

Consultation Paper on the re-development of the 2001 Cabinet Framework for Integrating Labour Standards and Trade Agreements



Have your say

BACKGROUND

Since 2001, Aotearoa New Zealand has had a Trade and Labour Framework to help guide our approach to trade and labour in free trade negotiations. As part of the broader ‘Trade for All’ process to review Aotearoa New Zealand’s trade policy settings and ensure they are fit for the future and deliver for New Zealanders, the Trade for All Advisory Board (TFAAB) Report recommended that the Government redevelop the 2001 Trade and Labour Framework (attached as Annex One) and the 2001 Trade and Environment Framework. The Government agreed to these recommendations.

The TFAAB also asked whether Aotearoa New Zealand legislation to address modern slavery was sufficient given international trends. The Government has recently consulted on a legislative response to modern slavery and worker exploitation, with the call for submissions having closed on the 7th of June 2022. Public consultation on the proposals will inform the shape of final legislation, expected to be introduced this Parliamentary term¹.

Public consultations on the Trade and Environment Framework took place last year. Now we are turning to consultation on the Trade and Labour Framework.

The refreshed Trade and Labour Framework will not replace individual negotiating mandates but will continue to provide a framework approach for negotiators and a starting point for Aotearoa New Zealand positions.

We are seeking your views on a redeveloped Trade and Labour Framework as part of the review process.

¹[Consultation on Modern Slavery and Worker Exploitation](https://www.mbie.govt.nz/consultation-on-modern-slavery-and-worker-exploitation) | Ministry of Business, Innovation & Employment ([mbie.govt.nz](https://www.mbie.govt.nz))

Consultation process and timeframes

We invite your response to the questions raised in this discussion document that focus on specific trade and labour considerations.

You do not have to answer all of the questions we ask. You may also want to tell us about other things that you think will help improve the current framework for integrating labour issues in trade agreements.

You can email your submission directly to tradeforall@mfat.govt.nz.

Please make your submission by 31st October.

Information provided as part of this process will inform the development of a refreshed Framework that is fit for purpose in today's world. The refreshed Framework will provide a guide for Aotearoa New Zealand's negotiators in seeking labour provisions as part of future Free Trade Agreement negotiations.

Thank you for taking the time to have your say.



Ministry of Foreign Affairs and Trade

Ministry of Business, Innovation and Employment

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Context

A globalised world with complex and interconnected supply chains has led to increasing awareness that international trade agreements need to support inclusive and sustainable development. In other words, efforts to grow our economy through increased international connections and trade opportunities should deliver benefits that are shared by all parts of our community, and not come at the expense of our environment or people's well-being.

In this context, what is sometimes described as the 'social dimensions' of sustainable trade includes addressing issues relevant to the role of labour in the production of goods and services. For example, issues around the identification and eradication of forced labour or modern slavery practices is an area that many governments, businesses and other stakeholders are currently grappling with.

In trade policy development, the inclusion of provisions on trade and labour in bilateral and multi-party free trade agreements has become increasingly common. This area also continues to be an emerging topic of discussion in forums such as the International Labour Organization (ILO), the Organisation for Economic Co-operation and Development (OECD) and the World Trade Organisation (WTO)². The issue of labour practices in supply chains has also seen a broader recognition of the need to recognise labour issues in other trade policy areas.

This is why the Government is consulting New Zealanders as part of the process of re-developing the Trade and Labour Framework. The refreshed Framework will replace the existing 2001 Framework (attached as Annex One) and will be used by Aotearoa New Zealand's trade negotiators to shape and inform decisions about what Aotearoa New Zealand seeks to include in its free trade agreements.

²[Free Trade Agreements and Labour Rights \(ilo.org\): Selection of relevant publications \(ilo.org\)](#)

QUESTIONS FOR FEEDBACK

We are seeking your feedback on a series of broad questions, informed by the current Framework and the TFAAB's feedback.

The following questions are intended as a starting point for discussion in redeveloping the Trade and Labour Framework. Any additional comments or points are welcome.

