 19.15.a);
    - contribute to the work of the Trade Committee on issues covered by the TSD Chapter (Article 19.15.c);
    - consider other matters related to the TSD Chapter as agreed by New Zealand and the EU (Article 19.15.d.);
- the Committee on Trade and Sustainable Development will publish a report after each meeting (Article 19.15.3);
- is to give due consideration to communications and opinions from the public on matters related to this chapter (Article 19.15.4); and
- each Party is to designate a contact point on entry-into-force of the Agreement, to facilitate communication and coordination on any matter relating to the TSD Chapter (Article 19.15.5).

## 5.22 Chapter 20: Māori Trade and Economic Cooperation

Article 20.2 sets out the chapter's context and purpose. This includes acknowledging te Tiriti o Waitangi/the Treaty of Waitangi as a foundational document of constitutional importance to New Zealand (Article 20.2.1), recognising international trade and investment opportunities in order to enable and advance Māori well-being and the challenges that may exist for Māori (Article 20.2.2), and the chapter's objective of pursuing cooperation between the Parties to enable and advance Māori economic aspirations and well-being (Article 20.2.3).

To that end, the Parties recognised the importance of cooperation being implemented in a manner consistent with te Tiriti o Waitangi/the Treaty of Waitangi (Article 20.2.4), and the value that Māori approaches, informed by te ao Māori, mātauranga, tikanga and kaupapa Māori, can contribute to protecting and promoting Māori trade and economic aspirations (Article 20.2.5).

The Parties also recognised the value of increased Māori participation in international trade and investment, including digital trade, through the promotion of Māori approaches and methodologies

(Article 20.2.6), as well as the value of enhancing cultural and people-to-people links through the opportunities that the chapter creates for both Parties (Article 20.2.7).

Under Article 20.3 (International Instruments), the Parties refer to the commitments they have under the following international agreements:

- the UN Declaration on the Rights of Indigenous Peoples 2007;
- the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions 2005;
- the UN 2030 Agenda for Sustainable Development 2015;
- the Convention on Biological Diversity 1992; and
- the Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.

Article 20.4 summarises other parts across the Agreement where specific provisions aimed at enhancing the participation of Māori in the trade and investment opportunities arising from the NZ-EU FTA can be found. These include the chapters on: Market Access; Sustainable Food Systems; Investment Liberalisation and Trade in Services; Digital Trade, Public Procurement; Intellectual Property; Trade and Sustainable Development, including wāhine Māori; Small and Medium-Sized Enterprises (SMEs); Institutional Provisions; and General Exceptions, including te Tiriti o Waitangi/the Treaty of Waitangi.

Article 20.5 outlines possible cooperation activities in the following areas:

- collaborating to enhance the ability for Māori-owned enterprises to access and benefit from the trade and investment opportunities created by the Agreement;
- collaborating to develop links between EU and Māori-owned enterprises, with a particular focus on SMEs, to facilitate access to new and existing supply chains, enable and strengthen opportunities for digital trade, and facilitate cooperation between enterprises on trade in Māori products;
- supporting science, research and innovation links, as appropriate between EU and Māori communities, pursuant to the Agreement on Scientific and Technological Cooperation between the European Community and the Government of New Zealand; and
- cooperating and exchanging information and experience on geographical indications.

Article 20.6 outlines the institutional mechanism to oversee the chapter’s implementation. This includes the Trade Committee supervising and facilitating the chapter’s implementation and application (Article 20.6.1), and the role for Domestic Advisory Groups (Article 20.6.2) and Civil Society Forums (Article 20.6.3) to advise each Party on issues covered by the chapter, including recommendations and conducting dialogues on implementation.

A Joint Committee established under Article 53(1) of the New Zealand European Union Partnership Agreement on Relations and Cooperation shall monitor the development of the comprehensive relationship between the Parties and exchange views and make suggestions on any issues of common interest, including issues that are not covered by the NZ-EU FTA (Article 20.6.4).

Article 20.7 clarifies that the dispute settlement mechanisms applicable under the Agreement and set out in Chapter 26 (Dispute Settlement) do not apply to this chapter.

### **5.23 Chapter 21: Small and Medium-Sized Enterprises**

Under Article 21.2, each Party is obliged to establish or maintain a digital medium that allows the public in the EU and New Zealand to easily access specified information free of charge. The information must be kept up-to-date and accurate. The specified information includes information about the Agreement and information designed for SMEs that the Party considers would be useful to SMEs interested in benefitting from the opportunities created by the Agreement. It also includes access to product-specific or generic information with respect to each Party's market on specified tariff and non-tariff measures.

Under Article 21.3, each Party shall communicate details of its SMEs contact point to the other and notify any changes to those details. The SME Contact Points are required, among other things, to ensure SME needs are taken into account in the implementation of the Agreement, and to ensure the information to be made available is up-to-date and relevant for SMEs.

The chapter is not subject to the dispute settlement mechanism in Chapter 26.

### **5.24 Chapter 22: Good Regulatory Practice and Regulatory Cooperation**

The scope of the good regulatory practice elements of the chapter is determined by the definition of "regulatory measures" related to any matter covered by the Agreement (Article 22.2(bi)). For New Zealand, regulatory measures mean:

- government bills that may become Public Acts, except for Articles 22.9 (Periodic Review) and 22.10 (Access to Regulatory Measures) where it means Public Acts; and
- regulations made by Order in Council.

The chapter also uses the concept of a regulatory authority of a Party. For the EU, this is the European Commission. For New Zealand, this is the Executive Government, meaning it is effectively the same as the Party.

The good regulatory practice commitments include the regulatory authority of each Party being required to make publicly available, for free, descriptions of the general processes and mechanisms under which it prepares, develops, evaluates or reviews its regulatory measures.

Each Party commits, at least annually, to list planned major regulatory measures that it reasonably expects to adopt within a year (Article 22.6). Those list(s) are to be made publicly available. The regulatory authority should make publicly available certain information about each major regulatory measure, such as the estimated timing for its adoption. Each Party's regulatory authority may determine what constitutes a "major regulatory measure" for this purpose. A footnote further clarifies that, for New Zealand, this commitment only applies to regulations made by Order in Council.

On public consultation, the regulatory authority of each Party commits, to the extent possible and appropriate, to make publicly available sufficient information about proposed major regulatory measures to allow someone to assess whether and how their interests might be significantly affected (article 22.7). The regulatory authority also commits to offer reasonable opportunities for anyone to provide comments and to consider comments received. The regulatory authorities are obliged to make information accessible to the public by digital means and endeavour to make publicly available a summary of the consultation.

The regulatory authority of each Party affirms its intention to carry out impact assessments of major regulatory measures it is preparing (Article 22.8). The regulatory authority must, for carrying out impact assessment, promote the identification and consideration of a range of factors, including the need for a regulatory measure, any feasible and appropriate regulatory and non-regulatory options, and the potential social, economic and environmental impact of the options. The regulatory authority is required to report, where it has carried out an impact assessment, on the factors it considered in its assessment and summarise relevant findings and to make that information publicly available no later than when the relevant regulatory measure is made publicly available.

The regulatory authority of each Party is required to maintain processes or mechanisms to promote periodic review of regulatory measures in force (Article 22.9). The regulatory authority must endeavour to ensure periodic reviews consider, where appropriate, whether there are opportunities to achieve public policy objectives more effectively and efficiently, and whether measures are likely to remain fit for purpose. Regulatory authorities are required, to the extent possible and appropriate, to make publicly available any plans for, and the results of, any periodic reviews.

Each Party commits to ensure that its regulatory measures in effect are published in a designated register or via a single digital medium that is publicly available, searchable and accessible free of charge, as well as updated regularly (Article 22.10).

Under Article 22.11, the Parties may propose a regulatory cooperation activity to the other. The Parties may agree to entrust implementation of a regulatory cooperation activity to relevant government agencies of the Parties. Each Party is also required to designate a contact point to coordinate regulatory cooperation activities (Article 22.12).

Chapter 26 (Dispute Settlement) does not apply to this chapter.

## 5.25 Chapter 23: Transparency

Article 23.3 requires each Party to promptly publish its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by the NZ-EU FTA, in a format accessible to the public. Parties are required to provide an explanation of both the objective and rationale for these, to the extent possible and appropriate. Furthermore, each Party is required to provide a reasonable time period between publication and entry into force of laws and regulations with respect to any matter covered by the NZ-EU FTA.

Article 23.5(1) requires each Party to administer all laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by the NZ-EU FTA, in an objective, impartial and reasonable manner.

Article 23.4 requires each Party to maintain appropriate mechanisms for responding to enquiries from any person regarding any laws or regulations with respect to any matter covered by the NZ-EU FTA. Parties must promptly provide information and respond to questions pertaining to any law or regulation, whether in force or planned, with respect to any matter covered by the Agreement, unless a specific mechanism is established under another chapter of the Agreement.

Article 23.5(2) details obligations regarding administrative proceedings relating to particular persons, goods or services. Where proceedings are initiated in respect of the application of laws, regulations, procedures or administrative rulings of general application relating to the NZ-EU FTA, each Party is required to:

- endeavour to provide reasonable notice in accordance with its law to persons directly affected by administrative proceedings. The notice includes a description of the nature, legal authority for, and general description of any issues in question;
  - afford affected persons reasonable opportunity to present supporting facts and arguments prior to a final administrative decision where permissible.

Article 23.6 requires each Party to establish or maintain judicial, arbitral or administrative tribunals or procedures. The aim of this is to allow prompt appeal or review of administrative decisions with respect to any matter covered by the NZ-EU FTA. These must be carried out in a non-discriminatory and impartial manner. Tribunals must be impartial and independent of the authority which carries out administrative enforcement powers. Each Party must ensure that parties to proceedings have a reasonable opportunity to support or defend their positions, and are provided with the final decision.

## 5.26 Chapter 24: Institutional Provisions

Article 24.1 establishes a Trade Committee comprising representatives of both Parties to oversee attaining the objectives of the NZ-EU FTA. Each Party may refer issues relating to implementation, application and interpretation of the NZ-EU FTA to the Trade Committee. The Trade Committee cannot meet any later than six months after the date of entry into force of the NZ-EU FTA. After this, the Trade Committee must meet annually unless otherwise agreed by the Parties. Meetings can be in person or by other appropriate means as agreed, and must alternate between Brussels and Wellington, unless agreed otherwise.

The New Zealand Minister responsible for trade and the Member of the European Commission responsible for trade must co-chair the Trade Committee, or designate someone else to do so. Annex 24 contains the rules of procedure for the Trade Committee.

Article 24.2 sets out the functions of the Trade Committee. These are split into **mandatory** and **non-mandatory functions**.

The **mandatory functions** of the Trade Committee include:

- supervising and facilitating implementation and application of the NZ-EU FTA, considering possible enhancements to NZ-EU trade and investment, and considering proposals to amend the NZ-EU FTA;
- supervising, guiding and coordinating the work of all specialised committees and other bodies established under the NZ-EU FTA, and recommending to those specialised committees and bodies any necessary action;
- seeking appropriate ways to prevent or solve problems arising from the NZ-EU FTA, without prejudice to Chapter 26 (Dispute Settlement);
- assessing the implications of any accession of a third country to the EU in advance of that accession.

The **non-mandatory functions** of the Trade Committee include:

- deciding to establish and allocate powers or responsibilities to specialised committees pursuant to Article 24.4 (Specialised Committees);
- recommending to Parties any amendments to the NZ-EU FTA;
- issuing interpretations of the NZ-EU FTA;
- adopting decisions amending the NZ-EU FTA to correct any errors, omissions or deficiencies, up until the end of the fourth year following entry into force;
- adopting decisions amending the NZ-EU FTA in accordance with Article 27.1(3) (Amendments) in the instances set out in Article 24.3 (Amendments by the Trade Committee).

Article 24.3 details decisions which the Trade Committee may adopt to amend parts of the NZ-EU FTA, including:

- Annex 2-A (Tariff elimination schedules) to Chapter 2 (National Treatment and Market Access for Goods);
- Chapter 3 (Rules of Origin and Origin Procedures) and Annex 3-A (Introductory notes to product-specific rules of origin), Annex 3-B (Product Specific Rules of Origin), Annex 3-C (Text of the statement on origin) and Annex 3-D (Supplier's declaration referred to in Article 3.3(4) (Cumulation of Origin));
- Annex 6-B (Regional conditions for plants and plant products), Annex 6-C (Equivalence recognition of SPS measures), Annex 6-D (Guidelines and procedures for an audit or verification), Annex 6-E (Certification) and Annex 6-F (Import checks and fees) to Chapter 6 (Sanitary and Phytosanitary Measures);
- Annexes 9-A, 9-B, 9-C, 9-D and 9-E to Chapter 9;
- the instrument “Mutual recognition of professional qualifications” referred to in Article 10.39(5) of Chapter 10;
- Article 10.9(1) and Annex 10-A and 10-B of Chapter 10 (Investment Liberalisation and Trade in Services);

**Article 24.4** establishes the following specialised committees:

- the Committee on Trade in Goods;
- the Committee on Sanitary and Phytosanitary Measures;
- the Committee on Sustainable Food Systems;
- the Committee on Wine and Spirits;
- the Committee on Trade and Sustainable Development;
- the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property, including Geographical Indications.

The Joint Customs Cooperation Committee is obligated to act as a specialised committee under the Trade Committee. The specialised committees must meet once a year, unless otherwise provided in the NZ-EU FTA, and may take place in person in either the EU or in New Zealand, or otherwise agreed by appropriate means of communication. The specialised committees must agree on their meeting schedule and set their agenda.

If a specialised committee does not separately decide on rules of procedure, the rules of procedure of the Trade Committee must apply instead. The specialised committees have powers to monitor and review the implementation of the NZ-EU FTA, and to consider and discuss technical issues in implementing the NZ-EU FTA. The specialised committees shall inform the Trade Committee of

scheduling and agendas for meetings sufficiently in advance, report to it on results and conclusions of meetings, and carry out Trade Committee delegated tasks. Parties are not prohibited from bringing matters directly to the Trade Committee where a specialised committee exists. Each Party must ensure that all competent authorities on matters in the agenda of specialised committees are represented as appropriate, and with adequate expertise.

Specialised committees must comprise representatives of each Party and be co-chaired by representatives of the other Party.

Article 24.5 relates to Trade Committee and specialised committee decisions and recommendations. These are binding on the Parties and all bodies set up under the NZ-EU FTA, including those referred in Chapter 26 (Dispute settlement). The Parties must take measures to implement Trade Committee decisions, although recommendations have no binding force. The Trade Committee or specialised committees must adopt their decisions by consensus.

Article 24.6 requires each Party to designate a domestic advisory group within a year after the date of entry into force of the NZ-EU FTA. The domestic advisory group, which must meet at least once a year (Article 24.6(2)), must comprise a balanced representation of a number of groups, including:

- independent civil society organisations, including NGOs;
- business and employers' organisations;
- trade unions active on, among others, economic, social and environmental matters.

In New Zealand's case, the domestic advisory group must include Māori representatives.

The domestic advisory groups may be convened in different configurations to discuss implementing different provisions of the NZ-EU FTA. Each Party must consider views or recommendations that the domestic advisory group submits when implementing the NZ-EU FTA.

Each Party may choose to publish the participating organisations in its domestic advisory group, and where they so choose, must publish a contact point for that group. The Parties must ensure their respective domestic advisory groups interact with each other.

Article 24.7 requires the Parties facilitate organising a Civil Society Forum, and each Party must agree on operational guidelines for the Forum's conduct at the first Trade Committee meeting. The Civil Society Forum must aim to meet in conjunction with the Trade Committee meeting. The Forum must be open to independent civil society organisations in each Parties' territories, including those referenced in Article 24.6.

Each Party must aim to promote balanced representation of organisations such as NGOs and trade unions active on, among others, economic, social and environmental matters. The Forum must include

Māori representatives in New Zealand's case. Each Party's Trade Committee participants must take part in a Forum meeting session to present information surrounding NZ-EU FTA implementation and to engage with the Forum in dialogue. The co-chairs of the Trade Committee must chair the session, or their designates as appropriate. The Parties must publish any formal statements made at the Forum but may choose to do this either jointly or individually.

## **5.27 Chapter 25: Exceptions**

The Exceptions Chapter provides exceptions that allow the Parties to justify actions that would otherwise violate the obligations under the NZ-EU FTA.

### **General Exceptions**

Article 25.1 applies the General Exceptions that are found in Article XX of the WTO General Agreement on Tariffs and Trade to the NZ-EU FTA, to chapters where such exceptions are relevant. The effect of incorporating this is that, so long as measures are not used for trade protectionist purposes, the NZ-EU FTA will not prevent either Party from taking measures, including environmental ones, necessary to protect human, animal or plant life or health, or public morals. The same applies to measures necessary to secure legal or regulatory compliance relating to:

- the prevention of deceptive and fraudulent practices or to deal with contract defaulting;
- privacy protection with regards to processing and disseminating personal data and protecting confidential individual records and accounts; and
- safety.

Both Parties are also able to take measures to implement multilateral environmental agreements under this Article.

Either Party can only take measures after they provide the other Party with all relevant information with a view to seeking an acceptable solution to the Parties. The Parties have 30 days to reach agreement otherwise the measures become applicable. In limited circumstances, and so long as the other Party is informed, the Party seeking to take measures may also take precautionary measures to deal with the situation.

### **Security Exception**

Article 25.2 states that a Party cannot be required to provide or allow access to any information where it determines that doing so would be contrary to its essential security interests. In addition, the exception ensures that either Party may apply any action which it considers necessary for such interests in relation to supply of arms to a military establishment, to fissionable and fusionable materials and their derivatives, or in time of war or other international relations emergency. A Party

may also take any action in pursuit of its United Nations Charter obligations to maintain international peace and security.

### **Taxation Exception**

Article 25.3 works on the premise that nothing in the NZ-EU FTA applies to taxation measures unless it is stated explicitly in Article 25.3 that it will apply.

