

POST-FTA BRIEFING



The EU is New Zealand's third largest trading partner, making up 11.5% of total trade.



The top exported goods from New Zealand to the EU are meat and edible offal products.



New Zealand's agricultural sector's emissions of methane and nitrous oxide account for around half of its gross GHG emissions.



EU-New Zealand

Basic trade figures

As a geographically isolated, small, and specialised economy, New Zealand has strong interests in global free trade¹. Its largest trade partners include China, then Australia, followed by the EU making up 11.5% of its total trade flows².

The New Zealand economy is heavily dependent on agricultural and resource-based industries, evident in the dominance of meat and edible offal (followed by fruits, and nuts, then dairy) in its exports to the EU.

Political context for negotiations

The EU-New Zealand free trade agreement (FTA), concluded on 30 June 2022, cements the economic and cooperative partnership between the two trade partners³. The negotiations for the FTA build on the parties' existing partnership and like-mindedness, most notably in the sustainability space.

New Zealand is part of several initiatives linked to trade and sustainability such as the Agreement on Climate Change, Trade and Sustainability (ACCTS),

and the Coalition of Trade Ministers on Climate. Paired with the EU's new approach to its Trade and Sustainable Development (TSD) Chapters, the pair came together and negotiated one of the most ambitious trade deals for sustainability.

Summary of sustainability in New Zealand

In 2019, the EU imported close to 720k tonnes of primary materials from New Zealand. The vast majority of imports from New Zealand are agricultural products such as meat, fruits and vegetables.

The relative importance of the agricultural sector to the New Zealand economy means that the sector is also a strong contributor to environmental pressures. The main environmental challenges the New Zealand faces in this context is increased greenhouse gas (GHG) emissions and the loss of endemic species through agricultural land use, the threat of invasive alien species, and fertiliser run-off that puts marine ecosystems at risk.

What are the next steps?

- Articulate the actions or omissions that would be considered a breach of the Paris Agreement.
- Encourage knowledge sharing in sustainable agriculture and food systems.
- Ensure all Parties ratify the fundamental ILO conventions, in particular Conventions 87 and 138 concerning freedom of association and the right to collective bargaining, and the effective abolition of child labour.
- Pursue further progress on developing a plan in the context of the UN Declaration on the Rights for Indigenous Peoples and ensure Māori benefit from trade liberalisation.

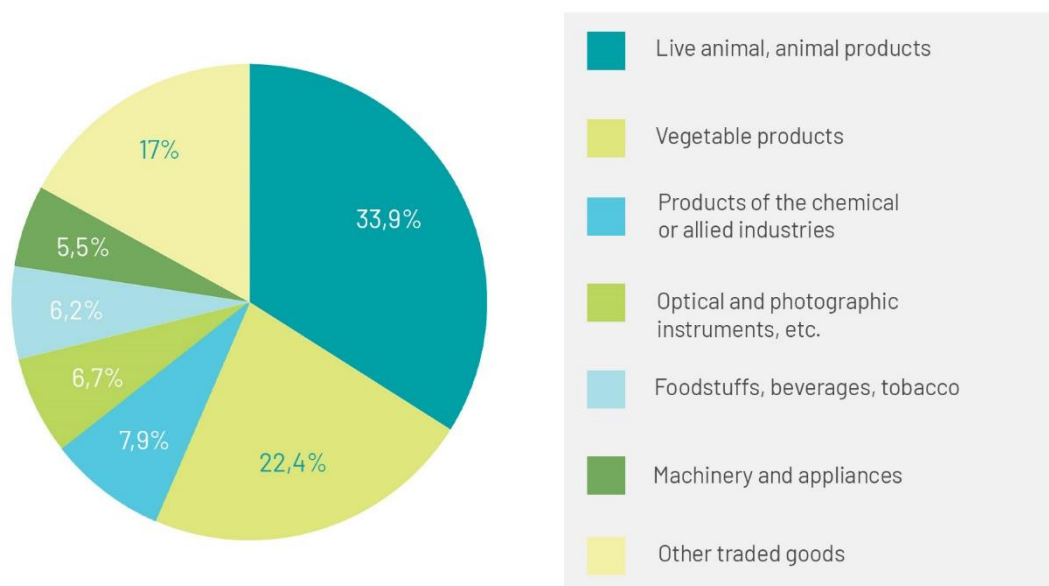
How well does the EU-NZ FTA score on our progress bar?



