

*EU-New Zealand Free Trade Agreement
Without prejudice*

Disclaimer: *In view of the Commission and New Zealand's respective transparency policies, the Commission and New Zealand are publishing the texts of the Agreement following the announcement of conclusion of the negotiations on 30 June 2022 (Brussels time).*

The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.

The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

CHAPTER X

TECHNICAL BARRIERS TO TRADE

ARTICLE X.1

Objectives

1. The objective of this Chapter is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade, and enhance cooperation between the Parties in matters covered by this chapter.

ARTICLE X.2

Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as “the TBT Agreement”), which may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

- (a) Purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies which are covered by Chapter XX of this Agreement; and
- (b) Sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures which are covered by Chapter XX of this Agreement.

ARTICLE X.3

Relationship with the TBT Agreement

1. Articles 2 through 9 inclusive and Annexes 1 and 3 of the TBT Agreement are incorporated into and made part of this Agreement mutatis mutandis.
2. Terms referred to in this Agreement, shall have the same meaning in this Agreement as they have in the TBT Agreement.

ARTICLE X.4

Technical regulations

1. Further to Article X.9 (Impact Assessment) of Chapter X (Good Regulatory practice and Regulatory cooperation), each Party shall endeavour to carry out an impact assessment of planned technical regulations, being technical regulations that fall within the scope of regulatory measures as defined in Article X.2 of Chapter X (the Good Regulatory Practice and Regulatory Cooperation Chapter), that may have a significant impact on trade, in accordance with its respective rules and procedures. For greater clarity, these obligations shall also apply to conformity assessment procedures that are part of such technical regulations.
2. Where an impact assessment is carried out under paragraph 1 then, further to Article X.8.2(b) of Chapter X (Good Regulatory Practice and Regulatory Cooperation), each Party shall assess the feasible and appropriate regulatory and non-regulatory options to the proposed technical regulation that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement. For greater clarity, these obligations shall also apply to conformity assessment procedures that are part of such technical regulations.

3. In addition to Articles 2.3 and 2.4 of the TBT Agreement, the Parties shall review their technical regulations from time to time. When doing so, the Parties shall, inter alia, give positive consideration to increasing convergence with relevant international standards, taking into account any new development in the relevant international standards and whether previous circumstances that gave rise to divergences from any relevant international standard continue to exist.

4. Without prejudice to Chapter XX (Good Regulatory Practice) when developing major technical regulations which may have a significant effect on trade each Party shall, as required by its respective rules and procedures, allow persons of the Parties to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Each Party shall allow persons of the other Party to participate in such consultation in terms no less favourable than those accorded to its own persons, and make the results of that consultation process public.

ARTICLE X.5

International Standards

1. International standards developed by ISO, IEC, ITU, CODEX ALIMENTARIUS shall be considered to be the relevant international standards within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement provided that they comply with the conditions set out in paragraph 2.

2. A standard developed by other international organisations, could also be considered relevant international standard within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement, provided that

(a) It has been developed by a standardisation body which seeks to establish consensus either:

EU-New Zealand Free Trade Agreement
Without prejudice

- i. among national delegations of the participating WTO Members representing all the national standards bodies in their territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardisation activity relates, or
 - ii. among governmental bodies of participating WTO Members, and,
 - (b) It has been developed in accordance with the TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5, and Annex 3 of the TBT Agreement.
3. If a Party has not used international standards as a basis for its technical regulations and related conformity assessment procedures, a Party shall, on request from the other Party, identify any substantial deviation from the relevant international standard and explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued, and provide the evidence on which this assessment is based where available.

ARTICLE X.6

Standards

1. With a view to harmonising standards on as wide a basis as possible, and in addition to Article 4.1 of the TBT Agreement, the Parties shall encourage its standardising bodies within their territories, as well as the regional standardising bodies of which they or their standardising bodies within their territories are members:
 - (a) To review national and regional standards not based on relevant international standards at regular intervals, aiming to increase convergence with relevant international standards among other considerations;

EU-New Zealand Free Trade Agreement
Without prejudice

- (b) To cooperate with the relevant standardisation bodies of the other Party in international standardisation activities. That cooperation may be undertaken in the international standardisation bodies or at regional level; and
 - (c) To foster bilateral cooperation between them and the standardisation bodies of the other Party.
2. The Parties should exchange information on:
- (a) Their use of standards in support of technical regulations;
 - (b) Each other's standardisation processes, and the extent of use of international standards, regional or sub-regional standards as a base for their national standards.
3. If standards are made mandatory through incorporation or by reference in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 8 of this chapter and in Articles 2 or 5 of the TBT Agreement shall apply to the extent permitted by applicable copyright.