Where the NZ-EU FTA is inconsistent with any tax convention<sup>85</sup> the tax convention will prevail. Articles 10.7 and 10.17 of the NZ-EU FTA, which both relate to MFN treatment, do not apply to an advantage that a Party gives in compliance with a tax convention.

Article 25.3 defines direct taxes as all taxes on income or capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, taxes on wages or salaries paid by enterprises and taxes on capital appreciation. Neither Party is prevented by the NZ-EU FTA from taking measures to ensure direct taxes are collected effectively or equitably, nor are they prevented from distinguishing taxpayers based on location of their residence or capital investment.

### **Restrictions in case of balance of payments and external financial difficulties**

Article 25.4 allows either Party to adopt or maintain temporary safeguard measures regarding capital movements, payments or transfers, where they experience serious difficulties or the threat of such difficulties, with balance of payments or external financial difficulties. This provision applies so long as safeguard measures are consistent with the IMF Agreement, and that they apply in a non-discriminatory manner and avoid unnecessary commercial, economic or financial damage to the other Party. They must also be temporary and only used as necessary.

A Party may also take these steps in order to safeguard its external financial position or balance of payments, consistent with GATT 1994 and its Understanding on the Balance-of-Payments Provisions, with respect to both trade in goods and in services.

Article 25.5 allows the EU to adopt temporary safeguard measures where there are exceptional circumstances of serious difficulties for the operation, or threats to the operation of the EU's economic and monetary union. These measures cannot be in place for longer than six months. The measures cannot discriminate arbitrarily or unjustifiably between New Zealand and a third country in similar situations.

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<sup>85</sup> This is defined in Article 25.3 as any agreement or arrangement relating wholly or mainly to taxation to which either NZ or the EU are party.

## **Te Tiriti o Waitangi/Treaty of Waitangi**

Article 25.6 provides that the NZ-EU FTA will not prevent New Zealand from taking measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by the Agreement, including in fulfilment of its obligations under te Tiriti o Waitangi/the Treaty of Waitangi, provided that a measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade. The text also specifies that interpretation of te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of the Agreement.

### **Disclosure of Information**

Article 25.7 ensures that nothing in the Agreement requires a country to provide or allow access to information where doing so would be contrary to its domestic law, or would impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises. The exception is where a panel set up under Chapter 26 (Dispute Settlement) needs the information for its proceedings. Each Party must keep information confidential where that information has been submitted by the other Party as confidential to the Trade Committee or to a specialised committee.

### **WTO waivers**

Article 25.8 provides that where a right or obligation in the NZ-EU FTA is identical to one found in the WTO Agreement, a waiver decision adopted under Article IX of the WTO Agreement is seen as conforming with the identical NZ-EU FTA provision.

## **5.28 Chapter 26: Dispute Settlement**

The first step in bringing a dispute under the Agreement is to request formal consultations as provided for in Article 26.3. If the Parties are unable to resolve the matter through those consultations, the Party that requested consultations may request the establishment of a panel to make findings and determinations on the issue (Article 26.4). The disputing Parties may also request that the panel make specific recommendations regarding resolution of the dispute. The Parties must ensure that the panel request is made public.

In order to ensure fairness and independence of the panel, the Parties shall consult with each other with a view to agree on the composition of a panel of arbitrators, which are called panellists (Article 26.5). If the Parties do not agree on the composition of a panel, each of the Parties has the opportunity to appoint one panellist, with the third panellist (the chair) chosen by agreement of the Parties where possible. The chair cannot be a national of the disputing Parties. If the Parties cannot agree on appointment of the chair, the chair can be selected by lot, to ensure that no Party can block composition of the panel. The Parties will select panellists from two lists of panellists that will be

agreed by the Parties shortly after the Agreement enters into force (Article 26.6). One list of panellists will be established for disputes in respect of an obligation in the Trade and Sustainable Development Chapter. A second list will be established for all other disputes.

There are provisions in the chapter that set out qualification and independence requirement for all panellists (Article 26.7). If a proceeding is brought in respect of an obligation in the Trade and Sustainable Development Chapter, panellists must have specific expertise in the area in question (Article 26.7(3)). The Agreement also contains rules of procedure for disputes in Annex 26-A. A code of conduct for panellists is set out in Annex 26-B.

The panel must consider *amicus curiae* submissions from persons from the Parties, provided that they comply with the rules of procedure for disputes (Article 26.21). Any information obtained by the panel must be disclosed to the Parties if it is obtained under this Article.

When a panel makes findings and determinations that a measure is inconsistent with a Party's obligations under the Agreement, the responding Party is required to take any measure necessary to comply promptly with the panel's findings in order to bring itself in compliance with the Agreement (Article 26.13). The responding Party must do so within a reasonable period of time if it is not practicable for it to comply immediately (Article 26.14). The disputing Parties must endeavour to agree on a reasonable period of time, but if they are unable to do so, the matter may be referred to the original panel to determine a reasonable period.

If requested by the complaining Party, in certain circumstances the Parties must enter into consultations with a view to agreeing on mutually acceptable compensation (Article 26.16). If there is no agreement on compensation, the complaining Party can notify the other Party that it intends to suspend the application of obligations under the covered provisions, provided that the notification specifies the level of intended suspension.

For disputes under the Trade and Sustainable Development Chapter, the remedies provided for under Article 26.16 apply if the panel finds a violation of:

- Article 19.3(3) (Multilateral labour standards and agreements); or
- Article 19.6(3) (Trade and climate change), if that panel, in its final report, finds that the Party complained against failed to refrain from any action or omission that materially defeats the object and purpose of the Paris Agreement.

There is provision for the panel to be reconvened if the responding Party considers that the level of benefits that the complaining Party is proposing to suspend exceeds the nullification or impairment caused by the violation, or if it considers that it has eliminated the non-conformity or nullification or impairment (Article 26.17).

The Parties can reach a mutually agreed solution at any time, and if they do, they must communicate this with the panel chairperson or the mediator (Article 26.26). The dispute will be terminated after this. The solution must be made publically available and each Party needs to take the necessary measures to implement this solution within the agreed time period. The Party implementing these measures needs to inform the other Party of the measures it is taking to do this, before the expiry of that time period.

At any time during the dispute settlement process, the Parties may agree to utilise mediation to try and find a solution to their dispute (Article 26.25). The disputing Parties may agree to suspend or terminate the dispute settlement proceedings as a result of using mediation. The procedural rules for mediation are set out in Annex 26-C. A Code of conduct for mediators is set out in Annex 26-B.

For disputes under the Trade and Sustainable Development Chapter, the Party complained against must inform its domestic advisory group(s) and the contact point of the other Party of measures it has taken or seeks to take in order to comply (Article 26.13(3)). In such circumstances, the Trade and Sustainable Development Committee must monitor implementation of the compliance measures.

## **5.29 Chapter 27: Final Provisions**

Article 27.1 allows the Parties to amend the Agreement. Such amendments enter into force on the first day of the second month, after an exchange of written notifications certifying completion of legal requirements and procedures for entry into force, or later as agreed. The Trade Committee is also able to amend the Agreement as provided in Article 24.3. The decision to do this must specify the entry into force date of the amendments, or provide for entry into force after exchange of written notifications as above.

Article 27.2 states that the NZ-EU FTA will enter into force on the first day of the second month following the date on which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures for entry into force. The Parties may agree on another date of entry into force of the Agreement. These notifications must be sent to the General Secretariat of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of New Zealand.

Article 27.3 states the Agreement remains in force unless terminated. Termination involves an exchange of notifications sent to the General Secretariat of the Council of the European Union and to the Ministry of Foreign Affairs and Trade of New Zealand. This termination takes effect six months after such a notification is delivered, unless otherwise agreed.

Article 27.4 clarifies that each Party is fully responsible for observing all provisions of the Agreement. Each Party must make sure that it is taking the necessary steps to give effect to the Agreement, and that each level of government and each person with delegated governmental authority observes their obligations. Article 27.4 also carries a good faith obligation for both Parties.

The Agreement forms part of the common institutional framework referred to in Article 52(1) of the New Zealand European Union Partnership Agreement on Relations and Cooperation (PARC). Where there has been a particularly serious and substantial violation of any of the obligations described in Article 2(1) or 8(1) of the PARC as essential elements, which threaten international peace and security so as to require immediate reaction, either Party may take appropriate measures relating to the NZ-EU FTA. A Party may also take appropriate measures where acts or omissions materially defeat the purpose of the Paris Agreement, in accordance with Article 54 of the PARC.

Article 27.5 requires juridical persons appointed by a Party as a delegated authority to act in accordance with that Party's obligations under the Agreement.

### **5.30 Joint Declaration Concerning Customs Unions**

The Joint Declaration Concerning Customs Unions requires New Zealand to endeavour to begin negotiating with countries which have customs unions with the EU, and do not benefit from the tariff concessions under the Agreement. The intent is to establish a free trade area in accordance with Article XXIV of GATT 1994, under a comprehensive bilateral agreement to be negotiated as soon as possible after the Agreement enters into force.

## **6. Measures which the Government could or should adopt to Implement the Treaty Action, the Intentions of the Government in Relation to such Measures, Including Legislation**

### **6.1 Legislative Changes Required**

In order to bring the NZ-EU FTA into force, amendments to legislation are required to enable New Zealand to implement its obligations under the FTA. The amendments are expected to include:

- Amendments to the Consumer Information Standards (Country of Origin (Clothing and Footwear) Labelling) Regulations 1992, to allow goods from a Member State of the European Union to be labelled as “Made in the EU” or, alternatively, as made in that Member State;
- Amendments to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules of origin for goods imported from the EU;
- Amendments to the Dairy Industry Restructuring Act 2001 to bring additional and revised dairy quotas under the existing quota management system;
- Amendments to the Geographical Indications (Wine and Spirits) Registration Act 2006 (GIs Act), to protect the EU GIs in New Zealand;
- Amendments to the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 to increase from NZ\$100 million to NZ\$200 million the monetary threshold for investments by EU non-government investors in “significant business assets” in New Zealand;
- Amendments to the Tariff Act 1988 to provide for the NZ-EU FTA’s bilateral safeguard mechanism under the Trade Remedies chapter;
- Amendment regulations under the Tariff Act 1988 to enable the application of the preferential tariff rates agreed in the NZ-EU FTA and to implement obligations relating to the tariff treatment of goods returned after repair or alteration; and
- Amendments to the Trade Marks Act 2002 to clarify that consideration of GI rights under the Trade Marks Act includes consideration of the EU GIs registered under Part 3 of the GIs Register and, subject to MBIE’s confirmation, to cover the costs ongoing costs of \$10,000 per annum for administering the expanded GI register.

In addition, within four years after the NZ-EU FTA enters into force, amendments are required to the Copyright Act 1994 to extend the term of protection for copyright and to prohibit the act of unauthorised circumvention of technology protection measures applied to copyright works (TPMs), i.e. digital locks. New Zealand had already agreed to extend the term of copyright protection under the NZ-UK FTA, but with a longer transition period to implement the obligation than under the NZ-EU FTA (15 years after the NZ-UK FTA enters into force – i.e. 31 May 2038 – compared to four years after the NZ-EU FTA enters into force).

## **6.2 New Zealand-EU Free Trade Agreement Legislation Bill**

Cabinet approval has been given to include the New Zealand-EU Free Trade Agreement Legislation Bill in the 2023 Legislation programme.

The Bill will be drafted in compliance with the Cabinet Manual and it as anticipated it will go through normal Parliamentary procedures before it is passed, including debate in Parliament, Select Committee scrutiny, public submissions, and a series of votes by Parliament. Any changes to or new regulations will also be made in compliance with the Cabinet Manual. All legislative instruments will be printed, published and notified in the Gazette.

## 7. Economic, Social, Cultural and Environmental Effects of the Treaty Entering into Force/ Not Entering into Force for New Zealand

This chapter assesses the overall economic, social, cultural, and environmental effects of joining the NZ-EU FTA for New Zealand. This analysis draws on the advantages and disadvantages of the Agreement outlined in Section 4, in addition to independent modelling of the impacts of the NZ-EU FTA for the New Zealand economy. It has also been guided by the ‘Productive, Sustainable and Inclusive Trade Channels’ framework, which is an essential tool for giving effect to Trade for All principles.

### 7.1 Approach to assessing impacts

#### Modelling of aggregate economic variables

Estimates of economic and sectoral impacts in this analysis were produced using Computable General Equilibrium (CGE) modelling undertaken by ImpactECON. The New Zealand government commissioned ImpactECON—an international consultancy with extensive experience in analysis of trade agreements—to provide a comprehensive study of the potential impacts of the NZ-EU FTA for New Zealand.<sup>86</sup>

In their study, ImpactECON considered the impact of the NZ-EU FTA on economic variables such as GDP, trade, and wages. They first determined a ‘baseline scenario’ – i.e. an estimate of how New Zealand’s economy would be expected to develop in the absence of the NZ-EU FTA. They then compared this against a scenario that included the liberalisation of trade in goods and services expected from the NZ-EU FTA, with any impacts presented as deviations from the baseline. The CGE model takes account of adjustments that might occur as resources are reallocated within the New Zealand economy in response to relative price changes from the trade liberalisation driven by the FTA.

The CGE modelling was undertaken in parallel with negotiations to enable it to support policy decisions as far as possible. ImpactECON’s study considered three scenarios, reflecting the range of potential outcomes at the time. Final negotiated outcomes in the Agreement are broadly in line with ‘Scenario 2’ in the study, which serves as the basis for analysis in this assessment. Small differences exist between Scenario 2 and the final agreement, primarily around aspects of quota access<sup>87</sup>. However, these differences are not expected to materially affect the size and direction of impacts.

<sup>86</sup> ImpactECON, ‘Impacts of the New Zealand-European Union Free Trade Agreement on the New Zealand Economy, April 2022, available at <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Final-Report-Economic-Modelling.pdf>

<sup>87</sup> See page 12 of ImpactECON’s modelling above. For **cheese**, the modelling assumed a 26,000 MT quota at 10% of the EU’s MFN rate, compared with the actual FTA outcome of new duty-free quota access of 25,000 MT phased in over seven years, plus the immediate removal of in-quota tariffs and other improved conditions for New Zealand’s WTO quota access of 6,031 MT (i.e. combined duty-free cheese access of 31,031 MT). For **butter**, the modelling assumed 40,000MT at 10% of the EU’s MFN rate, compared with the actual FTA outcome of new quota access of 15,000 MT at a tariff phasing down to 5% of the EU’s MFN rate, phased in over seven years, plus the reduction of tariffs on 21,000 MT of New Zealand’s WTO quota access, phasing down to 5% of the EU’s MFN over seven years (i.e. combined butter access of 36,000 MT at 5% of the EU’s MFN rate after 7 years). For **beef**, the modelling assumed 10,000 tonnes of new access, but at an in-quota tariff of 3.75% compared with an actual in-quota tariff of 7.5%, across both the FTA quota and New Zealand’s 1,102 MT WTO quota (reduced from the 20% in-quota tariff currently).

**Table 1: Summary of Economic, Social, and Environmental Effects**

Impacts for New Zealand		
<b>Economic Output</b>	<b>Positive</b>	New Zealand's annual real GDP is expected to be up to 0.24% (\$1.4 billion) higher by 2035. Output is expected to be higher across most sectors, including agriculture, food processing, and services.
<b>Trade</b>	<b>Positive</b>	New Zealand's total exports are expected to be 0.50% (\$783 million) higher and imports 0.88% (\$1.5 billion) higher by 2035. Exports of beef, cheese, butter, and wine are expected to experience the largest growth.
<b>Labour market</b>	<b>Positive</b>	A modest increase in real wages across the economy. Employment growth is expected in some sectors, notably agriculture, and a contraction in manufacturing employment. Aggregate employment is assumed to be unchanged.
<b>SMEs</b>	<b>Positive</b>	Outcomes expected to modestly benefit SME exporters by expanding market access and reducing costs to trade with the EU, which tend to disproportionately affect SME exporting firms.
<b>Consumers</b>	<b>Positive</b>	Modest benefits expected for consumers through increased household consumption and price effects on products imported from EU. Consumption benefits are expected to be shared broadly.
<b>Māori</b>	<b>Positive</b>	Outcomes expected to modestly benefit Māori business owners and workers due to relatively high representation of Māori in the primary industries, where economic gains are expected to be the largest.
<b>Women</b>	<b>Positive</b>	An increase in real wages and consumption will benefit women, although benefits may be less than for men due to lower female representation in export industries.
<b>Environment</b>	<b>Effect expected to be limited</b>	Expansion of economic activity, particularly in agriculture, creates risk of some negative environmental effects, but likely to be largely constrained and offset by environmental regulation and productivity improvements.
<b>Culture</b>	<b>No negative impact expected</b>	Does not impinge on policies towards or preclude support for New Zealand culture and the creative arts, including ngā toi Māori, traditional knowledge and cultural practices.
<b>Health</b>	<b>No impact</b>	Does not impinge on the regulation or operation of New Zealand's health and disability system.
<b>Social Regulation</b>	<b>No impact</b>	Does not inhibit the right to regulate for legitimate public policy purposes.
<b>Immigration</b>	<b>No impact</b>	Movement of business persons commitments do not apply to persons seeking access to the employment market of New Zealand, or to nationality, citizenship, or residence.
<b>Human Rights</b>	<b>No impact</b>	No effect on human rights in New Zealand.
<b>Treaty of Waitangi</b>	<b>No impact</b>	Nothing in the NZ-EU FTA that would prevent the Crown from meeting its obligations to Māori under te Tiriti.

*Estimates of impacts on economic indicators, including GDP, employment, trade, and wages, are based on economic modelling and should be viewed as approximate estimates of potential impacts, suitable for indicating the size and direction of effects rather than precise forecasts. For further information, see Section 7.1.*

The five sources of economic impact considered by ImpactECON were: reductions in tariffs on goods trade; increases in EU quotas and reductions in in-quota tariffs for certain primary sector products; reductions in non-tariff measures (NTM) on goods trade; reductions in non-tariff measures on services trade; and improved trade facilitation measures.