BUSINESS AS USUAL

New Zealand

GOLD STANDARD

Chart: New Zealand exports to the EU

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Source: [DG Trade, European Commission \(2022\)](#)

Political context of the negotiations

The negotiating directive of the EU-New Zealand FTA builds on the existing Partnership Agreement on Relations and Cooperation (PARC) between the trade partners, in force since 2016⁴. The subsequent FTA negotiations aimed to ambitiously liberalise bilateral trade and investment with a like-minded trade partner regarding sustainability issues.

New Zealand has demonstrated ambitions to tackle sustainability issues as a whole but also those linked to trade flows. One example of New Zealand's environmental efforts on the international stage is in its coordination the Friends of Fossil Fuel Subsidy Reform (FFFSR) in 2010 and using this group as a voice to advocate for reform at international fora such as Asia-Pacific Economic Cooperation (APEC), OECD and UNFCCC, as well as issuing statements at the WTO Ministerial Conferences.

Indeed, New Zealand is among the frontrunners regarding trade and sustainability issues, especially at the WTO. At MC12, New Zealand together with the EU, Ecuador and Kenya launched the Coalition of Trade Ministers on Climate to function as a global forum dedicated to trade, climate, and sustainable development issues⁵. This open coalition is currently made up of more than 50 trade ministers from various WTO members.

Another initiative New Zealand joined forced with the EU on is the Global Alliance on Circular Economy and Resource Efficiency (GACERE), launched in 2020. The GACERE brings together nations and international organisations with an aim to accelerate a just transition to a circular economy, in its conception and implementation⁶.

Finally, together with Costa Rica, Fiji, Iceland, Norway and Switzerland, New Zealand also launched the Agreement on Climate Change, Trade and Sustainability (ACCTS) in 2019, an initiative that has similar reach to the FFSR but expands its scope by advocating for the removal of tariffs on environmental goods and creation of guidelines for a voluntary eco-labelling programme so they are more widely applied and meaningful⁷.

Sustainability challenges in New Zealand

Biodiversity & ecosystems

New Zealand's geographic isolation and evolution of its ecosystem without mammalian predators means that it is home to an especially large proportion of endemic species⁸. British colonisers began to clear land for farming and timber in earnest and introduced hundreds of species of wild and domesticated animals systematically after 1840⁹. Not only did this result in species extinctions which is detrimental to its delicate ecosystems, introducing domestic species also resulted in loss of habitat by grazing that accelerated the existing natural erosion¹⁰.

Today, around 80% of endemic aquatic and terrestrial fauna in New Zealand are considered threatened. Increased trade and production poses threats to biodiversity in two facets: territorial expansion of the agricultural sector and a higher possibility for invasive foreign animal and plant species being introduced into ecosystems¹¹.

Increase in land clearance, conversion or development for the agricultural sector encroaches on the natural habitats of endemic species, damaging existing vegetation and accelerating soil erosion. With current farming practices, New Zealand's main exports of meat and edible offal (especially beef) have significant impacts on biodiversity, i.e., every 100g of beef produced requires 170m² of land¹².

Further, the ruminant meat and dairy industry's adverse impact on biodiversity is not limited to land habitat, but also water pollution which in turn harms aquatic ecosystems (and human health)¹³. This occurs through the by-product of phosphorous and nitrogen laden livestock waste entering water ways and increased run-off into water sources as a result of soil compaction from livestock trampling. The impact of runoff is enhanced by the general attraction of livestock to waterways, where 44% of soil that enters New Zealand rivers come from pastures¹⁴.

GHG Emissions

New Zealand's dependence on agricultural production and exports means that its GHG emissions profile is uniquely dominated by nitrous oxide and biogenic methane, which cover around half of total emissions. Over 95% of methane and nitrous oxide emissions in New Zealand are caused by agricultural sector activity¹⁵. Methane is released into the atmosphere as a by-product of digestion in ruminating animals¹⁶ and has 30 times the impact of carbon dioxide at trapping heat in the atmosphere¹⁷. Nitrogen comes from fertiliser application and as animal urine, and then gets released into the atmosphere as nitrous oxide after a process of nitrification¹⁸.

Though previous market-based attempts to curb methane emissions have been controversial and unsuccessful, the New Zealand government has since made commitments to cut biogenic methane emissions by 24-47% by 2050, by improving emissions measurement and implementing technologies such as lower-methane emitting feed¹⁹. While these mitigation options are being developed, caution must be exercised to minimise the impact of GHG emissions from the agricultural industry.

Lastly, the potential increase of production from liberalised trade can lead to higher GHG emissions, not only through the volume of production but also the creation of additional trade flows, increasing transport emissions, significant due to New Zealand's geographical isolation²⁰. Targeting this area of emissions reduction is fairly new, yet it is on the EU's agenda and should be taken into consideration in the context of this FTA and future EU-New Zealand cooperation at the International Maritime Organisation (IMO)²¹.