What should be our approach to a Trade and Labour Framework?

The 2001 Trade and Labour Framework provides a high-level, principles-based approach, based on the fundamental labour principles as outlined by the 1998 ILO *Declaration of Fundamental Principles and Rights at Work*.

A principles-based approach allows flexibility by articulating a desired outcome or focus without stipulating the means by which these should be achieved or requiring particular wording. This enables negotiators to exercise discretion in finding mutually acceptable ways to achieve the desired outcome. This approach has seen the development of different forms of trade and labour provisions, and a progressive development and refining of their content. Tailoring trade and labour provisions to each negotiation has enabled New Zealand to secure trade and labour commitments with a wide range of countries, both developed and developing.

Preserving policy space is also an important consideration. The value of the current Framework to date and source of its longevity has been its principles-based, rather than overly prescriptive, approach. In this respect, the Board noted that:

“...Trade agreements have implications for New Zealand's future policy choices on a broad range of topics, including... labour rights... Trade policy should always look to avoid putting future governments in a position where they would need to choose between implementing the policies they were elected on and remaining in international agreements to which the country has previously committed...”³

An alternative approach is to be more prescriptive in terms of specific required outcomes. Further to this, the TFAAB also suggested considering a model chapter approach using recent FTA labour chapters, such as the CPTPP as a basis. A model chapter, or template approach, would represent the most prescriptive end of this continuum.

A more prescriptive approach can offer more transparency in relation to the desired outcome. It has the potential to enable more detailed consultation of a model chapter prior to a negotiation, and could allow for greater consistency of outcomes across FTAs. However, depending on the level of detail, a prescriptive approach can take less account of negotiating partners' differing circumstances and can sometimes be interpreted as a 'take it or leave it' approach. This is particularly relevant for a small state such as Aotearoa New Zealand, whose negotiating power/leverage can often be limited. Balancing a set of template requirements with the need for negotiating flexibility would be an important consideration if a more prescriptive approach was to be taken.

³the Trade for All Advisory Board (TFAAB) Report, paras 4 & 5

What international instruments or principles should be reflected in a Trade and Labour Framework?

The 1998 *ILO Declaration of Fundamental Principles and Rights at Work* is the agreed multilateral framework for fundamental labour principles. Given it represents the multilateral approach to this area, this Declaration commonly underpins the approach to trade and labour policy by many countries and its principles form a fundamental component of New Zealand's approach to trade and labour. The 1998 Declaration was amended at the 2022 International Labour Conference to include an additional principle – “**a safe and healthy working environment**”. The potential impact of this amendment will be considered as part of the process for redeveloping the Trade and Labour Framework⁴.

There are a number of other relevant multilateral instruments which Aotearoa New Zealand supports and could potentially be referenced in a refreshed Framework.

An example is the *ILO Declaration on Social Justice for a Fair Globalisation (2008), as amended in 2022*⁵. This Declaration outlines the objectives by which the ILO seeks to realise the concept of Decent Work. This Declaration also reaffirms the principle that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

There is also the 2019 *ILO Centenary Declaration for the Future of Work*⁶. This Declaration seeks to promote the ILO's vision of a human-centred approach to the future of work by promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work.

A key issue in referencing international instruments is to what extent they can be translated into clear guidance for negotiators. The 1998 ILO Declaration defines a set of labour rights which the current Framework treats as a basis for seeking obligations

that can be reflected in domestic law and not undermined for trade advantage. In contrast, both the 2008 and 2019 ILO Declarations are more wide-ranging and aspirational. The question then is what particular themes or elements should be included as part of the Framework, either as statements of principle to be acknowledged by the parties or specific commitments to be sought through the negotiating process.

What elements or principles in the existing, (2001) Trade and Labour Framework should be included in the redeveloped Trade and Labour Framework?

New Zealand's aims, domestically and internationally, are to develop sound, sustainable policies in trade and labour and ensure that these policies are mutually supportive. Central to our current approach to trade and labour is the recognition that as tradable goods and services are a product of labour, labour conditions should be recognised in our trade relationships. New Zealand's approach is also underpinned by the view that trade agreements are not ends in themselves, but should aim to improve living standards, and promote decent work.