### **Limitations of economic modelling**

While CGE modelling is a standard approach internationally for quantifying the impacts of trade agreements, it is important to note that economic models by their nature rely on assumptions and imperfect data. Estimating the baseline scenario, which involves projecting economic and demographic variables over several decades, is inherently challenging. Models also cannot fully capture the range of dynamic impacts that result from trade agreements. As a result, modelling results should be viewed as approximate estimates of potential impacts, suitable for indicating the size and direction of effects rather than precise forecasts.

For the NZ-EU FTA, there is also a higher-than-usual degree of uncertainty around the modelling results due to the considerable impacts and complications of COVID-19 and Brexit. COVID-19 and Brexit have affected the economic structures, trading patterns, and long-run prospects of both the EU and New Zealand economies, as well as the economies of other trading partners. The economic modelling was also concluded before Russia's invasion of Ukraine, which continues to have acute economic impacts for the EU in addition to profound humanitarian consequences. It is still too early to understand how these developments may evolve over the long term in the context of the NZ-EU FTA.

### **Applying a Trade for All approach to impact assessment**

While economic modelling provides a useful input for assessing the impacts of the NZ-EU FTA, it does not represent a full cost-benefit analysis. In addition, it provides necessary if limited insights into how the impacts would be distributed across society. The NZ-EU FTA is expected to generate overall net economic benefits to New Zealand, but these gains are unlikely to be distributed evenly across society and some areas may experience negative effects. Understanding these distributional and sustainability impacts is an important part of any impact assessment and is essential for applying the Trade for All principles.

To provide a fuller discussion of the impacts of the NZ-EU FTA, the following assessment has been supplemented and informed by the 'Productive, Sustainable and Inclusive Trade Channels' (PSITC) Framework. The PSITC framework is an analytical tool developed by MFAT to identify and understand the complex channels through which trade affects productive, sustainable, and inclusive outcomes (see Figure 1 and Box 1). This includes distributional and regional impacts, the impacts on Māori and women, and effects on the environment. Although the evidence base underpinning our understanding of the distributional and sustainability impacts of trade is still developing, the analysis draws on recent research. This includes work by MFAT to develop data on the distributional characteristics of

New Zealand's goods exporting firms and research with the OECD looking into the impacts of trade policy for women<sup>88</sup>.

This chapter has also been informed by additional analyses to ensure a more independent and rigorous assessment, as recommended by the Trade for All Advisory Board<sup>89</sup>. In addition to the independent economic modelling undertaken by ImpactECON, MFAT engaged a number of organisations to review and/or supplement the analysis. ACE Consulting were commissioned to undertake an independent review of the key outcomes of the NZ-EU FTA on Māori, the results of which are discussed in Section 10.2. Drafts of the chapter were also shared with Sense Partners and the New Zealand Council of Trade Unions (CTU).

The peer review undertaken by Sense Partners concluded that the chapter provided a good overview of most relevant costs and benefits and accurately reported the results of the CGE modelling. It identified a range of drafting suggestions to provide greater clarity of expected impacts, and suggested extensions that MFAT will consider for future assessments<sup>90</sup>. The CTU also acknowledged the inclusion of distributional aspects in the analysis, including overall impacts for wages, sectors, and population groups, and identified areas where the analysis could be further strengthened in future assessments<sup>91</sup>.

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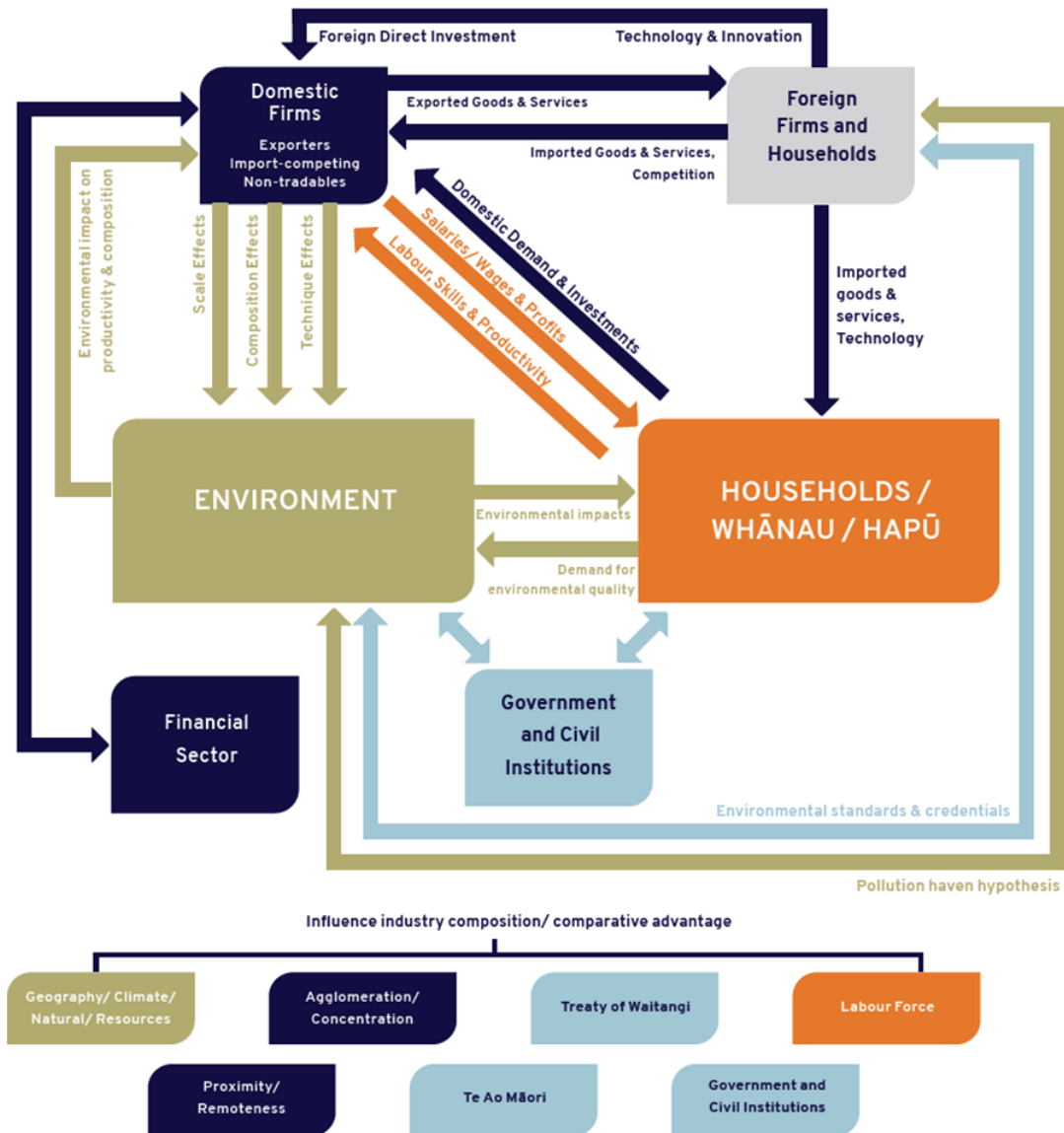
<sup>88</sup> See MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', February 2022; and OECD, 'Trade and Gender Review of New Zealand', 2022

<sup>89</sup> See 'Report of the Trade for All Advisory Board', 2019, on MFAT's [website](#).

<sup>90</sup> This included incorporating economic analysis of the impacts of geographical indicators and copyright extensions; using the PSITC framework to structure the chapter; and developing an integrated model to estimate economic, environmental, and social impacts that would enable robust quantitative estimates to be produced in areas where assessments are currently largely qualitative (e.g. green-house gas emissions).

<sup>91</sup> This included considering in more detail expected gains across income levels and for labour vis-à-vis the owners of capital; estimates of the impacts for output across regions; consideration of how FTAs are expected to contribute to New Zealand's long-term economic development, including complementary policy levers (and opportunity costs) required to unlock the potential; and a desire for detailed estimates of emissions impacts to support the current qualitative assessment of environmental effects.

Figure 1 Productive, Sustainable and Inclusive Trade Channels Framework



**Box 1 – The Productive, Sustainable, Inclusive Trade Channels (PSITC) Framework**

The PSITC framework is based on a standard economic model of a small, open economy. The main components of the model are: households, whānau and hapū; the environment; domestic firms; foreign firms and households; government and civil institutions; and the financial sector. The framework identifies the main interlinkages that allow the impacts of trade to flow from one area to another.

A trade agreement such as the NZ-EU FTA would be expected to lead to changes across the framework. Industries and firms that benefit from the increase in trade experience higher profits and productivity through a combination of economies of scale, access to better and/or cheaper inputs, and innovation and technology diffusion. Expanded production to meet overseas demand requires labour, capital and other factors of production to be reallocated across the economy, which when coupled with productivity improvements would put upward pressure on wages.

Households, whānau, and hapū employed or with an ownership stake in these industries would receive higher income. However, the converse is true for industries and firms exposed to greater competition. These industries may experience a fall in demand and reduce production, with potential flow on effects for employment and incomes. In addition to employment impacts, households and firms would be expected to enjoy cheaper, and a wider variety of, imported goods and services, supporting household and intermediate consumption and living standards.

The distributional impacts of these changes for different groups will depend on the regional, gender, and ethnic distribution of firms, workers, and consumers. These impacts are complex and our evidence base for understanding them is still developing.

Similarly, the environmental impacts of a trade agreement depend on the nature of the economic changes that occur. For example, more economic activity typically increases environmental effects (scale effects). Trade also changes the composition of production within an economy, which can have positive or negative impacts depending on the environmental footprint of the industries and firms affected (composition effects). Finally, trade can support the uptake of environmental technologies by enabling the transfer of new technology across borders (technique effects).

A wide range of factors influence these complex interactions, including a country's geography, institutions, policy settings, and economic competitiveness. These factors determine an economy's areas of comparative advantage, which in turn play a critical role in determining the overall efficiency and impacts of international linkages.

For a full description of the PSITC framework, see MFAT's [website](#).

## 7.2 Macroeconomic impacts of the NZ-EU FTA

Results from the economic modelling indicate that the NZ-EU FTA will lead to long-run increases in New Zealand's trade, GDP, and wages. By 2035, the modelling estimates that New Zealand's annual real GDP would be up to 0.24% higher than if the FTA did not exist, adding NZ\$1.4 billion to the economy in 2019 dollar terms.

The estimated GDP impact from the New Zealand modelling is similar but more conservative than the economic gains estimated by the EU in its own impact modelling undertaken in March 2020<sup>92</sup>. The EU impact assessment estimated that the NZ-EU FTA was likely to have positive effects on both the EU and New Zealand economies, under both of the two scenarios modelled ('ambitious' and 'conservative'). For New Zealand, real GDP was expected to increase by €1.3 billion in the 'ambitious' and €0.7 billion in the 'conservative' scenario.

The main driver of the economic impacts for New Zealand is an expected increase in bilateral trade flows with the EU. The modelling estimates that by 2035 New Zealand's exports to the EU will be up to 17% higher (\$1.8 billion) than if the FTA did not exist. Similarly, imports from the EU are expected to be 12% higher (\$3.2 billion). Some of this growth in bilateral trade will come from producers diverting trade that would otherwise have been destined for other markets to New Zealand or to the EU to take advantage of opportunities created by the FTA. As a result, the impact on New Zealand's total exports and imports is smaller than the bilateral impacts. New Zealand's total exports in 2035 are estimated to be \$783 million (0.50%) higher and imports \$1.5 billion (0.88%) higher as a result of the NZ-EU FTA. Increased trade flows with the EU would also have the benefit of reinforcing exporter resilience and market diversification.

### Estimated economic gains from trade liberalisation

ImpactECON's study decomposes the aggregate gains for New Zealand's GDP into different policy aspects of the NZ-EU FTA – i.e. tariff reductions, quota increases, non-tariff measures, and trade facilitation improvements (Table 2). Economic gains are expected to accumulate gradually from entry into force, with annual real GDP expected to be 0.15% higher on average over the first decade before stabilising at 0.24% higher from 2035.

Tariff elimination and reductions are expected to be the single largest source of economic gains for New Zealand, accounting for just over half the overall GDP impacts from the NZ-EU FTA. The Agreement would eliminate 94% of EU tariff lines on New Zealand exports on entry into force, with most remaining tariff lines eliminated within seven years. As detailed in Chapter 4, tariffs eliminated at entry into force include those on key New Zealand exports such as kiwifruit, apples, Manuka honey, onions, wine, and seafood. In addition, all New Zealand tariffs on imports from the EU would be

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<sup>92</sup> European Commission, 'Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand', 2020.

eliminated at entry into force. The modelling estimated that this tariff elimination would increase New Zealand's GDP by about 0.12% in 2035 (\$742 million). This includes gains from allocative efficiency as relative prices adjust following tariff reductions and production shifts to areas where New Zealand has the greatest competitive advantage.

In addition to tariff reductions, the NZ-EU FTA includes expansion of quotas and reductions of in-quota tariffs for dairy, beef, and sheep meat products. These outcomes would further expand access to the EU market for key New Zealand exports. ImpactECON estimated that expansions of quota access and reductions of in-quota tariffs would provide just under a fifth of the total gains to New Zealand, increasing New Zealand's real GDP by 0.05% (\$251 million).

While lowering tariffs and expanding quota access is the most direct mechanism by which the NZ-EU FTA would improve market access, the Agreement provides other measures that would simplify the rules affecting trade and thereby support trade and investment. Collectively these are known as 'non-tariff measures' (NTMs)<sup>93</sup>. ImpactECON found that NTM reductions would provide around a third of the GDP gains, increasing GDP by 0.07% (\$440 million). Economic gains from NTM reductions are expected to be derived for both goods and services, although gains from goods exports would be slightly larger.

ImpactECON also considered the impacts of trade facilitation improvements from the NZ-EU FTA – i.e. commitments aimed at facilitating the flow of goods, including streamlined application of customs procedures. The FTA would provide modest improvements over pre-existing agreements. However, as both parties already have efficient customs procedures, these impacts are expected to be relatively small. ImpactECON's estimates are based on a 7.5-15% reduction in customs processing times, which would have a minimal impact on overall GDP (\$16 million or 0.1% of total gains from the Agreement).

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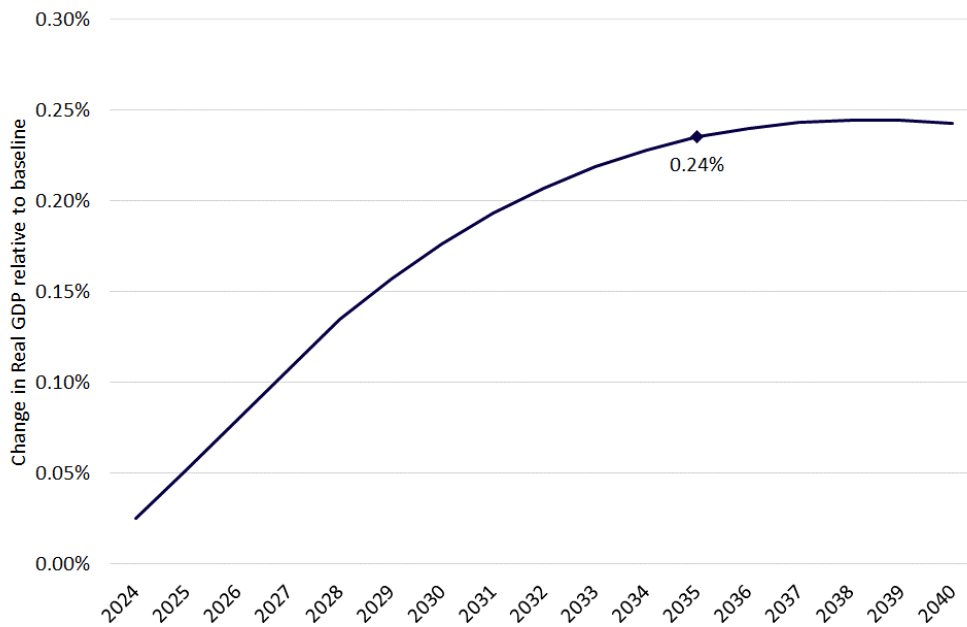
<sup>93</sup> A non-tariff measure (NTM) is a policy measure, other than a tariff, which may restrict trade. The NZ-EU FTA's NTM-related provisions are largely contained in the Customs and Trade Facilitation, Technical Barriers to Trade, Sanitary and Phytosanitary, Goods, Services and Government Procurement chapters. See Chapter 4 for details.

**Table 2: Sources of Real GDP Impacts from the NZ-EU FTA**

Trade liberalisation component of NZ-EU FTA	Increase in NZ GDP in 2035 when FTA is fully in effect, relative to baseline	
	Percent increase in real GDP	NZ\$ value (constant 2019 dollars)
Reductions in tariffs on goods trade	0.12%	\$742 million
Expansion in quota access for goods trade	0.04%	\$251 million
Reductions in NTMs on goods trade	0.04%	\$253million
Reductions in NTMs on services trade	0.03%	\$187 million
<b>TOTAL ECONOMIC BENEFIT</b>	<b>0.24%</b>	<b>\$1.43 BILLION</b>

Source: ImpactECON

**Figure 2 Estimated change in real GDP from NZ-EU FTA**



Source: ImpactECON

## Estimated impacts by sector

Most sectors in the New Zealand economy are expected to experience gains from the NZ-EU FTA, with 25 of the 32 industries modelled by ImpactECON estimated to have higher output in 2035 as a result of the Agreement<sup>94</sup>.

Expanded export opportunities for the agriculture and food sector is an important driver of the overall economic benefits. Improved and preferential quota access and lower or no tariffs on products such as beef, cheese, butter, fruit, and wine would improve New Zealand competitiveness, leading to expanded production and export growth for these products. It would also support export market diversification for products including seafood, some horticultural products, and butter and cheese. Output in the agricultural and processed food sectors is estimated to increase by 0.20% (\$154 million) and 0.18% (\$199 million) respectively by 2035 due to the NZ-EU FTA (Table 3). Similarly, exports of agricultural and processed food products are expected to be 0.66% (\$88 million) and 0.41% (\$296 million) higher. Higher prices for these products in the European market is also expected to support increased export revenue.