Land rights

Māori enterprises own around 30% of all beef and lamb production²², and their share of primary sector assets have grown in the past decade. However, they have been historically deprived of ownership and access to arable land. Unlike many other indigenous populations around the world, the Māori people of Aotearoa New Zealand signed a Treaty of Waitangi in 1840, which outlined their authority over land, forests and fisheries. It also transferred sovereignty to the British Crown, and within 20 years of the signing of the original Treaty of Waitangi, 60% of Māori ownership passed to the government, and now only 5.5% of land is held by Māori collective ownership²³. The land that was "suitable for arable use was targeted by the Crown and private acquisitions" intentionally²⁴.

Today, contention over land usually comes from mining and marine industries, namely hydraulic fracturing and fish farms, which have led to Māori people losing access to rivers, forests and subsistence, as well as culturally significant areas²⁵. The dispossession of Māori land has resulted in long lasting, intergenerational effects on their physical health and spiritual and cultural wellbeing, and a deteriorated "individual and collective identity, which stems from the land"²⁶. Their cultures of collective ownership and wellbeing and care for the environment have been subsequently eroded²⁷.

Yet, interviewed *iwi* (tribes) are shown to be consenting of profit-making or extraction in mining processes given that the environment is prioritised²⁸. This demonstrates that Māori land rights are not only historically entrenched human rights but would facilitate sustainable practices in mining, agriculture and aquaculture industries.

On the international stage, New Zealand did not ratify the UN Declaration on the Rights of Indigenous peoples in 2007²⁹. Since then, New Zealand has moved to support the Declaration, and as it stands the Cabinet has taken steps toward creating a Declaration Plan with Māori engagement³⁰. Domestically, new measures have since been put in place in the last 50 years such as 'social licence to operate' (SLO) practices that are backed by legal instruments, with opportunities for the involvement indigenous and other

community groups in the decision-making process³¹. In practice however, few *iwi* contribute or are mentioned in SLO documents: the mechanism has not been designed by indigenous communities themselves, and is short term as opposed to facilitating long-term partnership, potentially explaining Māori ambivalence and lack of participation³².

Assessment of sustainability-relevant FTA Chapters

On the heels of the European Commission's communication on the new approach to TSD Chapters in June 2022³³, the Commission announced the conclusion of negotiations with New Zealand on their new bilateral trade agreement. Hailed as the most progressive EU FTA to date, the agreement's sustainability ambitions are thanks to the willingness of both Parties to cooperate and include more provisions related to sustainability and trade. The following section assesses the new provisions, articles and thematic chapters introduced in the EU-New Zealand FTA and speculates whether these additions are as significant as they are portrayed.

The TSD Chapter

Forestry

The article on trade and forests in which the Parties recognise the role of trade and investment in sustainable forest management. Comparing this forestry article to the same article featured in the EU-Japan FTA, the EU-New Zealand article is more explicit regarding which actions are to be undertaken by the trade partners. This includes "Parties *shall implement* measures to combat illegal logging [...]" versus EU-Japan's "Parties *shall contribute* to combating illegal logging [...]".

Moreover, the EU-New Zealand article includes an additional provision concerning the role of forests in combating climate change and biodiversity loss. To this extent, Parties "shall promote initiatives addressing deforestation, including deforestation-free supply chains" and are expected to cooperate "to minimise deforestation and forest degradation worldwide". This is in reference to the EU's Deforestation Regulation which is expected to enter into force in June 2023 with an 18-month transition period for businesses and a 24-month for smallholders and SMEs to ensure compliance³⁴.

Biodiversity

The provisions of the biodiversity article have also improved by specifying actions for the Parties with aims to tackling illegal wildlife trade, conservation and sustainable use of the CITES-listed species, prevent the spread of invasive alien species, and promote trade in products derived from the sustainable use of biological resources.

New additions to this biodiversity article include explicit provisions recognising the knowledge and practices of indigenous and/or local communities in the contribution to the conservation and sustainable use of biological diversity, and cooperation on the access to genetic resources, the fair and equitable sharing of benefits from their utilisation consistent with the objectives of the CBD³⁵.

Climate change

The inclusion of an article on trade and climate change in the TSD Chapters was not always the norm. For instance, the EU-Andean agreement – in force since 2013 – was the first FTA to include such an article³⁶. The most notable additions to this article include the more explicit language for the Parties to implement the UNFCCC and the Paris Agreement, including their Nationally Determined Contributions. This commitment is linked to the obligation of the Parties “to refrain from any action or omission which materially defeats the object and purpose of the Paris Agreement.” (See dispute settlement below).