ARTICLE X.7

Conformity assessment

1. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:
- (a) Select conformity assessment procedures proportionate to the risks involved;
 - (b) Accept the use of supplier's declaration of conformity, where appropriate;

(c) If requested by the other Party, explain the rationale for selecting particular conformity assessment procedures for specific products.

2. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures. Such mechanisms may include:

- (a) Supplier's declarations of conformity;
- (b) Recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
- (c) Cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the Parties;
- (d) Mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
- (e) Use of accreditation to qualify conformity assessment bodies;
- (f) Government designation of conformity assessment bodies.

3. If a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a governmental body as specified in paragraph 5, it shall:

EU-New Zealand Free Trade Agreement
Without prejudice

- (a) Give preference to the use of accreditation to qualify conformity assessment bodies;
- (b) Make use of international standards for accreditation and conformity assessment,
- (c) Where practicable, use international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF);
- (d) Encourage the use of functioning international agreements or arrangements for harmonisation and/or facilitation of acceptance of conformity assessment results;
- (e) Ensure that its rules and procedures do not unnecessarily restrict choice for economic operators amongst the conformity assessment bodies designated by the authorities for a particular product or set of products.
- (f) Ensure the activities of its accreditation bodies are consistent with international standards for accreditation and, in that respect, there are no conflicts of interest between accreditation bodies and conformity assessment bodies in relation to their conformance activities, including personnel.
- (g) Ensure that conformity assessment bodies carry out their activities in a manner that prevents conflicts of interests affecting the outcome of the assessment.
- (h) Allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. Nothing in this subparagraph shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself; and,

EU-New Zealand Free Trade Agreement
Without prejudice

(i) Ensure the details, including the scope of the designation, of the bodies that have been designated to perform such conformity assessment are published online.

4. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products be performed by specified government authorities of the Party. In such cases, the Party shall:

(a) Limit the conformity assessment fees to the approximate cost of the services rendered and upon the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited in amount to the approximate cost of services rendered; and

(b) Ensure the conformity assessment fees are available on request, if they are not published.

5. Notwithstanding the provisions of paragraphs [1,3&4], in the fields listed in Annex 1 where the EU accepts Supplier's Declaration of Conformity (SDoC), New Zealand shall, if it considers non-first-party conformity assessment necessary as an assurance that a product conforms with the requirements of New Zealand's technical regulations, accept:

(a) Certificates and test reports issued by conformity assessment bodies that are located in the territory of the EU and that have been accredited by an accreditation body member of the international arrangements for mutual recognition of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF), or their successor, or which is otherwise recognised pursuant to New Zealand technical regulations; or

EU-New Zealand Free Trade Agreement
Without prejudice

In relation to electrical safety and electromagnetic compatibility aspects, certificates and test reports that have been issued by conformity assessment bodies that are located in the territory of the EU and under the IECEE CB Scheme¹.

6. Supplier's Declaration of Conformity (SDoC) is first-party attestation of conformity issued by the manufacturer or other authorised first-party² on their sole responsibility based on the results of an appropriate type of conformity assessment activity and excluding mandatory third party assessment.

7. The Parties shall cooperate in the field of mutual recognition in accordance with the Agreement on Mutual Recognition between the European Community and New Zealand, done at Wellington on 25 June 1998, as amended. The Parties may also decide, in accordance with the relevant provisions of that Agreement, to extend the coverage as regards to the products, the applicable regulatory requirements and the recognised conformity assessment bodies.

ARTICLE X.8

Transparency

1. Each Party shall allow a period of at least 60 days following its transmission to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request to extend the comment period.

¹ The IEC System for Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) Certification Body (CB) Scheme.

² Pursuant to each Party's technical regulations.