The services sector is expected to make the largest contribution to economic gains in absolute terms, due to the significant role of services in the New Zealand economy. Unlike the primary sector, where the benefits are primarily the result of direct market access improvements, the largest gains for the services sector are expected to come through indirect effects. Services liberalisation under the NZ-EU FTA is expected to result in growth of services exports by 0.40% or NZ\$95 million by 2035, led by increased exports of professional services and trade and communications services. Overall production in the services sector is estimated to grow by 0.25% or \$2.1 billion – the largest source of economic gains from the Agreement. This is because higher economic activity and incomes in other sectors as a result of the NZ-EU FTA would increase general demand for services in the economy, due in part to the important role of services as inputs to other sectors.

Outside of food and beverage processing, the NZ-EU FTA is expected to lead to slightly lower output in the manufacturing sector. It is estimated that manufacturing output would be 0.04% (\$63 million) lower in 2035 than if the FTA did not exist. This is due to an expected increase in imports of manufactured goods from the EU, which would increase competition for these products in the domestic market and lower prices for New Zealand consumers. This does not mean that output in the manufacturing sector will not continue to grow between now and 2035. Rather, the NZ-EU FTA would be expected to result in some labour and resources shifting to other sectors to take advantage of opportunities opened up by the Agreement. As a result, manufacturing is expected to comprise a smaller proportion of the expanded output of the economy than would otherwise have been the case.

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<sup>94</sup> ImpactECON's modelling uses industry definitions from the 'Global Trade Analysis Project' – a commonly used international standard for modelling impacts of trade agreements. These differ in some cases from the 'Australian and New Zealand Standard Industrial Classification' definitions used by StatsNZ to compile industry statistics. Appendix I of ImpactECON's report provides further information on the sector aggregations used.

Outcomes across the manufacturing sector vary. For example, production of textiles, apparel, and forestry and paper products is expected to expand, while output of machinery, electronics, and metals is expected to contract. It is also important to note that the increase in imports of EU manufactured goods would benefit other local businesses and households, as they would take advantage of lower trade barriers (and this reduced prices) and higher incomes from the Agreement to consume more manufactured goods from the EU.

**Table 3: Impact on New Zealand production, exports and imports by sector, 2035**

	Percent	\$NZm
<b>PRODUCTION</b>		
Agriculture	0.20%	\$154m
Food	0.18%	\$199m
Manufacturing	-0.04%	-\$63m
Services	0.25%	\$2,068m
<b>EXPORTS</b>		
Agriculture	0.66%	\$88m
Food	0.41%	\$296m
Manufacturing	0.54%	\$232m
Services	0.40%	\$95m
<b>IMPORTS</b>		
Agriculture	1.19%	\$33m
Food	1.63%	\$186m
Manufacturing	0.82%	\$1,047m
Services	0.79%	\$244m

Source: ImpactECON

## Regional impacts

Trade with the EU has differing effects across New Zealand due to regional variations in industry composition and relative exposure to international markets. These regional differences underpin the way in which the NZ-EU FTA would affect particular regions through changes in gross output and intermediate consumption<sup>95</sup>. These changes are expected to occur through increases in exports to the EU, which may boost regional gross output, as well as decreases in the price of imported goods leading to higher levels of intermediate consumption.

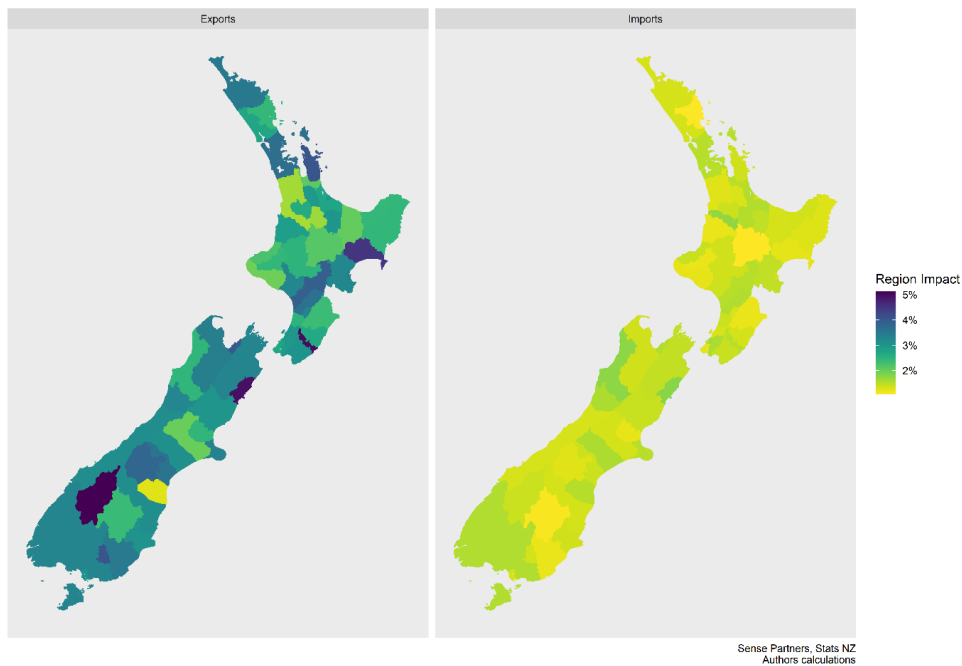
<sup>95</sup> MFAT Research Paper, 'Industry Exposure to Trade – The Trade Opportunities and Risk Model', 2020

Regions such as the Hawke's Bay, Wairarapa, Marlborough, Southland, and Otago sell a higher proportion of their exports to the EU market than other regions (Figure 3, left panel). This reflects their comparative advantage in producing New Zealand's major goods exports to the EU, particularly wine and meat. As a result, these regions are expected to benefit most from the economic outcomes associated with the NZ-EU FTA, although benefits are expected to be felt broadly across the country.

Also shown in Figure 3 are regional imports from the EU as a share of regional output. There is less variability in imports across regions than exports, reflecting the importance of products such as vehicles, machinery, pharmaceutical, and medical products in the composition of New Zealand's imports from the EU. These products are relatively evenly consumed across regions. As a result, benefits for consumers and businesses from reduced import prices are expected to be evenly distributed across the country.

**Figure 3 Impact of NZ-EU FTA on exports to and imports from the EU by region**

Exports and Imports to and from EU



Sense Partners, Stats NZ  
Authors calculations

Source: Sense Partners, Stats NZ, MFAT

### 7.3 Impacts on workers, consumers, and SMEs

#### Effects on workers and wages<sup>96</sup>

Trade agreements, such as the NZ-EU FTA, can affect the labour market in a number of ways. Workers in firms and industries that benefit should receive higher incomes due to increases in productivity and as wages are bid upwards to attract workers from other parts of the economy. This can in turn affect relative levels of employment across sectors as sectoral activity expands or contracts in response. Around one in four jobs in New Zealand are in the export sector and just under half of all jobs are in the more broadly defined tradeables sector, which represents the part of the economy directly affected by global conditions, the exchange rate, and trade policy<sup>97</sup>.

The modelling undertaken by ImpactECON assumes that the supply of labour and total employment in the economy is unaffected by the FTA in the long run. This is common when modelling the impacts of trade agreements, as FTAs do not influence the drivers of long-run employment. However, the modelling provides useful insights on how real wages and relative employment across sectors might adjust due to changes in the structure of the economy.

The modelling estimates that the NZ-EU FTA would lead to higher real wages across all occupation types in 2035. Agricultural and low-skilled workers are expected to experience the largest gains (0.36%), as wages in the agriculture and food sector are bid up to attract workers as these sectors expand. More modest wage gains of 0.28% are expected for other occupations, including professionals and managers, service workers, clerks, and technical professionals.

Although total employment is assumed to be unchanged by the FTA in the long run, the modelling points to small changes in sectoral employment reflecting the structural changes expected in the economy. Employment in agriculture is expected to increase, with estimated growth of between 0.27% to 0.32% across all occupation types within the sector. More modest gains are expected in the food-processing sector with employment growth of between 0.07% and 0.09% projected across most occupations, although a small contraction is projected among lower-skilled jobs as some workers shift to the faster growing agricultural sector. Meanwhile, employment in the services sector is expected to remain largely unchanged, except for a modest increase in unskilled workers (0.12%).

Manufacturing is the only sector where employment is estimated to be lower in 2035 than it would be without the NZ-EU FTA. This reflects the expectation that the employment and wage gains created by the Agreement in other sectors would draw some labour away from manufacturing. Employment in the manufacturing sector is expected to be around 0.23% lower for most occupation types, with a

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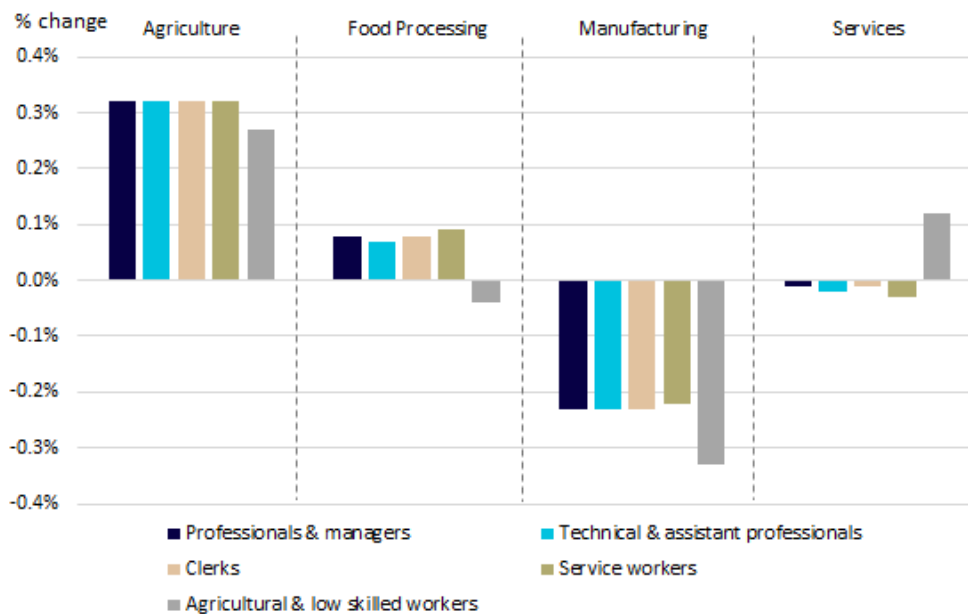
<sup>96</sup> Estimates of employment by and ownership of goods exporting firms draws heavily on recent firm-level analysis by MFAT using New Zealand's statistical data sources, the Longitudinal Business Database and Integrated Data Infrastructure. For further information, see MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', February 2022

<sup>97</sup> See MFAT Working Paper, 'Estimating Employment in New Zealand Producing Goods and Services for Export', December 2018.

larger reduction of 0.33% in low-skilled workers. Some of this reduction in employment may occur naturally over time, for example as retired workers leave the labour market and new workers enter in expanding sectors.

Although exposure to international markets can create temporary disruption across industries as economic activity adjusts, the modelling suggests that these labour market effects would build steadily from entry into force in line with the gradual expansion of market access.

**Figure 4 Projected employment changes by 2035 from NZ-EU FTA by sector and occupation type (Central scenario, relative to baseline)**



Source: ImpactECON

### Effects on consumers

A key reason economies trade is to raise the living standards of individuals and households by supporting greater access to goods and services for consumption. This occurs through two channels. Higher employment and wages generated by trade agreements lead to growth in household incomes, which enables consumers to increase their consumption of goods and services. Trade agreements also tend to lower prices for consumer goods through a combination of reduced tariffs, access to cheaper and/or higher quality products from abroad, and exposure to international competition and production inputs that can encourage domestic producers to reduce prices. This means that households are able to afford more goods and services for a given level of income.

Given the expected economic and labour market effects from the NZ-EU FTA, it is not surprising that real household consumption is projected to grow broadly in line with the wider economic impacts. The

CGE modelling projects that real household consumption will be up to 0.2% higher by 2035, roughly comparable to expected growth in real GDP.

It is difficult to predict how these consumption effects would be distributed across population groups, as they depend on different consumption bundles and the products on which relative price decreases occur. Growth in household consumption would likely be more notable for households that derive their income from sectors benefitting from the NZ-EU FTA, such as in rural and agricultural communities. However, the relatively broad-based nature of New Zealand's import consumption from the EU, along with our high economic exposure to international markets more generally, suggests that modest effects would be experienced across the economy.

Research has also shown that lower prices from trade liberalisation disproportionately benefit lower-income households<sup>98</sup>. These households tend to spend a larger share of their income, particularly on heavily traded products such as food and garments. The NZ-EU FTA could have similar effects for lower-income households, particularly given the larger wage and employment gains expected for low-skilled workers. However, the consumer price effects for low-income households may be lessened by the fact that manufactured goods such as machinery and electronics are expected to be the largest source of import growth. In addition, European consumer products are often located at the premium end of their respective market segments and less likely to comprise a large share of consumption bundles of low-income households.

More generally, the EU impact assessment posited that the Agreement may have a limited but positive impact on consumers in New Zealand by increasing the range of available goods and services and reducing prices for imported goods, and contributing to limited welfare and wage growth<sup>99</sup>.

### **Effects on small and medium enterprises (SMEs)**

SMEs—typically defined as those with fewer than 50 employees—are a key feature of New Zealand's economy and export sector, representing around 96% of firms involved in exporting goods<sup>100</sup>. In addition, many more engage in and benefit from international trade as importers of foreign inputs and technology. However, although SMEs represent the majority of New Zealand exporting firms, their share of total exports is small and they are much less likely to participate in exporting than larger firms<sup>101</sup>. One reason for this is that SMEs are less equipped than larger firms to overcome the challenges of trade, including complying with different regulatory frameworks and accessing information to understand foreign markets and meet trade regulations. As a result, NTM reductions through trade agreements can have a larger positive impact on SMEs than other businesses.

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<sup>98</sup> OECD, 'Trade and Gender Review of New Zealand', 2022

<sup>99</sup> European Commission, 'Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand', 2020

<sup>100</sup> MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', 2022

<sup>101</sup> Ibid

The results of the economic analysis suggest that the NZ-EU FTA may have positive impacts on SMEs. As discussed, the sectoral impacts from ImpactECON's modelling suggest that most industries are expected to experience either positive or neutral benefits from the agreement and that the positive gains will be distributed broadly across the economy, including to SMEs. SMEs that have a greater focus on the EU market may benefit more from the FTA than firms exporting to a wider range of markets.

There are several industries where SMEs are particularly prevalent that are expected to benefit from the NZ-EU FTA. This includes agriculture, forestry and fishing, which taken together has around 20,000 SMEs, many of which may benefit from market access improvements for products such as beef, sheep meat, dairy, and seafood. The benefits from NTM reductions for goods and services—estimated at \$440 million by 2035 (see section 7.2)—will also be experienced by SMEs, and potentially with greater beneficial impacts than for larger firms given their more limited capacity to overcome non-tariff barriers.

The EU's impact assessment also suggests the NZ-EU FTA would benefit SMEs, through improving the ability of SMEs to enter new markets and access global supply chains, and the overall reduction of administrative costs via lower entry and operating expenses<sup>102</sup>. Compared to the baseline, the report concludes that by 2030 the main business sectors in which New Zealand SMEs are expected to grow under the FTA will be the horticulture, animal meat (e.g. beef and sheep meat), and utility sectors.

The NZ-EU FTA also contains an SME chapter aimed at improving the accessibility of information and supporting SMEs to take advantage of opportunities in the Agreement. It includes commitments to facilitate cooperation and information sharing on issues specifically relating to SME trade, including assisting in SME export counselling and assistance, and providing easy to use information designed for SMEs. Although hard to quantify, these measures can be expected to contribute to a modest reduction in transaction and administration costs for SMEs exporting to the EU. These measures may also improve the prospects for SMEs entering the EU market for the first time.

## 7.4 Effects on Māori

### Māori employment and incomes

Exporting is an important driver of economic and labour market outcomes for Māori due to the significant role exporting plays in the Māori economy. Around one in four Māori workers derive their livelihoods from producing goods and services for export, and these workers earn more on average than Māori in non-exporting firms<sup>103</sup>. Māori are also well represented in New Zealand's export workforce. 16% of employees in New Zealand goods exporting firms are Māori—higher than in the overall workforce—and in export-intensive industries such as agriculture, forestry, and fishing Māori

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<sup>102</sup> European Commission, 'Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand', 2020.

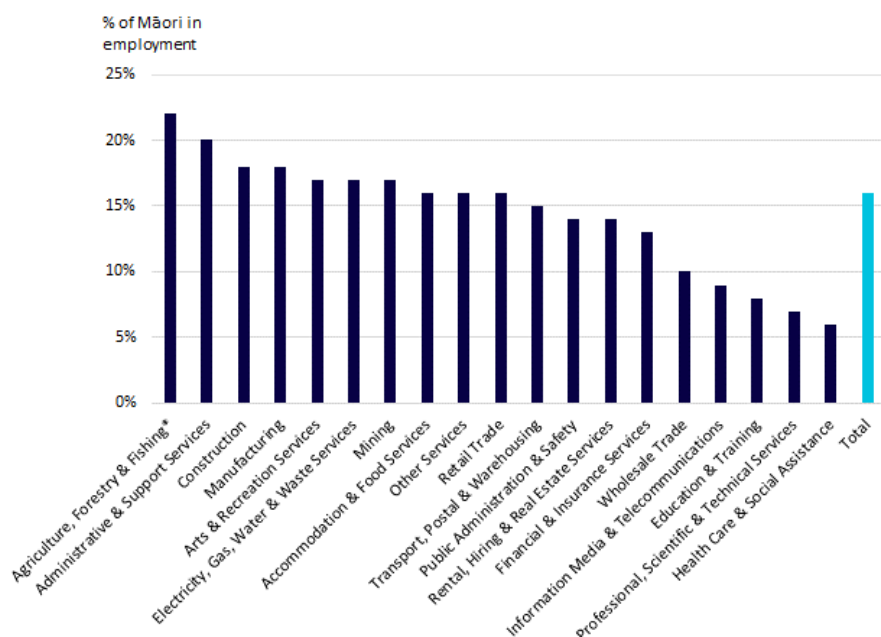
<sup>103</sup> MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', 2022

make up nearly a quarter of the total workforce<sup>104</sup>. As a result, trade agreements can play an important role in creating economic opportunities for Māori.