Moreover, the article includes provisions to improve cooperation on trade-related aspects of climate change at the usual fora such as the WTO, the UNFCCC and also the International Civil Aviation Organisation and the International Maritime Organisation. The addition of the latter two organisations is a step in the right direction to begin to tackle transport-related emissions embedded in international trade.

Trade and investment supporting sustainable development

Compared to previous FTAs, the article on trade and investment supporting sustainable development is more concrete on activities and actions to facilitate sustainable development through trade and investment. One example is the annex with a non-exhaustive list of specific environmental goods and services of which the trade will be liberalised. Under services, there is a list of circular economy-related services, so far consisting of repair, recycling and renting services.

Fossil fuel subsidy reform

An article on fossil fuel subsidy reform is a new addition to EU trade agreements. In its first provision, the Parties recall the role fossil fuel subsidies play in the climate crisis and their need to be phased out, referencing the Sustainable Development Goal 12.C on fossil fuel subsidies³⁷, the Glasgow Climate Pact³⁸ and the WTO Ministerial Statement on fossil fuel subsidy reform³⁹. The Parties also recognise that fossil fuel subsidies distort markets, disadvantage renewable and clean energy and are inconsistent with the goals of the Paris Agreement.

In light of the above, the Parties reaffirm their commitment to reforming and progressively reducing fossil fuel subsidies in accordance with national circumstances. Finally, role of the WTO as a recognised platform for discussion on fossil fuel subsidy reform is highlighted. EU and New Zealand shall cooperate and encourage other members to pursue fossil fuel subsidy reform.

Gender Equality

Another new addition to the TSD Chapter is the article on gender equality. The Parties recognise that inclusive trade policies can contribute to both SDG Target 5⁴⁰ and the objective of the WTO MC11 Joint Declaration on Trade and Women's Economic Empowerment. Regarding more concrete actions, the Parties are expected to implement their gender equality-related obligations under both the ILO⁴¹ and UN⁴² conventions mainly in the context of eliminating discrimination against women in economic life and employment.

Furthermore, the Parties commit to cooperate on trade-related aspects of gender equality policies and measures. Some of these activities include promoting awareness of their gender equality laws, regulations and policies, exchanging best practices on data collection, design, implementation, monitoring, evaluation and strengthening of policies and programmes on women's participation in economic activity, in addition to cooperation at multilateral fora such as the WTO and the OECD.

Many of the new provisions integrated in the TSD Articles are largely cooperation-based and are often not obligatory. Yet, there has been a positive evolution in the nature of the content of these provisions which is a step in the right direction.

Dispute settlement

The EU-New Zealand trade agreement is the first of the EU's FTAs to completely remove the article on dispute settlement out of the TSD Chapter. Instead TSD-related disputes are to be handled under the FTA's general dispute settlement Chapter. In a trade dispute regarding market access, sanctions or compensatory measures often materialise during dispute resolution, while TSD violations have never been subject to sanctions.

The EU-New Zealand agreement introduces the possibility of sanctions for actions or omissions which materially defeat the object and purpose of the Paris Agreement, and for the violation of the fundamental ILO conventions.

However, it remains unclear what actions or omissions would be considered at odds with the Paris Agreement, and who would decide on these potential infringements. For example, the Nationally Determined Contribution of New Zealand and the EU have been evaluated as, respectively, "highly insufficient" and "insufficient". In this case, how could the Parties' submission of their Nationally Determined Contributions, deemed "insufficient", not be considered defeating the objectives of the Paris Agreement?⁴³

Yet, considering New Zealand's green ambitions regarding trade and sustainability, it is unlikely that their government would take actions that would materially defeat the objective of the Paris Agreement.

Regarding the fundamental ILO conventions, it is worth noting that New Zealand has yet to ratify fundamental convention 87 related to the freedom of association and right to collective bargaining, and convention 138 pertaining to the effective abolition of child labour⁴⁴. The EU-Korea dispute settlement on the non-ratification of core ILO conventions set a precedent that the labour provisions in the EU-Korea FTA are legally binding and enforceable. The EU-New Zealand states that Parties "shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so." Yet, as of 2021, the ILO judged the prospects of these conventions being ratified as "unlikely"⁴⁵. It remains to be seen if the ratification of the EU-New Zealand FTA will spur action for the ratification of these ILO conventions, however, if insufficient action is taken it would be possible for the EU to pursue dispute settlement.