Another principle that frames our approach to trade and labour is that developing countries should not be denied legitimate comparative advantage of lower labour costs. However, this comparative advantage should not be secured by a country deliberately undermining their own labour laws and practices in order to secure a trade advantage. This is often referred to as the ‘non-derogation’ principle.

Similarly, levels of labour protection should not be used to create trade barriers – this is known as the ‘non-discrimination’ principle. An example of this might be if a country had an import requirement that certain products from other countries needed to be produced in accordance with specified labour standards.

⁴The title of this Declaration has been updated to the: “ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022”. For the purposes of this document, it will continue to be referred to as the “1998 ILO Declaration”.

⁵[ILO Declaration on Social Justice for a Fair Globalization, 2008](#)

⁶[wcms_711674.pdf \(ilo.org\)](#)

What new elements or principles should be included in a Trade and Labour Framework?

The TFAAB identified the Fundamental ILO Labour Conventions as an issue for consideration in the development of a refreshed Trade and Labour Framework.

A refreshed Framework could maintain the current focus on the 1998 ILO Declaration and/or include an objective of acknowledging the desirability of working towards ratification of the Fundamental Conventions.

Like Aotearoa New Zealand, many of our trading partners have not ratified all of the Fundamental Conventions. A requirement to work toward ratifying all of the fundamental Conventions would require significant changes to New Zealand's legislative and policy settings. In this context, it is also useful to consider whether free trade agreements should unduly limit the rights of governments to regulate as they see fit, including on labour standards⁷.

Labour market issues such as supply chain management and addressing modern slavery are significant areas of focus in current international dialogue on trade and labour. Modern slavery in supply chains is also an important issue in a domestic context, with a number of governments introducing legislation to address modern slavery - often defined as including forced or compulsory labour, human trafficking, debt bondage, or other slavery and slavery like practices.

Proposals have been developed for legislation designed to address modern slavery across operations and supply chains, both in Aotearoa New Zealand and overseas. The aim of this includes lifting practices so that working with suppliers to address risks of exploitation becomes an ordinary part of doing business.

In light of these developments, the refreshed Framework could include the principle that Aotearoa New Zealand's FTAs should seek to include provisions addressing the issue of modern slavery.

New Zealand's most recent FTA with the United Kingdom includes provisions on promoting the objectives of the ILO Decent Work Agenda, and on adopting and implementing laws and policies on minimum wages, hours of work, and healthy and safe working conditions. There are also provisions on trade and gender, modern slavery and corporate social responsibility. In addition, domestic advisory groups are required to enable the participation and input of worker, employer and civil society groups, and the dispute resolution provisions include both consultative provisions and recourse to the overall dispute settlement provisions of the FTA.

These features demonstrate the progressive evolution of Aotearoa New Zealand's trade and labour provisions since 2001. It is expected that this development and evolution will continue. For example, the involvement of civil society - in particular worker and employer organisations - in how labour disputes are dealt with in FTAs is an important area for ongoing and active discussion.

A redeveloped framework could include new features that appropriately frame New Zealand's current and future approach to trade and labour. An example could include seeking trade and gender outcomes or civil society participation through domestic advisory groups.

⁷[Trade-for-All-report.pdf \(mfat.govt.nz\)](#) para 49

What should New Zealand’s approach to the enforceability of labour commitments be in a Trade and Labour Framework?

When the 2001 Trade and Labour Framework was developed, New Zealand’s approach to trade and labour commitments was to focus on bespoke consultation and dispute settlement mechanisms that were not subject to binding FTA dispute settlement and associated trade remedies or sanctions.

New Zealand’s approach to enforcement has since progressed with the CPTPP and NZ-UK FTA labour chapters subject to the formal dispute settlement provisions set out in the FTA. If a breach is proven, the Party in question may be subject to trade sanctions or penalties. It is important to note however, that both chapters only allow a dispute to be brought if the complaining Party first works through specialised chapter-specific procedures involving initial complaint action, consultations and processes to attempt to resolve the dispute before accessing the main FTA provisions⁸.