The NZ-EU FTA is expected to have a marginally positive effect on Māori labour market outcomes. As the largest gains for New Zealand exports from the NZ-EU FTA are expected to come from the agriculture and food sector where Māori are well represented, employment gains for Māori may be slightly higher than for other population groups. However, this may be partly offset by the expected contraction in manufacturing. The modelling of sectoral output and employment impacts from the NZ-EU FTA was extended to estimate impacts for Māori employment, which found a limited (0.01%) employment gain for Māori relative to other groups<sup>105</sup>.

Māori would also be expected to enjoy modest increases in real wages as result of the NZ-EU FTA. As discussed in Section 7.3, the Agreement is expected to increase real wages across all job groupings, with wages for agricultural and low-skilled workers expected to increase the most. Given the high representation of Māori employed in agriculture, as well as in lower-skilled jobs in manufacturing and transportation and warehousing, Māori may experience slightly larger wage growth relative to other population groups.

**Figure 5 – Representation of Māori in goods exporting firms by sector (2018)**



Source: Source: Stats NZ, MFAT

\* Given most agricultural production is exported, all employment in this sector is assumed to be export related.

<sup>104</sup> Ibid

<sup>105</sup> This extension uses Household Labour Force Survey employment data by ethnicity and industry to approximate the relative employment effects for Māori based on estimated employment impacts from ImpactECON’s CGE modelling.

## Māori businesses engaged in exporting

Māori exporting businesses are also expected to benefit from the NZ-EU FTA. Firms with identifiable Māori ownership characteristics made up \$1.5 billion worth of exports in 2018 (8% of New Zealand's total). Much of the engagement of Māori business in trade stems from the high share of land and other primary sector assets owned by Māori.<sup>106</sup> A high proportion of Māori businesses—both exporting and non-exporting—belong to the agricultural, forestry and fishing sector. Altogether, Māori enterprises account for 40% of New Zealand's forestry, 50% of the fishing quota, 30% of sheep and beef production, and 10% of dairy production.<sup>107</sup> However, Māori export businesses are likely to be smaller than non-Māori owned firms, with 94% of Māori exporting firms employing fewer than 50 people.<sup>108</sup>

The NZ-EU FTA would improve goods market access for many products of particular relevance to Māori export businesses. This includes reducing tariffs and/or expanding quota limits on sheep meat, beef, seafood, dairy, horticulture, and Mānuka honey products. This would increase the competitiveness of these products in the EU and expand export opportunities for Māori businesses in these industries. Outcomes in the NZ-EU FTA to reduce NTMs and support trade facilitation may also be of greater importance for Māori firms given their smaller average size than non-Māori exporting firms. While the economic gains are expected to be largest in the primary industries, the general improvement in market access across goods and services trade more generally will also provide wider opportunities for other Māori firms to grow and diversify.

The NZ-EU FTA also includes a Māori Trade and Economic Cooperation chapter that supports collaboration between New Zealand and the EU that may support the ability of Māori enterprises to benefit from the FTA's trade and investment opportunities. This includes strengthening links between Māori enterprises and the EU, with a particular focus on SMEs, as well as supporting science, research and innovation links, and cooperating on geographical indications.

## 7.5 Effects on women

### Female employment and incomes

The number of New Zealand women engaged in exporting has increased steadily over the past two decades, and women in exporting firms tend to receive higher wages on average than those in domestically-focused businesses. However, as in many developed economies, New Zealand women remain underrepresented in the export sector. Women make up about 40% of New Zealand's export-related workforce, lower than the 47% they comprise of New Zealand's total labour force<sup>109</sup>. Female representation is particularly low in export-oriented industries such as manufacturing and primary

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<sup>106</sup> MFAT Working Paper, 'Understanding the linkages between trade and productivity, sustainability and inclusiveness', June 2020

<sup>107</sup> Chapman Tripp, 'Te Ao Māori Trends and Insights Pipiri', 2017

<sup>108</sup> MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', 2022

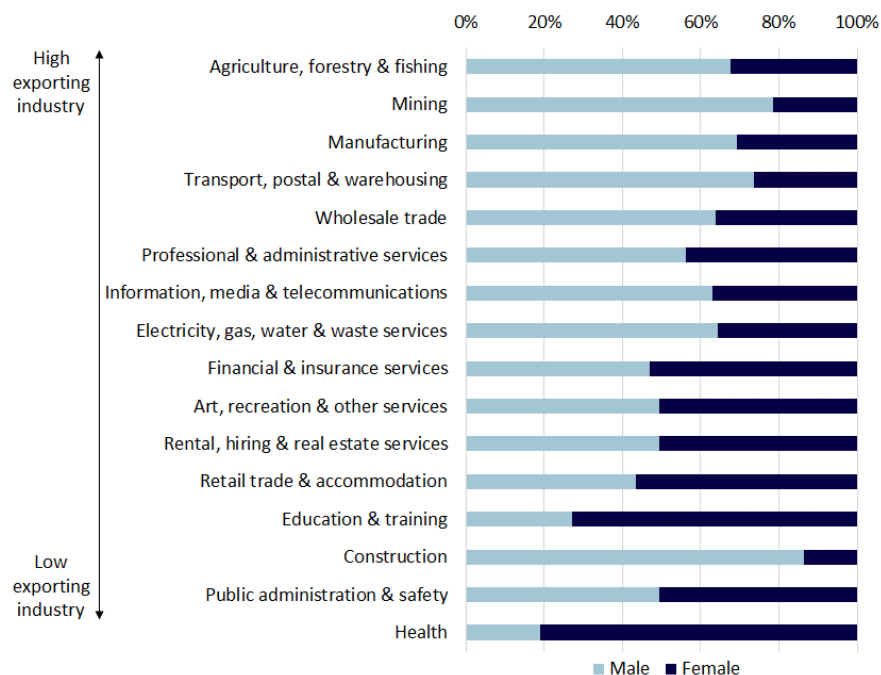
<sup>109</sup> OECD, 'Trade and Gender Review of New Zealand', 2022

industries, where women comprise only a third of employees in exporting firms (Figure 6). Gender earnings gaps also tend to be slightly larger in exporting firms.

The broad-based nature of the economic gains created by the NZ-EU FTA mean the Agreement can be expected to have a positive effect on economic outcomes for women. Female workers in sectors such as agriculture and food processing would enjoy increased employment opportunities and higher wages as these sectors expand. The services sector, where women are highly represented, is also expected to experience higher wages and employment growth, particularly amongst lower-skilled workers. These impacts would contribute to higher incomes and consumption for women and higher living standards.

However, overall it is likely that women may not experience gains from the FTA to the same extent as men, due to their lower representation in the export sector. In particular, the largest employment and wage effects are expected to occur in the primary industries where female representation overall is particularly low. The modelling results for employment were extended to estimate employment outcomes by gender, which estimated there to be a marginally negative effect on female employment (0.02% lower due to the FTA) relative to men (0.02% higher)<sup>110</sup>.

**Figure 6 – Gender shares of total industry employment (2021)**



Source: Stats NZ, MFAT

<sup>110</sup> This extension uses Household Labour Force Survey employment data by gender and industry to approximate the relative employment effects for men and women resulting based on estimated employment impacts from ImpactECON’s CGE modelling.

## Female-led businesses engaged in exporting

Female-led businesses are expected to experience similar benefits from the NZ-EU FTA as male-led businesses, including trade growth from improved market access and better access to quality and/or cheaper inputs. FTA outcomes that improve trade facilitation and reduce NTMs may also be particularly beneficial for female entrepreneurs, as on average they tend to own and lead businesses that are smaller than those owned and led by men and have less access to capital. 95% of female-owned and led goods exporting firms in New Zealand employ fewer than 50 people, of which a relatively high proportion are micro firms (i.e. less than 20 employees). As smaller firms have fewer resources to navigate trade costs, outcomes that streamline customs procedures could be particularly beneficial for female entrepreneurs that export to the EU.

However, the relatively small number of women-led exporting businesses in the agriculture sector may mean that there is a difference in the extent to which NZ-EU FTA market access outcomes are experienced by women overall. Consistent with wider female employment patterns, women are underrepresented as business owners within New Zealand's export sector, with only 14% of goods exporting businesses in 2018 owned by women and 16% classified as female-led<sup>111</sup>. In particular, female entrepreneurship and business ownership in the primary sector, which is likely see larger gains from the Agreement, is particularly low.

The NZ-EU FTA also includes a chapter on trade and gender equality that commits both Parties to strengthen cooperation on trade-related aspects of gender equality policies, including enabling women to access and benefit from opportunities under the FTA. This could help increase the likelihood that female exporters are aware of and take up the opportunities provided by the FTA.

## 7.6 Environmental effects

New Zealand has long recognised the links between trade and the environment<sup>112</sup>. Trade can generate a mix of positive and negative effects on a country's environment and natural resources.<sup>113</sup> These changes can affect global environmental indicators (such as greenhouse gas emissions) as well as domestic ones (such as water and soil quality).

### Effect of economic impacts on greenhouse gas emissions

The NZ-EU FTA is expected to boost economic growth, resulting in the risk of an associated increase in greenhouse gas emissions. This will depend on the volume of exports and resulting production ('scale effects'), their composition ('composition effects'), and how the Agreement may affect environmental

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<sup>111</sup> MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', 2022

<sup>112</sup> Since 2001, New Zealand has had a Trade and Environment Framework, which provides a set of principles to ensure environmental issues are considered alongside economic objectives in trade agreements. This framework was updated in 2020 in accordance with the recommendations of the Trade for All Advisory Board. See <https://www.beehive.govt.nz/release/government-issues-new-trade-and-environment-framework>.

<sup>113</sup> MFAT Working Paper 'Understanding the linkages between trade and productivity, sustainability and inclusiveness', June 2020

efficiency of production over time ('technique effects') (see Box 2). Estimating the overall size and direction of these impacts is complex and highly dependent on producer and consumer preferences, as well as environmental regulation and policy settings.

All else equal, an increase in aggregate economic activity from the NZ-EU FTA would be expected to lead to higher levels of greenhouse gas emissions associated with that activity. The Agreement is also expected to affect the composition of production within the economy, most notably leading to a small shift toward agricultural and services production and away from manufacturing. While a contraction in manufacturing (particularly heavy manufacturing such as of metals and machinery) would reduce emissions, based on the emissions intensities of these industries this would likely be offset by higher agricultural emissions, as well as general expansion in services sectors such as construction. It is possible that in the absence of any other effects this composition effect could lead to a small increase in net greenhouse gas emissions.

However, a number of factors are expected to reduce or mitigate these impacts. Firstly, New Zealand's environmental policies and regulations are designed to manage the adverse effects of economic activity consistent with sustainable development goals.<sup>114</sup> These environmental regulation and policy efforts have helped to reduce the scale and composition effects of trade in recent years as it has incentivised the adoption of more sustainable production processes and technology. The Emissions Trading Scheme (ETS) and national emissions targets are also important in this regard. Although the agriculture sector is not covered by ETS surrender obligations, emissions in other sectors would be expected to be constrained by the ETS as a higher carbon price would discourage emitting activity. The He Waka Eke Noa programme to develop a pricing mechanism for agriculture, expected to come into effect in 2025, would also help to manage any increase in agricultural emissions.

In addition, it is likely that much of the export growth is likely to be achieved through a reallocation of existing capacity, productivity and efficiency improvements, and higher prices. Over the past decade, substantial growth in agricultural exports has coincided with only limited increases in agricultural emissions (Box 2). This is partly due to the adoption of lower-emission production techniques, as mentioned, as well as increased productivity improvements, particularly in agriculture where the size of the national dairy herd has remained largely steady since 2012. As a result, the net impact of the NZ-EU FTA on greenhouse gas emissions is ambiguous as the scale and composition effects are likely to be limited by efficiency gains and technique effects, as well as New Zealand's environmental regulatory framework.

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<sup>114</sup> Relevant legislation includes the Climate Change Response (Zero Carbon) Amendment Act 2019, the Resource Management Act 1991, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1949 (amended 1993), the Forests Act 1949 (amended 1993), and the Wildlife Act 1953.

## Box 2 – The environmental impacts of trade agreements

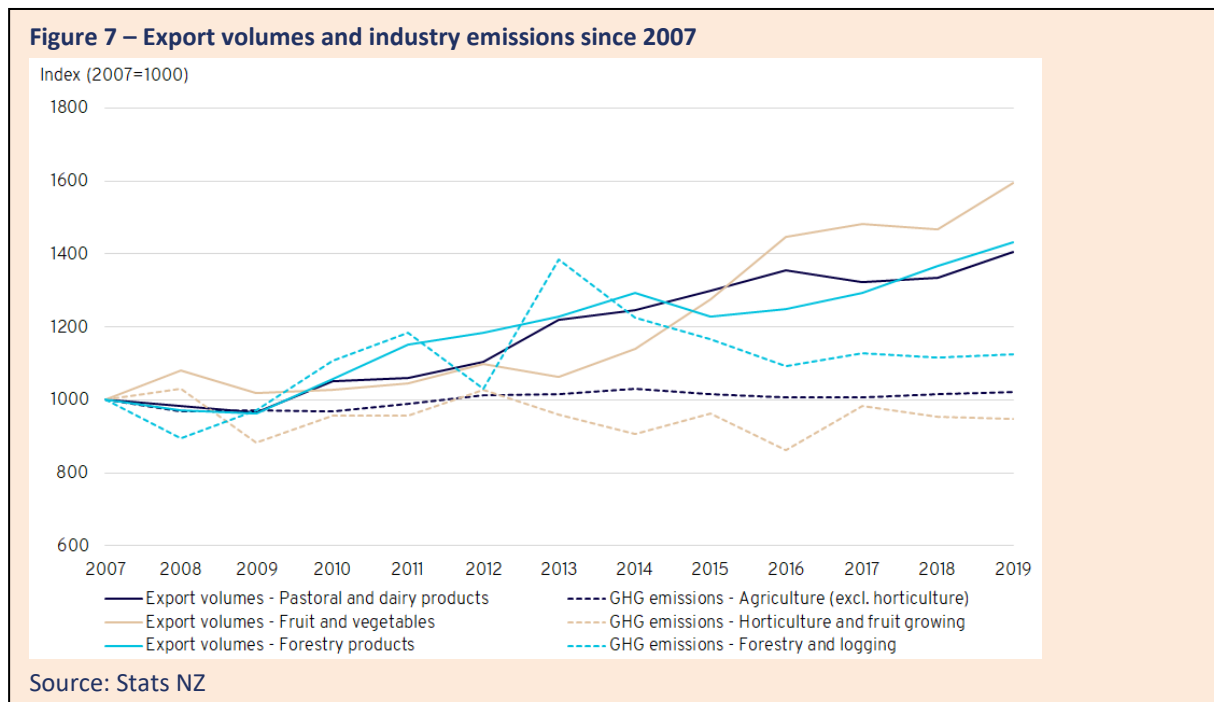
The environmental impacts of trade are commonly categorised into three effects:

- *Scale effects* – As economies expand from trade liberalisation, the total volume of trade and economic activity increases, resulting in a risk of higher pollution levels and other environmental impacts. However, this may be partially mitigated by productivity and allocative efficiency gains, which allow more goods and services.
- *Composition effects* – Trade liberalisation can affect the composition of an economy as production responds to incentives and opportunities in global markets. If this leads to a shift in resources away from environmentally damaging production, composition effects are likely to be net positive; and vice versa for a shift towards more environmentally harmful production.
- *Technique/income effects* – The cross-border transfer of innovation and technologies facilitated by trade can improve the spread and uptake of environmentally friendly technologies. The additional income generated through trade can also support investment in new technology and production processes with positive environmental outcomes.

In the past, scale and composition effects from trade were largely negative for New Zealand due to the dominance of the primary sector in our exports. Agriculture—particularly the dairy, sheep, and beef sectors—has been both a large export earner and a large contributor to emissions given the composition of the economy. The sector has accounted for around half of New Zealand’s total emissions.

However, there is evidence to suggest the scale and composition effects of trade have reduced in recent years, as strong export growth has not seen corresponding increases in emissions (Figure 7). A key factor has been reduced scale effects from the primary sector as growth has been generated from productivity and efficiency improvements. Environmental regulation and policy efforts have also accelerated, playing an important role in limiting environmental impacts and incentivising the adoption of more sustainable production processes and technology.

- (Continued on next page)



### Global climate impacts

Given that greenhouse gas emissions have global effects, it is important to consider the emissions impacts of trade agreements in the context of their effects on global emissions and where New Zealand’s comparative advantage lies. Trade can support global allocative efficiency by allowing products to be produced where it is most environmentally efficient to do so – i.e. where there is an environmental comparative advantage. Globally, New Zealand is one of the most efficient suppliers of agricultural products like dairy and beef.<sup>115</sup> This is partly because New Zealand’s pasture-based dairy system and mild climate means there is less reliance on grain for feed and temperature controlled barns than more intensive dairy systems, including in Europe. To the extent that the NZ-EU FTA could facilitate greater exchange of goods from more environmentally efficient production, this may mitigate the overall increase in global greenhouse gas emissions.