Newly added chapters

Māori trade and economic cooperation

The EU-New Zealand FTA is the first EU trade agreement to feature a dedicated chapter on indigenous cooperation. For New Zealand, this is the third agreement to include a chapter on Māori interests and cooperation, the first two being the NZ-UK FTA and the economic cooperation agreement with Taiwan.

This Chapter references several declarations and conventions related to indigenous rights including the UN Declaration on the Rights of Indigenous People, however it does not specify that Parties are obligated to ratify or implement the objectives of these frameworks.

Interestingly, this Chapter includes a list of provisions benefitting Māori that have been included across other chapters of the FTA text. The remainder of this Chapter focuses on cooperative activities such as enhancing Māori access to trade and investment opportunities, facilitate cooperation between enterprises on trade in Māori products, and exchanging information on geographical indicators.

The Chapter does not impose any legal or financial obligations on Parties to explore, commence or conclude cooperation activities. Furthermore, the Chapter explicitly states that dispute settlement does not apply its contents.

Sustainable food systems

The new Chapter on sustainable food systems (SFS) outlines the provisions for cooperation to improve and achieve more SFS. Understanding the scope of our food systems and how to make them sustainable means defining and recognising the range of actors and their interlinked activities across all areas of the food system, in addition to the evolving definition of SFS. This includes the production, harvesting, processing,

manufacturing, transport, storage, distribution, sale, consumption and disposal of food products. Article 7.4 lists a range of topics which the Parties could cooperate on.

Yet, more concretely, the provisions under Article 7.6 define the role of the Committee on SFS. The Committee is to establish priorities for cooperation and annual work plans with objectives and milestones to implement those priorities and promote cooperation in multilateral fora. Moreover, the Committee on SFS can establish working groups with expert representatives from each Party, and they are expected to meet within 12 months after the date of entry into force of the EU-New Zealand FTA.

Bilateral cooperation frameworks such as the one established by the SFS Chapter facilitate progress towards the design and implementation of SFS in the trade partner countries with the added benefit that potential trade-related barriers can be discussed in an open manner.

Animal welfare

Following the Chapter on SFS, the Chapter on animal welfare diving deeper into the implications of current farming practices while recognising that animals are sentient beings. Again, this Chapter mainly consists of provisions on cooperation in international fora to promote the development and implementation of animal welfare standards, exchanges on information and experiences, and cooperation on research in the area to develop science-based animal welfare standards related to the treatment animals on the farm, during transport and at slaughter.

To facilitate these cooperative activities, the Chapter establishes a technical working group on animal welfare that reports to and undertakes activities by the Committee on Sanitary and Phytosanitary Measures. Though the animal welfare working group is a full-fledged committee, the area stands to benefit from a working group provided it runs effectively.

Conclusion

The EU-New Zealand FTA performs strongly in the assessment of its environmental credentials. The trade agreement integrates the Parties' compliance to the Paris Agreement and the ILO conventions to the general dispute settlement mechanism, meaning that non-compliance could result in sanctions. Moreover, the contents of the TSD Chapter have significantly improved to be more comprehensive, especially compared to older FTAs.

Yet, cooperative activities in the context of environmental sustainability remain the primary tool to foster sustainable practices, rather than the development of specific targets, actions, and timelines. Furthermore, it remains unclear to what extent the new provisions surrounding the Paris Agreement will be enforceable.

Recommendations

- Articulate what actions or omissions would be considered a material breach to objectives of the Paris Agreement.
- Encourage discussion and knowledge sharing particularly in the area of sustainable agriculture and food systems.
- Follow up on the activities of relevant working groups and committees on the design, implementation and evaluation of sustainability standards, laws and regulations. The Domestic Advisory Groups should be notified on the development and status of these activities.
- Ensure all Parties ratify the fundamental ILO conventions, in particular Conventions 87 and 138 concerning freedom of association and the right to collective bargaining, and the effective abolition of child labour.
- Pursue further progress on the development of a Declaration plan in the context of the UN Declaration on the Rights for Indigenous People and ensuring Māori benefit from trade liberalisation without putting their practices at risk.
- Continue cooperating bilaterally and at international fora on sustainability issues such as the WTO, the UNFCCC, and the GACERE.

The progress bar presented on the front page of this briefing indicates how well a given FTA scores at being a gold standard FTA for sustainability. The criteria for a gold standard FTA builds on previous IEEP research and recommendations, while the rating of the FTAs scoring of each criteria is conducted by the author. For more information, please reach out to the corresponding author at eblot@ieep.eu.

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