The current Trade and Labour Framework states that:

“...dialogue and consensus will be preferred to penalties or sanctions as a way of making progress on labour standards issues. The Government’s aim will be to focus discussion of labour issues and provide a forum for action and progress to be made, by consensus and not coercion, in a bilateral context.”

This is consistent with recent outcomes, as this wording does not preclude the use of dialogue and consensus as initial mechanisms, with the backstop of formal FTA mechanisms potentially involving the use of sanctions or penalties. However, with the progressive development of New Zealand’s FTA outcomes, the current wording of this principle/objective could potentially be updated in the refreshed Framework.

⁸See for example [RE: NZ-UK FTA Legal Scrub \(mfat.govt.nz\)](#) from 23.18 onward.

2001 Cabinet Framework for Integrating Labour Issues into Free Trade Agreements

The Government wants labour standards better integrated with trade agreements, without allowing developed countries to use this as a pretext to keep out exports from developing and other countries.

Objectives of trade and labour policy

Economic and trade partnership agreements are not ends in themselves. The goal they serve is to improve living standards in the countries whose Governments have negotiated them. This Government believes that to reach that goal, economic and trade agreements need to be crafted in a way which promotes decent work. By this it means opportunities for work in which minimum standards are protected and adequate income is generated within an infrastructure which ensures social protection.

The Government also recognises that agreements need to be negotiated in a way that makes them acceptable to developing countries. Developing countries should not be denied legitimate comparative advantage of lower labour costs but this advantage should not be secured by deliberately neglecting fundamental labour principles.

The Government, therefore, supports the International Labour Organisation's overarching objectives of promoting decent work in the global economy and adheres to the principles of the core labour standards as reflected in the ILO's [Declaration of Fundamental Principles and Rights at Work](#).

Linkage between trade agreements and labour policy

The principal contribution that trade agreements can make to the improvement of living standards is to provide a liberal and rules-based trading environment. But trade, whether in goods or services, does not take place in a vacuum. It is the product of people's employment. Trade agreements should be negotiated in a way that acknowledges this and aims to enhance the conditions under which people work.

In both multilateral and bilateral contexts, the Government will take a consistent approach that will reflect its objective of promoting decent work in the global economy. Bilateral contexts provide a more direct opportunity for dialogue and to co-operate on specific initiatives to improve employment outcomes. But setting and monitoring labour standards requires the expertise and legitimacy of a specialist international forum. The Government is always mindful in trade agreements, whether bilateral or multilateral, of the need to avoid anything which could undermine the status of the International Labour Organisation.

The Government believes that the ILO's Fundamental Principles and Rights of Work provide an appropriate basis for the discussion of labour standards within the framework of trade agreements.

These core principles are:

- 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.

Consistent with the approach taken in the ILO, each country would be free to implement those fundamental principles according to its own laws and practices. But as a minimum, the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with and not undermine these core principles, the promotion of decent work, and the promotion and protection of universal human rights standards.

In any provisions agreed in the context of negotiating a bilateral trade or economic agreement, dialogue and consensus will be preferred to penalties or sanctions as a way of making progress on labour standards issues. The Government's aim will be to focus discussion of labour issues, and provide a forum for action and progress to be made, by consensus and not coercion, in a bilateral context. Whether this is done in provisions in the agreements themselves, or in some other manner, is a matter on which the government is willing to show flexibility. It is interested in the content rather than the form.

While the details would need to be determined on a case by case basis, the Government would look to include any or all of the following elements in the framework of any bilateral/plurilateral trade and economic partnership agreements:

- a workplan of initiatives or objectives
- a mechanism for regular reviews of objectives or initiatives, and regular dialogue on how to better promote decent work
- a mechanism for resolution of issues raised by parties or their social partners.



Te Kāwanatanga o Aotearoa
New Zealand Government