The NZ-EU FTA also contains several outcomes on trade and sustainability that, while indirect and difficult to quantify, support global efforts to promote environmental outcomes. This includes outcomes on climate action and the Paris Agreement that are legally binding and enforceable, and a commitment to strengthen cooperation on fossil fuel subsidy reform policies.

<sup>115</sup> Food and Agriculture Organization of the United Nations (FAO), ‘Greenhouse gas emissions from ruminant supply chains – a global life cycle assessment’, 2013

## Other domestic environmental effects

Aside from greenhouse gas emissions, the NZ-EU FTA may have wider environmental effects—both positive and negative—through a range of channels. Firstly, the scale and composition effects from higher economic activity could affect local environmental indicators such as water and soil quality, as higher agricultural production can affect local waterways, fertiliser use, and soil compaction from livestock. It is difficult to estimate these impacts as the evidence base for understanding the causal effects from trade to water and soil quality is still developing. It is likely also that environmental regulation and improving production practices would largely constrain these effects. However, some negative effects are possible, particularly in regions with high agricultural production.

The NZ-EU FTA is also likely to support trade in environmental goods – i.e. products with an environmental end use or benefit. NZ’s imports of environmental goods from the EU have grown over the past decade and now represent almost 10% of New Zealand’s goods imports with the EU<sup>116</sup>. These include machinery and parts used in areas such as heat and energy management, waste and recycling systems, and wastewater management. The NZ-EU FTA eliminates customs duties on a range of these environmentally beneficial goods, which by lowering domestic prices could further support the uptake of environmentally friendly production in New Zealand, resulting in positive environmental and climate outcomes.

In terms of biosecurity risks, the NZ-EU FTA is not expected to materially alter New Zealand’s risk exposure. The Agreement contains robust provisions on Sanitary and Phytosanitary measures, and the risk profile of the projected import changes is low with import growth expected to be concentrated in manufactured goods. New Zealand’s existing framework of environmental and biosecurity laws, regulations, and practices are expected to manage any changes.

## 7.7 Trade and development

As trade agreements provide exporters from signatory countries with preferential access to markets, they can also result in changes to trade flows for countries that do not enjoy similar access. For New Zealand, this could raise concerns for regional development if an agreement displaced trade from Pacific Island countries. For example, if the nature of exports to the EU for New Zealand and the Pacific is similar, improved market access opportunities for New Zealand in the NZ-EU FTA could displace exports from the Pacific.

Pacific goods exports to the EU totalled NZ\$1.6 billion in 2019 (the most recent year data is available)<sup>117</sup>. A large proportion of these exports (79%) comprised of palm oil and kernel, prepared or preserved fish, and precious metals and copper, none of which New Zealand exports in large amounts

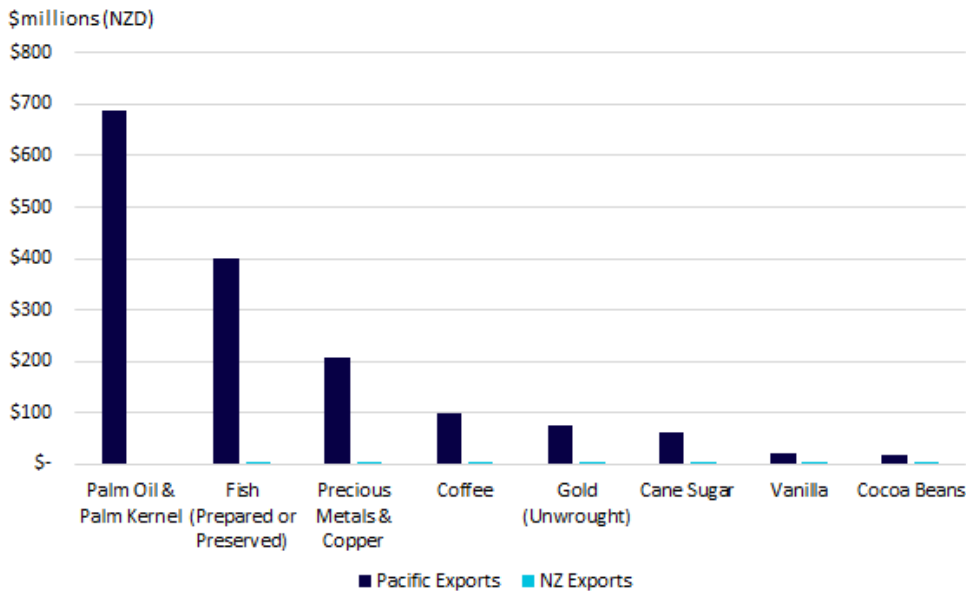
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<sup>116</sup> Based on the OECD’s ‘Combined List of Environmental Goods’ (CLEG), which defines around 250 products

<sup>117</sup> Countries included are Fiji, Samoa, Tonga, Solomon Islands, Niue, Papua New Guinea, Cook Islands, Nauru, Kiribati, Tuvalu, Tokelau and Vanuatu.

(Figure 8). Other top Pacific exports to the EU included coffee, cane sugar, and vanilla, for which New Zealand’s exports to the EU are negligible. As a result, there is little to suggest that trade displacement effects are likely to occur for Pacific Island countries. This is also true for Pacific Island and EU competing exports into New Zealand.

**Figure 8 – Pacific Island countries’ top goods exports to the EU (2019)**



Source: Global Trade Atlas, StatsNZ

## 7.8 Social and Cultural Effects

### Social and Cultural Effects

The NZ-EU FTA would have few implications for New Zealand’s ability to develop social and cultural policy. The preamble reaffirms the Parties’ right to regulate to achieve legitimate policy objectives, such as social services, public education, social or consumer protection, protection of cultural diversity, and the promotion and protection of Māori rights and interests.

In the unusual situation where an action may breach an obligation in the FTA, the Exceptions chapter contains a safety net to ensure legitimate public policy is provided for in a range of areas, including health, environment and in relation to treasures of artistic, historic or archaeological value.

Chapter 10 on investment liberalisation and cross-border trade in services follows the structure of WTO General Agreement on Trade in Services (GATS) and excludes services supplied in the exercise of government authority. Further, New Zealand has preserved significant policy space to regulate as appropriate in a range of social services established for a public purpose including childcare, social welfare, social security, public housing, and public education.

In addition there are reservations in New Zealand's services and investment non-conforming measures that ensure space for cultural policy, including the creative arts<sup>118</sup>. Chapter 10 (Digital Trade) has a specific carve-out for audio-visual services, which means the obligations in the Chapter do not apply.

In these circumstances the NZ-EU FTA is not expected to have any negative effect on the Government's ability to pursue its cultural and social policy objectives.

### **Health impacts**

The NZ-EU FTA would not impede the Government's ability to regulate for legitimate public policy purposes, including public health objectives. This is made clear in the FTA's Exceptions chapter which reflect existing WTO rules and provide that nothing in the FTA should prevent the adoption or enforcement of measures necessary to protect human health (Article 25.1.2.(b)).

This commitment is reflected elsewhere in the FTA, for example both Parties reaffirm the right to regulate to achieve legitimate policy objectives such as the protection of public health (e.g. Article 10.1 on Investment Liberalisation and Trade in Services). Additionally, New Zealand's public health system is excluded from many of the obligations set out in the Investment Liberalisation and Trade in Services chapter.

The NZ-EU FTA does not contain Investor-State Dispute Settlement (ISDS) provisions, which provides further comfort with regard to measures the Government may wish to take in areas such as tobacco control (e.g. plain packaging).

An ongoing concern for New Zealanders, increasing through the period of Covid-19 and by the cost of living challenges, is the affordability and accessibility of medicines. The NZ-EU FTA would not impose any additional costs or restrictions in this area. The PHARMAC model would remain unchanged, including which pharmaceuticals get listed for funding.

The NZ-EU FTA does not include patent term extension or extended data protection terms for Pharmaceuticals which would have imposed significant costs for New Zealand by delaying the entry of generic medicines into New Zealand.

There are no direct quantifiable economic benefits to healthcare system from the NZ-EU FTA. For example medicines and medical products and devices are all currently traded between the EU and New Zealand tariff-free, so the FTA is not expected to accelerate trade in these sectors.

That being said the expected increase in revenue from taxation owing to the FTA could be expected to provide the opportunity to invest more funding into health and other publicly-funded sectors.

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<sup>118</sup> including theatre, dance, and music – visual arts and craft, literature, film and video, language arts, creative on-line content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions

## Immigration

The NZ-EU FTA will not require any changes to New Zealand’s immigration policy or legislation. The only specific commitments related to the movement of people are the short-term commitments for travel in Section D (Temporary Entry) of Chapter 10 (Investment Liberalisation and Trade and Services). The chapter would result in no substantial change to people flows in New Zealand as it is similar to commitments made to other FTA partners and does not apply to categories of visitors related to immigration (for example people seeking employment or citizenship or permanent residency).

The NZ-EU FTA contains commitments for contractual services suppliers and independent professionals, which will allow New Zealand businesses to access highly skilled, qualified individuals working in certain sectors on a temporary basis. Both categories are subject to an economic means test, which will ensure that the labour market isn’t being negatively impacted.

## Human Rights

The NZ-EU FTA includes no inconsistencies with the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990, and its implementation would have no negative effect on human rights in New Zealand.

In fact, specific outcomes of the FTA are expected to complement New Zealand and the EU’s compliance with important international conventions with respect to equality and social cohesion, in line with the Government’s Trade for All agenda. This includes through the strong outcomes to promote labour rights in Article 19.3 of the Trade and Sustainable Development chapter.

Article 19.4 on Trade and Gender Equality in the Trade and Sustainable Development chapter will also promote a greater focus on gender equality and women’s economic empowerment, with respect to the ongoing implementation of the NZ-EU FTA. These obligations go beyond what New Zealand has agreed in past FTAs, and are subject to the FTA’s dispute settlement mechanism.

The EU Impact Assessment<sup>119</sup> included the following summary of the situation: “Overall, the EU and New Zealand have a strong human rights record. Although the human rights situation in both Parties can be characterised by several issues that need attention, at the same time, it demonstrates that there are constant developments to improve the human rights record and performance. There are various institutions in place that point out shortcomings and elaborate recommendations on constant improvement of human rights situations.”

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<sup>119</sup> European Commission, ‘Trade Sustainability Impact Assessment in Support of FTA Negotiations between the European Union and New Zealand’, 2020

## 8 Costs to New Zealand of Compliance with the Treaty

### 8.1 Tariff revenue

The majority of the estimated fiscal costs from the NZ-EU FTA come from foregone annual tariff revenue. The elimination of all tariffs on imports from the EU on entry into force of the FTA equates to approximately \$74 million per year, based on the total duties paid on goods of EU origin in the three-year period from 2020-2022. This is an increase on the previous three-year period, when tariffs equated to approximately \$53 million per year, as a result of an increase in goods imports from the EU post-COVID.

The cost represents foregone tariff revenue and from an economic perspective is treated as a cost, but the overall net effect for New Zealand is likely to be positive as a result of cheaper consumer goods for consumers and inputs for business, alongside increased innovation and competition.

### 8.2 Intellectual Property Provisions

#### Copyright

The NZ-EU FTA requires that the term of copyright protection be extended by 20 years, and that this change must be made within four years after entry into force of the FTA (NZ-UK FTA includes the same requirement but provides a fifteen year transition).

The exact costs are difficult to quantify. Economic modelling suggests a range of possible outcomes, from a net present cost of up to \$15.4 million for literary works and sound recordings<sup>120</sup>, to a small net positive impact. However, this modelling did not include impacts in relation to films and artistic works. It also did not address the cultural and social costs of delaying access to older works, particularly those that are no longer commercially available. These include, amongst other things, the opportunity costs of people not being able to access or make use of knowledge and culture contained in copyright works and the increased costs to the galleries, libraries, archives and museums (GLAM sector). Implementing the copyright term changes as part of a wider review of the Copyright Act will provide an opportunity to mitigate some potential cost of the copyright term changes, including by providing appropriate flexibilities to the GLAM sector.

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<sup>120</sup> MBIE-commissioned research from 2020 estimated that the cost in present value terms would be between \$15 million in costs and a marginal benefit, with a “maximum net loss in welfare of \$13.7 million in the books sector and \$1.7 million for music sector” spread over the total copyright term. The research estimated that less than 2 per cent of literary works and sound recordings retain any commercial value at the end of their current copyright term. The authors of the report considered their provided the best point in time estimate of costs, they also highlighted the difficulty in estimating the long run effects of copyright term extension, including because of changing consumption habits and limited data availability for certain types of works.

## Geographic Indications

Modelling to assess EU proposals on geographical indications (GIs)<sup>121</sup> from 2017<sup>122</sup> suggested costs of up to \$22.6 million (these will likely have increased in the intervening period, but are still likely to be below \$30 million). Most of these costs would be felt by affected producers, importers and exporters who have to re-label products in advance of the GIs being protected.

There are costs for setting up and maintaining up a new GI register, estimated to be an initial cost of \$20,000, plus ongoing annual costs of \$10,000. There will also be some costs incurred for the Government in informing producers, importers and exporters about the new GI framework and meeting the administrative enforcement obligations in the FTA. These are estimated to be 6 FTEs, or \$915,000 annually, alongside potential litigation costs, and though we expect the cost of administrative enforcement to reduce overtime, this will still need to be met from departmental baselines.

The costs of the implementation of the GI outcomes falls unevenly amongst affected businesses, particularly specialist cheesemakers. Many of these cheesemakers are not exporters and would therefore not benefit from improved EU market access, but would be prevented from using common cheese names (e.g. feta) in the local market, while competing with EU producers able to use those names.

### 8.3 Costs to government agencies of implementing the Treaty

#### 8.3.1 Institutional Arrangements

The NZ-EU FTA establishes a Trade Committee to oversee the implementation of the FTA, a series of Specialised Committees that sit underneath (covering Goods; SPS; Sustainable Food Systems; Wine and Spirits; Trade and Sustainable Development; and Investment, Services, Digital Trade, Government Procurement and Intellectual Property), and a Joint Customs Cooperation Committee.

Such institutional provisions are common practice in FTAs and provide New Zealand with an important mechanism to engage with a much larger partner and to ensure delivery of the intended benefits of the Agreement. They provide a means to pursue compliance of commitments, to undertake the ongoing work envisaged in the FTA, to address any emerging issues, in particular in areas such as TBT, SPS and Customs, and to manage future developments. Undertaking these activities has resourcing implications for the agencies involved.

That said, the NZ-EU FTA provides flexibility for specialised committees to meet in person or virtually if agreed by both Parties. New Zealand will want to engage substantively in the FTA's institutional

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<sup>121</sup> A geographical indication (GI) is an indication - usually a name like Champagne (France) - which identifies that a product comes from a particular area. It indicates that a product has a particular quality or characteristic that is associated with it coming from that geographic area.

<sup>122</sup> <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-2017-Modelling-of-GI-costs.pdf>

arrangements to maximise opportunities under the FTA, while looking to minimise costs and take advantage of meeting efficiencies as much as possible. The likely annual costs are likely to be low and able to be met from existing baselines, including through drawing from funds in the Trade Negotiations Fund if possible.

The NZ-EU FTA will require the setting up of new stakeholder mechanisms, the Domestic Advisory Group (DAG) and the Civil Society Forum, which will advise each Party on matters related to the implementation of the FTA. These novel mechanisms will require additional support to set-up, and engage with, to ensure that both can function as intended. MFAT is beginning to consider these arrangements, with the first DAG meeting required to occur within a year after entry into force, and the CSF to meet in the margins of the first Trade Committee meeting, six months after entry into force of the Agreement.

A number of other obligations in the NZ-EU FTA will require additional resources to implement, for example where cooperation is envisaged in the chapters on Animal Welfare, Sustainable Food Systems, Trade and Sustainable Development, including Gender Equality, Energy and Raw Materials, TBT, Good Regulatory Practices and Regulatory Cooperation, Intellectual Property and the Māori Trade and Economic Cooperation chapter. These should be able to be met within baselines.

Resourcing to maximise outcome from the high-profile Māori Trade and Economic Cooperation chapter will represent a particular challenge, for both Government and for Treaty partners. Feedback from Māori on the NZ-EU FTA, including that provided after the conclusion of negotiations (see Chapter 10 of the NIA) has underlined the importance for Māori of meaningful implementation and associated resourcing. This will need to be carefully worked through in close consultation with Treaty partners and with considerations regarding appropriate prioritisation.

### **8.3.2 Engagement and Outreach**

In the lead up to and following entry into force of the NZ-EU FTA, government agencies will need to work alongside the private sector, stakeholders and Māori to ensure maximum take-up of opportunities provided by the FTA. The Trade Negotiations Fund<sup>123</sup> is available to support departments with resources for establishment and implementation activities related to FTAs. The funding would be drawn upon, likely in the 2023/24 financial year, to support a mixture of in-person and virtual outreach activities in New Zealand, so that New Zealand businesses are informed and able to take advantage of the many opportunities provided by the NZ-EU FTA. This sort of funding envelope could be in the region of \$100,000 - \$200,000.

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<sup>123</sup> A contestable NZ Inc fund administered by MFAT.

## **9 Possibility of any Subsequent Protocols (or other Amendments) to the Treaty, and likely effects**

The Final Provisions chapter allows for the two Parties to agree to amend the Agreement by mutual agreement in writing (Article 27.1). Any such amendment would only enter into force on the first day of the second month, or on such a date as agreed between the Parties, following the date on which the Parties exchange written notifications that they have completed all legal requirements.

A proposal for an amendment may also come about through the work done by the Trade Committee or by a Committee or other subsidiary body established under the Agreement.

New Zealand would need to consider any proposed amendment on a case by case basis.

## **10 Consultation with Māori, the Community and Interested Parties in respect of the Treaty**

### **10.1 Engagement overview**

The NZ-EU FTA was New Zealand's first FTA negotiation commenced under the Government's 'Trade for All' agenda. Accordingly, there was a particular focus on delivering meaningful outcomes to promote sustainable and inclusive trade, as well as ensuring high levels of engagement with Māori as Treaty partners and stakeholders, and an added level of transparency with regard to the sharing of negotiation text. Through mid-2018 until the close of negotiations in June 2022 there were hundreds of meetings and hui with Māori and interested stakeholders on the NZ-EU FTA, designed to inform the New Zealand negotiating position, and to provide updates on key developments.

These engagements were a mixture of in-person and virtual, reflecting evolving developments related to the Covid-19 pandemic over 2020-2022. The move to more virtual methods of stakeholder engagement over the latter period of the negotiation was reflected in the negotiations themselves, - the final six rounds of negotiations were conducted by New Zealand and the EU virtually.

### **10.2 Engagement with Māori**

There was active and ongoing engagement with Māori in advance of and through the period of negotiations on the NZ-EU FTA. The New Zealand position was informed through a series of trade-related hui that took place in a range of New Zealand towns and cities over November 2017 – May 2018. A further series of Trade for All-related hui over September – November 2018 again sought views from Māori about issues that were considered important in any trade negotiation with the EU (alongside broader trade issues). Those in-person engagements on Trade for All were supplemented by a call for written submissions as part of that process.

The engagement process with Māori on the NZ-EU FTA included regular meetings (in-person or virtually) with Treaty partner representative groups (e.g. Te Taumata, Federation of Māori Authorities (FOMA), Ngā Toki Whakarururanga, and the National Iwi Chairs Forum, amongst others) through the period of negotiations. These meetings took place with the New Zealand Chief Negotiator, Deputy Chief Negotiator, and chapter leads, depending on the issues discussed. These engagements assisted in enabling negotiators to understand how the NZ-EU FTA could best reflect Māori interests, including in areas such as goods market access, intellectual property, digital trade, and the Māori Trade and Economic Cooperation chapter.

These in-person and virtual engagements were supplemented by research commissioned to better understand Māori interests in our trade engagement with the EU. In 2019 MFAT and TPK jointly commissioned an independent report by Business and Economic Research Limited (BERL) on the Māori economy, with a specific NZ-EU focus<sup>124</sup>. This research involved interviews with a number of Māori business representatives. In addition, a hui on the NZ-EU FTA was held in February 2019 with Māori representatives, as well as MFAT, TPK and MBIE officials.

An area of particular interest to Māori concerned the EU's proposals around geographical indications (GIs). MFAT provided funding to Te Taumata in January 2020 to commission research for the purpose of identifying Māori interests in geographical indications (GIs) in the context of the NZ-EU FTA negotiations. The report was peer reviewed by Māori business leaders and made available for wider review by Te Taumata's online Māori subscribers and business network<sup>125</sup>. The report was completed in April 2020.

Negotiators also looked to build improvements into the NZ-EU FTA negotiation engagement process, so as to increase transparency, and enable more useful work with Treaty partners on the FTA text itself. Accordingly, for the first time for a NZ FTA, and with the EU's agreement, live negotiation text was shared with Te Taumata and Ngā Toki Whakarururanga representatives under confidentiality agreements and an information sharing protocol. This was designed to facilitate better and more focused discussions and to engage on ideas for improvement. This was of particular relevance for evolving negotiations on goods market access, digital trade, services and investment, and the Māori Trade and Economic Cooperation chapter.

On the Māori Trade and Economic Cooperation chapter, officials engaged closely with Treaty partner representative groups to develop consultation processes that enabled Māori to have direct input and influence on the outcome. Proposed text was developed in partnership between officials and Māori entities, including Ngā Toki Whakarururanga, Te Taumata, Mānuka Charitable Trust, the Federation of Māori Authorities and the National Iwi Chairs Forum.

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<sup>124</sup> <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/BERL-report.pdf>

<sup>125</sup> <https://tetaumata.com/te-taumata-analysis-on-gis-and-ip-now-available-to-view/>

### 10.3 Independent Assessments of the NZ-EU FTA for Treaty Partners

In line with the recommendations of the Trade for All Ministerial Advisory Board<sup>126</sup>, and recommendation 9 in particular<sup>127</sup>, the NZ-EU FTA has also been subject to an extra level of scrutiny after the FTA was concluded. This has included a more robust set of analysis on outcomes for Māori, for which ACE Consulting, Te Taumata and Ngā Toki Whakarururanga have all provided reports to inform the NIA and the broader understanding of the FTA outcomes. Māori views on the NZ-EU FTA, as reflected in these reports, are varied.

#### ACE Consulting Assessment

ACE Consulting prepared a detailed report on the NZ-EU FTA entitled “Ūropi Tauhokohoko Ka Taea New Zealand – European Union Free Trade Agreement: An Independent Assessment of the Impacts for Māori”<sup>128</sup>. This was commissioned by MFAT and awarded to ACE following a competitive tender process.<sup>129</sup>

The report drew from written documentation, separate economic modelling, and included a series of 26 interviews about the FTA (whai whakaaro). These interviews about the FTA found that three of the four Treaty partner groups MFAT engaged with (Federation of Māori Authorities, Iwi Chairs Forum and Te Taumata) were “buoyant” about the prospects for Māori trade with the EU. Ngā Toki Whakarururanga’s assessment was noted by ACE as having identified “limitations in the level of protection of Māori Treaty rights and the efficacy of the Treaty exception” as well as expressing a desire for Te Tiriti-based negotiations.

The document review (whai hua) was reflected in ACE’s report as finding benefits for Māori including tariff elimination on goods of specific interest to Māori businesses, the Treaty of Waitangi exception, the Māori Trade and Economic Cooperation chapter, references to mātauranga Māori, treaty partner engagement and greater Māori representation on groups formed to implement the FTA. Reservations remain, however, including in respect of protecting and promoting Māori rights under the Treaty of Waitangi, size of economic gains for Māori and a possible “softening” of these gains because of pre-existing vulnerabilities for Māori.

ACE modelled benefits for the Māori economy arising from the NZ-EU FTA as between \$80 million to \$150 million per year, with \$110 million being the most “likely scenario”. This was seen to be a “reasonably significant” outcome for the Māori economy (see “Table 7” below). Taking into account a

<sup>126</sup> <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf>

<sup>127</sup> Related to independent assessment of NIAs

<sup>128</sup> <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-An-Independent-Assessment-of-the-Impacts-for-Maori.pdf>

<sup>129</sup> The terms of reference required a short report on the key outcomes of the NZ-EU FTA for Māori. The expectation was for a report that demonstrates: (1) a focus on goods market access for Māori using available data; (2) Māori interests in other sectors and in the Māori trade and economic cooperation chapter; (3) an understanding of the Trade for All agenda; (4) experience in economics and trade policy; and (5) an understanding of te ao Māori and Māori interests in FTAs. The assessment needed to consider other areas of the NZ-EU FTA in which Māori have interests, including services, investment, geographical indications, and digital trade. While the terms of reference identified areas in which Māori interests are anticipated, ACE was not restricted to those areas.

fuller range of perspectives on the FTA, based on the written material, modelling, and interviews, ACE noted “there are both benefits and consequences of the NZ-EU FTA depending on the sector, business type, and ground being considered, including Māori”.

**Table 7 Change in real GDP for the Māori economy by 2040 for NZ-EU FTA scenarios 1-3<sup>a</sup>**

	Scenario 1 (low)	Scenario 2 (likely)	Scenario 3 (high)
	Real GDP		
<b>Percent</b>	0.06	0.08	0.15
<b>NZE<sup>b</sup> gains (NZ\$m)</b>	900	1,100	1,600
<b>ME<sup>c</sup> gains (NZ\$m)</b>	80	110	150

<sup>a</sup> The trade-exposed sectors comprise 36% of the Māori economy; <sup>b</sup> Aotearoa New Zealand economy in 2018 New Zealand dollars; <sup>c</sup> Māori economy in 2018 New Zealand dollars.

ACE included sources that showed MFAT was committed to working with Māori on trade policy, consistent with its obligations under the Treaty of Waitangi and the Trade for All agenda. It was noted that the NZ-EU FTA included 70 references to “Māori” and 17 references to “Tiriti o Waitangi/Treaty of Waitangi”. This was interpreted by some Māori that mātauranga Māori was considered important and had a relevant place in trade with the EU, while some Māori raised the risk of misappropriation.

On the process of the negotiation, ACE’s report again highlights a plurality of views from Māori. Te Taumata were seen as being at the “forefront of negotiations, ensuring Māori had a strong voice and that Māori interests and priorities were understood and advocated”. The Federation of Māori Authorities “applauded the work from Manatu Aorere [MFAT] to advance Aotearoa’s interests, illustrating the negotiations are what true partnership looks like”. However, it is noted that some Treaty partner groups may find that the “engagement process and outcomes falls short of expectations”.

The report concluded:

- Negotiations were approached with a view to ensuring that the Crown’s obligations to Māori under Te Tiriti o Waitangi were upheld, and that outcomes for Māori were apparent in the NZ-EU FTA. Trade negotiations were conducted with expectations of Treaty Partner involvement.
- Māori as Treaty partners were engaged in the NZ-FTA negotiations process and officials point to specific instances where their input made a significant difference. Māori are recognised in this process as Treaty partners (which is distinct from stakeholder relations with industry for example). A degree of trust and respect from Treaty partners and negotiators was evident.
- There are, however, concerns about the process, content, and outcomes of the NZ-EU FTA for Māori, including protection for mātauranga Māori, Treaty rights and interests and cultural and intellectual property of Māori. Wai 262 was felt to “lag” behind commitments in the NZ-EU FTA.

- Māori stood to benefit from the NZ-EU FTA, alongside non-Māori, but the extent and distribution of such benefits accruing to Māori firms was not clearly visible and tended to be inferred (though MFAT was working on improvements to measuring distributional benefits).
- Māori tech and service-based enterprises were a growth opportunity and innovation could be further developed through engagement with the EU and its science and innovation capability.

### Te Taumata Assessment

Te Taumata's *"EU FTA Analysis – An assessment of what the EU FTA delivers, or could deliver, for Māori"*<sup>130</sup> concluded that the EU FTA "doesn't necessarily contain all Māori hoped for" but assesses that the FTA "does in fact provide a reasonable balance and assurance that benefits and protections contemplated (and assured) in this agreement are tiki, pono and can support us to be Tūpuna Pono". The FTA "is a seed, and this one is full of potential". The NZ-EU FTA is assessed to "potentially provide significant economic benefits to Māori and preserve matters of tikanga, mātauranga and advance tino rangitiratanga in its own way". The FTA was also considered to have made "a reasonable attempt to consider the potential impact on Māori cultural and economic interests".

Te Taumata noted that "Māori political capital and influence are acknowledged as being on the ascendancy through the process of the FTA negotiations as well as the intended benefits and opportunities". This was reflected in the trust and strong engagement that Te Taumata had with the European Union delegation to New Zealand to ensure issues of importance to Māori were understood in Brussels. It was also reflected in the decision to share live FTA negotiation texts with Te Taumata (and other Treaty partner representatives), something that it is hoped MFAT will proactively look to support in future FTA engagements with Māori.

Te Taumata's analysis assessed the NZ-EU FTA against five kaupapa Māori goals: Whānau; Te taiao; Pūtea; Ngākau hihiko; and Papa whenua (with the latter weaved through Te taiao; Pūtea; Ngākau hihiko).

Under Whānau, the analysis highlighted the importance of Māori having more rightful agency. This was seen to be addressed in the FTA's outcomes that require more Māori voice and influence in the FTA's implementation – with both the Domestic Advisory Group and Civil Society forums noted as "novel innovations". Te Taumata was positive about the access of some Māori to text and having a "voice in real time" as tangata whenua. This showed that MFAT had "come some way to proactive engagement around a te Tiriti partnership approach". The "novel" approach to the digital trade chapter to address Wai 2522 was also seen positively.

Te Taiao focused on the FTA's outcome in the Trade and Sustainable Development and Sustainable Food Systems chapters, with strong outcomes on the Paris Agreement/ climate change said to be a

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<sup>130</sup> <https://tetaumata.com/nz-eu-fta-poised-to-deliver-for-maori/>

kaupapa that resonates within te Ao Māori. Te Taumata note that the Sustainable Food Systems chapter provides an opportunity for Māori primary industries to transform, and take advantage, and to work collaboratively with the EU in areas such as research-based organics and regenerative agriculture, while also activating mātauranga Māori. The 'Trade for All' kaupapa and focus areas are seen to be "enabling" for Māori exports and exporters.

Within the Pūtea analysis, Te Taumata noted the range of whenua and moana-based sectors that would benefit from the FTA, including kiwifruit, honey, red meat, dairy and wine, in which Māori have economic, trade and development interests. The market diversification potential of an FTA with the EU and its 450 million population was noted positively, especially in an uncertain geopolitical and trade environment.

The FTA was seen as delivering opportunities for Māori service providers and for innovation (Ngākau hihiko). This included in areas such as public procurement, and for providers of health, education, technology and other professional services.

There was specific focus on the Māori Trade and Economic Cooperation chapter. This was seen as a "game-changing opportunity for Māori", and it was recognised that this was a first of its kind for a "massive machine like the EU to incorporate and approve in their trade agreement architecture". There was an opportunity to promote engagement and cooperation between Māori and the EU in many areas, provided there was effective focus and implementation. Te Taumata also hoped that this outcome could support other Indigenous Peoples and be the standard for future FTAs.

Te Taumata noted that their analysis had not dealt in depth with Māori intellectual property rights, but called for a resolution to the domestic situation around Wai 262, so that there could also be better advocacy for Māori rights and interests internationally. Once Wai 262 was settled, New Zealand should be more progressive and this would need to be picked up in future EU FTA reviews. Te Taumata noted that a lack of enforceability around issues such as mātauranga was "a worry" and suggested that MFAT "take counsel" from Ngā Toki Whakarururanga's analysis on this matter.

Te Taumata highlighted the need to understand the Government's plan for implementation of the EU FTA, and associated resourcing, including for the Domestic Advisory Group and Civil Society Forum. Priority focus areas were also provided as a guide for implementation. Resourcing to provide for Māori engagement at the beginning of any international instrument that would have an impact on Māori was important.

## Ngā Toki Whakarururanga Assessment<sup>131</sup>

Ngā Toki Whakarururanga's *Te Tiriti O Waitangi Assessment –New Zealand European Union Free Trade Agreement*<sup>132</sup> acknowledged that in the NZ-EU FTA the Crown has “made some positive changes to past practice and agreements” but “there are also some backwards steps”. The Crown, led by MFAT, is still seen to have “a long way to go to satisfy their obligations under Te Tiriti o Waitangi”. The FTA is not seen to “advance the range of rights, interests, duties and responsibilities of Māori in a Te Tiriti compliant manner” and the FTA “offers minimal, if any, concrete economic benefits to Māori businesses and workers”.

Important context for Ngā Toki Whakarururanga was that NIAs prepared by MFAT are said to focus on perceived economic benefits to New Zealand arising from an FTA “with little consideration for the Crown’s Te Tiriti o Waitangi obligations”. Ngā Toki Whakarururanga’s Assessment measures the NZ-EU FTA against two related reference points: the Crown’s obligations and Māori rights under what Ngā Toki Whakarururanga refers to as the four articles of Te Tiriti o Waitangi and the Tiriti-based kaupapa as set out in Ngā Toki Whakarururanga’s 2020 Mediation Agreement entered into with the Crown.

The assessment has seven parts: Te Tiriti o Waitangi and Rangatiratanga, Māori Trade and Economic Cooperation Chapter, Mātauranga Māori: Knowledge and Culture, Mātauranga Māori: Data Sovereignty and Digital Trade, Māori Businesses, Kaimahi and Wāhine Māori and Te Taiao.

In Te Tiriti o Waitangi and Rangatiratanga, Ngā Toki Whakarururanga state “there was no rangatiratanga in the negotiation of the NZ-EU FTA” nor in the “governance and decision-making structures or implementation”. Criticisms are made of the lack of dedicated Māori representation on the FTA’s Committees, and the benefit for Māori amongst a range of non-Tiriti “stakeholders” in the Domestic Advisory Group and Civil Society Forum, as well as a lack of resourcing. Ngā Toki Whakarururanga say the Crown needs to support Māori to develop a Tiriti-based governance model and to ensure it has “genuine authority in relation to decision-making”.

The Māori Trade and Cooperation chapter is criticised for being unenforceable, with no commitments to undertake any activities, or to resource, and no power-sharing. Further, the chapter, like the whole agreement, only refers to Māori and excludes indigenous peoples from the EU. It is acknowledged that the Crown “worked hard” to secure the outcome, but the chapter lowers the bar on the UK FTA that was itself not Tiriti compliant.

Ngā Toki Whakarururanga state that the NZ-EU FTA’s Intellectual Property outcomes “strengthen the system of Western IP rights and will make it harder for Te Pae Tawhiti to deliver on the Wai 262 concerns”. On plant variety rights, the assessment does note the inclusion of a new “for greater

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<sup>131</sup> Summary provided by Ngā Toki Whakarururanga.

<sup>132</sup>

<https://static1.squarespace.com/static/62d0af606076367ebf83b878/t/6463471db83ddc54d78978dc/1684227873906/NZ+EU+FTA+ToW+Assessment.pdf>

certainty” footnote to “deal with the Tiriti risk”. The NZ-EU FTA is seen to deliver tariff cuts for Mānuka exports to the EU as a tradable commodity, but no protection for the name itself as a culturally important taonga. A definition of Mānuka in the unenforceable Māori Trade and Economic Cooperation is said only to provide a “very weak interpretive context for the rest of the Agreement” and the possible future recognition of mānuka as a geographical indication is highly speculative. The assessment notes “one potential gain for Māori artists” regarding agreement to provide rights for artists to a share of the price when their work is re-sold.

On data sovereignty and digital trade, Ngā Toki Whakarururanga note that MFAT took the Waitangi Tribunal’s “Wai 2522” decision “seriously” and sought advice from Ngā Toki Whakarururanga and others on draft texts to put to the EU. That agreed text is viewed positively and as a “major achievement”, and the digital trade chapter is seen as a “significant advance in providing active protection for mātauranga Māori” although other parts of the agreement as still problematic for digital rights.

In the Pakihi Māori chapter, Ngā Toki Whakarururanga explain why the modelled GDP gains for the NZ-EU FTA [up to \$1.4 billion] are an “underwhelming drop in the bucket” [given GDP in 2021 was \$250 billion]. While market access gains to Māori from tariff cuts may accrue in primary sectors in which Māori interests are already strong, much of that will be trade diversion, not creating new business and jobs. Tariff cuts also need to be weighed against the loss of Māori producers to use protected European Geographical Indications in the future. On investment, the assessment notes “we are very pleased there are no special protections and no ISDS in this FTA”.

The assessment addresses “protections” in the FTA around services and investment commitments, including a “strong reservation for water”, a Tiriti-reservation for digitally-enabled trade, and what is seen to be more limited reservations on items such as “social services”. Public procurement is noted in the report as having become “an increasingly important vehicle for Māori economic development...”, with the combination of the Treaty of Waitangi exception and language linking to the WTO Government Procurement Agreement as providing a “strong degree of protection” for preferences explicitly for Māori in procurement contracts, but not social procurement that also benefits Māori.

On Kaimahi and Wāhine Māori, the assessment asserts no tangible protection for Māori workers arising from the FTA. Commitments in the Trade and Gender Equality article of the NZ-EU FTA that commitments to cooperate have no resourcing attached to them. Women and wāhine Māori are said to be mainstreamed into a western international trade model that raises its own structural and systemic barriers. The lack of provision for gender fluidity is also noted.

Ngā Toki Whakarururanga suggest “no effective protections for Te Tiriti and Te Taiao” in the Trade and Sustainable Development chapter, nor a role for Māori governance. The Trade and Climate change

outcome is said to provide “nothing new” Chapter 7 on Sustainable Food Systems is also criticised for a focus on cooperation and “no empowerment for Māori or other Indigenous Peoples...”.

The Tiriti assessment suggests a number of ways to bring the Crown into compliance with its Tiriti obligations. As a first step, it urges the Crown to co-sponsor with Nga Toki Whakarururanga the development of an effective Tiriti-based mechanism that brings together the existing Māori entities that are actively engaged in the trade-related space for the purpose of building cooperation and cohesion to represent the interests of ngā Māori katoa, and that will provide for shared decision-making with the Crown, equitable access to resources, and Māori authority over Māori people and Māori Kaupapa

It should be noted that the above represents a summary of these reports, and the full reports, or links to them, can be found on the website of the Ministry of Foreign Affairs and Trade. The views and perspectives expressed will help to inform our implementation of the FTA, other trade negotiations and the Crown’s broader te Tiriti relationship, including in areas in which MFAT can continue to improve its engagement and practices.

#### **10.4 Public Engagement**

In December 2015, MFAT formally sought stakeholder comment on proposed FTA negotiations between New Zealand and the EU (in advance of New Zealand and the EU reaching agreement of the “Scope” of negotiations in 2017). A total of 24 written submissions were received during this process, with the majority of submissions from industry organisations and business councils, individual businesses, and civil society organisations.

The overall tenor of the submissions was supportive of the proposed FTA negotiations. Issues commonly raised include: market access, non-tariff barriers, regulatory coherence, Geographical Indications and investment. Civil society groups raised some concerns around possible human rights issues and public health impacts. A significant number of submissions explicitly mentioned the need for the negotiations to be more transparent and consultative than earlier NZ FTA negotiations.

Over 2017-2018 New Zealand officials held dozens of in-person engagements on the NZ-EU FTA in towns and cities across New Zealand to better understand the views of stakeholders, and Treaty partners, as mandates for the negotiations – which was launched in June 2018 – was being developed.

Over August – October 2018, as part of the Government’s consultation on Trade for All, there was more detailed engagement with the public on the NZ-EU FTA. This included 10 meetings<sup>133</sup> (and 4 hui<sup>134</sup>) in which the NZ-EU FTA was a focus of engagement. Written submissions were also invited and more than 200 were received either direct to MFAT or via an online “have your say” webpage. An

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<sup>133</sup> Auckland, Christchurch, Dunedin, Hamilton, Napier/ Hastings, Nelson, New Plymouth, Palmerston North, Tauranga, Whangarei.

<sup>134</sup> Auckland, Christchurch, Napier/Hastings, Nelson.

independent report on the outcomes of those meetings/ hui and the written submissions was published on the MFAT website<sup>135</sup>.

In the specific area of GIs, the New Zealand Government conducted public consultations at various stages of the negotiations. These included, at the end of 2018, on the EU's list of over 2,000 GIs proposed for protection under the agreement, and in 2022-2023 on amendments to that list. From late 2019 to early 2020, consultations were also held on the EU's proposed legal framework for protection of GIs.

With civil society, there was an intensive set of engagements with a wide array of stakeholders throughout the course of the negotiations. This included the New Zealand Council of Trade Unions (CTU) and Business New Zealand, with consultations also including a wide range of businesses, both exporters and importers. The engagements covered both updates on the negotiation rounds and more bespoke, detailed and confidential trade policy briefings on labour issues in the FTA in particular.

Stakeholder sessions on the NZ-EU FTA were held regularly over the course of negotiations, either jointly with the New Zealand and EU Chief Negotiators, or solely by the New Zealand Chief Negotiator or other officials. As with the broader pattern of engagement, these tended to evolve to public webinars through the period of the Covid-19 pandemic over 2020-2022. While the in-person value proposition was reduced, the webinars were able to reach a wider cross-section of stakeholders to participate in a more cost-effective way. As a result, though, the scope for more detailed discussion was more limited. Nevertheless, each webinar provided the opportunity for Q&A with participants and opportunities for follow up subsequently through the enquiry portal.

Through the course of negotiations, public summaries of each negotiation round were made available on the MFAT website (including in Te Reo for the final year of discussions over 2021/22)<sup>136</sup>. Video-blogs by the New Zealand Chief Negotiator were also made available for most negotiation rounds.

The MFAT NZ-EU FTA webpage<sup>137</sup> provided other information related to the FTA, and contact details for the public to share views at any time. A stand-alone email address ([eu-fta@mfat.govt.nz](mailto:eu-fta@mfat.govt.nz)) was set-up and monitored through the period of negotiations. Questions from the public were answered as these arose.

After negotiations concluded on 30 June 2022, a number of FTA information documents were made available to inform the public about the FTA outcomes. New Zealand and EU officials also uploaded a non-legally verified version of the full FTA text in the week after negotiations were concluded. This was replaced in November 2022 with a complete version of the legally verified text (and schedules). Copies

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<sup>135</sup> <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-Summary-of-Feedback.pdf>

<sup>136</sup> <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-european-union-free-trade-agreement/history-of-negotiations/>

<sup>137</sup> <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-european-union-free-trade-agreement/>

of the report on the economic modelling prepared for the FTA, and the modelling prepared with respect to the EU's GI proposals, were also made available online.

### **10.5 Other Stakeholder Engagement**

Through the course of the negotiation period, and after negotiations concluded, MFAT and supporting agencies undertook extensive engagement with New Zealand exporters and other businesses (including importers) with an interest in New Zealand trade policy and a particular focus on the NZ-EU FTA.

This engagement included regular participation at board meetings and briefings on specific commercial issues to a range of New Zealand businesses and business representatives, including but not limited to: Dairy Companies Association of New Zealand (DCANZ), Beef + Lamb NZ, the Meat Industry Association, Zespri, Onions NZ, Horticulture NZ, Fonterra NZ, the International Business Forum (IBF), the Employers and Manufacturers Association, Export NZ, Seafood New Zealand, Chambers of Commerce and Business Associations, NZ Wine Growers and Apiculture NZ, amongst others. MFAT also engaged with the CTU on analysis of Trade for All impacts in Chapter 7 of this NIA, which identified a number of areas to strengthen the analysis for future assessments (see Section 7.1).

### **10.6 Summary of issues raised**

Engagement with stakeholders and Treaty partners provided a valuable opportunity to hear about the interests and concerns around the NZ-EU FTA from different groups of New Zealanders. Amongst the issues raised were:

Goods market access: a consistent priority voiced in initial public consultations, and throughout the period of negotiations, by business and by Māori, was the importance of enhanced market access for New Zealand products into an EU market that remains highly restricted, in particular for agricultural products. An important objective for the FTA was to ensure that the playing field for New Zealand exporters was levelled with competitors that have already secured an FTA with the EU (e.g. Canada and Chile).

Trade and Sustainable Development: The growing importance of using trade to facilitate and support positive outcomes for sustainable development has been raised frequently by New Zealand stakeholders. This is in line with 'Trade for All' objectives, and a desire by many stakeholders to align FTA outcomes with a growing need to address climate change.

Investor-State Dispute Settlement (ISDS): Many stakeholders continued to express concern<sup>138</sup> about the potential impact of ISDS on New Zealand law and policy making. These concerns were eased when it became clear that ISDS would not be part of the NZ-EU FTA).

Digital trade: Specific concerns related to Māori interests in digital trade and financial services were raised, and with a particular focus on the final WAI2522 report on e-commerce provisions in CPTPP, which was released in November 2021.

Intellectual Property/Geographic Indications: A number of New Zealand business representatives raised concerns about New Zealand agreeing to protect a significant number of new EU geographic indications (GIs) as part of the final FTA outcome. The focus of opposition was on cheeses such as ‘feta’ and ‘parmesan’ which were seen to be generic in New Zealand and/ or have been the subject of commercial use in New Zealand and in other export markets. There was also some concern around certain beverage names, such as ‘port’, that had been used in New Zealand for many years. While in some cases there was an acknowledgement that GIs would need to be part of any final package of outcomes, many businesses sought as long a transition period as possible before they would lose the right to use a particular GI.

Conversely, feedback from some Māori, including findings in Te Taumata’s “Māori Interest and Geographic Indicators” report, was that a new GIs regime could provide important new opportunities to protect and benefit Māori interests.

Trade and Gender: Public consultation revealed a view that more could be done to enhance women’s economic empowerment using FTAs. This feedback aligned with recommendation 22 of the report of the Trade for All Advisory Board, which said that “New Zealand should seek provisions in FTAs that protect the rights of women and advance their economic, social and environmental interests”.

Māori Economic Development: there was consistent and strong feedback from Māori about the desirability of securing a Māori Trade and Economic chapter with the EU to promote Māori commercial interests and opportunities (as had been secured with the UK). This was a priority for New Zealand negotiators but did not look likely up until the final stages of the negotiation. In the final month, officials managed to secure a dedicated chapter to promote Māori trade and economic cooperation which would sit inside the FTA.

UPOV 91 –The importance of the International Convention for the Protection of New Varieties of Plants (UPOV 91) for Māori was emphasised and, in particular, securing an outcome that continued to provide space for the Government to meet its Treaty of Waitangi obligations.

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<sup>138</sup> [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjF0-a-tp7-AhWRkYBHS6EDZEQFnoECCcQAQ&url=https%3A%2F%2Fforms.justice.govt.nz%2Fsearch%2FDocuments%2FWT%2Fwt\\_DOC\\_195473606%2FReport%2520on%2520the%2520CPTPP%2520W.pdf&usg=AOvVaw3VghJxt\\_yCRSiZNdhp8U1h](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjF0-a-tp7-AhWRkYBHS6EDZEQFnoECCcQAQ&url=https%3A%2F%2Fforms.justice.govt.nz%2Fsearch%2FDocuments%2FWT%2Fwt_DOC_195473606%2FReport%2520on%2520the%2520CPTPP%2520W.pdf&usg=AOvVaw3VghJxt_yCRSiZNdhp8U1h)

PHARMAC – stakeholders continued to raise the importance for New Zealand of Pharmac as a system designed to procure pharmaceuticals for use in the New Zealand health system. This had been a particular focus of contention in the Trans Pacific Partnership (TPP) negotiations previously in 2015/16. There was strong opposition to any suggestion of agreeing to the EU request for patent term extensions for pharmaceuticals and veterinary medicines.

## 10.7 Addressing concerns

Goods market access: New Zealand negotiators worked to secure the best possible outcome on goods market access that was available. Overall, the NZ-EU FTA represents a comprehensive package that will create significant new opportunities in the EU for New Zealand exporters. 91% of New Zealand's existing exports will enter the EU duty free from day one of the FTA, including important exports such as wine, seafood, horticultural products, and Mānuka honey, growing to 97% in Year 7.

Some dairy and beef exporters expressed disappointment that the outcomes in the FTA were not as comprehensive in these sectors as desired. On balance, however, the NZ-EU FTA provides positive new opportunities for dairy and red meat exporters, and in some case products will be able to be exported to the EU that have not been possible for years. In several sectors (sheep meat, butter, and cheese) New Zealand's quota access will mean we will be among the top two or three sources of EU imports if filled (alongside the UK for sheep meat and butter, and the UK and Switzerland for cheese) and would account for more than half of the EU's imports (butter: 60% of current EU imports; sheep meat: over 90%).

Trade and Sustainable Development: New Zealand worked hard to secure as comprehensive an outcome as possible on trade and sustainable development, to build on outcomes achieved through the CPTPP and NZ-UK FTA, where possible.

New Zealand pushed for agreement on a number of “firsts” in the NZ-EU FTA that will reflect a strong approach to the use of trade to support sustainable development. These included:

- The first time an EU FTA has made certain environment and labour commitments subject to binding dispute settlement and the possible use of sanctions;
- The first time the EU has agreed to disciplines on fisheries subsidies in an FTA;
- The strongest outcome agreed by the EU on fossil fuel subsidy reform.

The commitments around climate change are also the most progressive outcomes New Zealand has agreed to in an FTA.

Investor-State Dispute Settlement (ISDS): It was agreed with the EU that the NZ-EU FTA would not include ISDS.

Digital trade: negotiations on the digital trade chapter were intense and challenging. In the end a balanced package was agreed that promotes a progressive approach to digital trade that avoids unnecessary barriers (e.g. on data localisation), while also preserving regulatory space.

In responding specifically to the findings contained in the Wai 2522 report, negotiators secured a carve out so that measures taken by New Zealand to protect or promote Māori interests would not be covered by the chapter. This is in addition to other safeguards and exceptions that apply across the agreement, including the exception protecting the ability of the New Zealand government to adopt policies it considers necessary to fulfil its obligations to Māori, including under the Treaty of Waitangi, common to all New Zealand's FTAs.

Intellectual Property/ geographic indications: New Zealand managed to secure an outcome on GIs that protected the ability of existing users to continue to use certain key names (e.g. gruyere and parmesan), while providing to users of other names lengthy transition periods to allow those affected time to adjust (e.g. nine years for 'feta' and 'port' from the date the FTA enters into force).

Trade and Gender: New Zealand was active in pressing for a progressive outcome to promote gender equality and women's economic empowerment, and a dedicated article was agreed in the Trade and Sustainable Development chapter. The article has a focus on cooperation but, unlike with other FTAs, it incorporates some substantive commitments which underline the importance of this area for both the EU and New Zealand. These include commitments relating to non-derogation and effective enforcement (which have been included in NZ FTAs but only in relation to labour and environment outcomes previously), as well as new ground-breaking commitments on the need to effectively implement existing obligations in international treaties related to gender equality or women's rights.

UPOV 91 – New Zealand secured a similar outcome as obtained in the CPTPP with respect to UPOV91, with added clarity through a "for greater certainty" footnote related to the Treaty of Waitangi. This ensures that the government continues to preserve policy space to give effect to changes that may be required regarding plant variety rights in a way that addresses issues for Māori and Treaty of Waitangi obligations.

PHARMAC – the NZ-EU FTA does not agree any changes to PHARMAC's operating model. New Zealand also resisted EU proposals to extend the term of patents for pharmaceuticals, and agricultural medicines which would have increased the cost of medicines for New Zealand.

## **10.8 Inter-departmental consultation**

The NZ-EU FTA was negotiated by an inter-agency team led by MFAT, and primarily comprised officials from MFAT, the Ministry of Business Innovation and Employment (MBIE), the Ministry for Primary Industries (MPI) and the New Zealand Customs Service. Officials from these agencies also led specific chapters.

A wider range of other agencies were consulted throughout the negotiations, including Treasury, the Reserve Bank of New Zealand, Ministry for the Environment, Te Puni Kōkiri, Ministry for Women, Ministry of Education, Ministry of Social Development, Ministry of Justice, New Zealand Trade and Enterprise, Ministry of Transport, Ministry for Culture and Heritage, Pharmac, Department of Conservation, the Commerce Commission, the Ministry of Health, the Inland Revenue Department, Department of Conservation, Department of Statistics, Inland Revenue Department, Maritime New Zealand, Department of Prime Minister and Cabinet, and the Department of Internal Affairs.

## 11 Withdrawal or Denunciation Provision in the Treaty

The NZ-EU FTA can be terminated, as provided for in Article 27.3(2) (Final Provisions chapter), by either Party on the basis of six months' written notice to the other Party of intention to terminate the agreement, unless the Parties agree otherwise.

## 12 Agency Disclosure Statement

This National Interest Analysis has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. It identifies all the substantive legal obligations in the NZ-EU FTA, some of which will require legislative implementation, and analyses the advantages and disadvantages to New Zealand in becoming a Party to the NZ-EU FTA.

It presents the findings of the independent economic modelling of the Agreement's impacts prepared by consultancy firm ImpactECON and contains an assessment of the Agreement's potential environmental, social and cultural impacts, together with analysis of potential effects for Maori, women, and SMEs. The chapter 7 'Trade for All' analysis has been independently peer reviewed, and that analysis has helped to inform the chapter. A separate and independent analysis on the FTA's key outcomes for Māori was also commissioned and reflected in the NIA. Te Taumata and Ngā Toki Whakarururanga also prepared their own separate and assessments of the outcomes for Māori, and a Te Tiriti Assessment.

Implementation of the obligations arising under the NZ-EU FTA would not be expected to impose significant additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.



# MFAT

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