EU-New Zealand Free Trade Agreement
Without prejudice

2. The Party shall provide, in case the notified text is not in one of the official WTO languages, a detailed and comprehensive description of the content of the measure in the WTO notification format.

3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:
 - (a) If requested by the other Party, discuss the written comments with the participation of its competent regulatory authority *whenever possible*, at a time when they can be taken into account, and
 - (b) Reply in writing to significant or substantive issues presented in the comments no later than the date of publication of the technical regulation or conformity assessment procedure.

4. Each Party shall make publicly available, preferably by publishing on a website the Party's responses to significant or substantive issues presented in comments received from other WTO Members on its TBT notifications of the proposal for the technical regulation or conformity assessment procedure.

5. Each Party shall, if requested by the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

6. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published online free of charge.

7. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO.

EU-New Zealand Free Trade Agreement
Without prejudice

8. Further to Article 2.12 of the TBT Agreement, the phrase “reasonable interval” shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

9. A Party shall consider a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to extend the period of time between the adoption of the technical regulation and its entry into force, except where the delay would be ineffective in fulfilling the legitimate objectives pursued.

ARTICLE X.9

Marking and labelling

1. The Parties agree that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations contain mandatory marking or labelling, they will observe the relevant principles of Article 2.2 of the TBT Agreement.

2. Where a Party requires mandatory marking or labelling of products:

- (a) The Party shall to the extent possible only require information which is relevant for consumers or users of the product or to indicate the product's conformity with mandatory technical requirements;
- (b) The Party shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of the risk of the products or the risk of the claims made on the labels and markings to human, animal or plant health or life, the environment or national safety;

EU-New Zealand Free Trade Agreement
Without prejudice

- (c) Where the Party requires the use of a unique identification number by economic operators, the Party shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) Provided it is compliant and not misleading, contradictory or confusing in relation to the importing country's regulatory requirements, the Party shall permit the following:
- (i) information in other languages in addition to the language required in the importing Party of the goods;
 - (ii) internationally-accepted nomenclatures, pictograms, symbols or graphics;
 - (iii) additional information to that required in the importing Party of the goods;
- (e) The Party shall accept that labelling, including supplementary labelling or corrections to labelling, take place in the territory of the importing Party, in accordance with its relevant regulations and procedures as an alternative to labelling in the exporting Party, unless such labelling is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement.
- (f) The Party shall in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.
3. Paragraph 2 of this Article shall not apply to marking or labelling of medicinal products and medical devices as defined by the legislation of the respective Parties.

ARTICLE X.X

Cooperation on market surveillance, safety and compliance of non-food products

1. The Parties recognise the importance of cooperation on market surveillance, safety and compliance of non-food products for the facilitation of trade and for the protection of consumers and other users, and of building mutual trust based on shared information.
2. The Parties shall ensure:
 - (a) Impartial and independent conduct of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest³; and
 - (b) The absence of any interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.
3. The Parties may cooperate and exchange information in the area of market surveillance, safety and compliance of non-food products, in particular with respect to the following:
 - (a) Market surveillance and enforcement activities and measures;
 - (b) Risk assessment methods and product testing;
 - (c) Coordinated product recalls or other similar actions;
 - (d) Scientific, technical, and regulatory matters, aiming to improve non-food product safety and compliance;

³ Parties shall ensure that safeguards are put in place to ensure the impartiality and absence of conflict of interest if a single entity is entrusted with both responsibilities.

EU-New Zealand Free Trade Agreement
Without prejudice

(e) Emerging issues of significant health and safety relevance;

(f) Standardisation-related activities and

(g) Exchange of officials.

4. The European Union may provide New Zealand with selected information from its RAPEX alert system, or its successor, with respect to consumer products as referred to in Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety or its successor, and New Zealand may provide the European Union with selected information on the safety of non-food consumer products and on preventive, restrictive and corrective measures taken, with respect to consumer products as referred to in the relevant legislation of New Zealand. The information exchange may take the form of:

(a) Ad-hoc exchange, in duly justified cases; or

(b) Systematic exchange, based on an arrangement established in Annex [XX].

5. Parties may establish in Annex [YY] an arrangement on the regular exchange of information, including by electronic means, on measures taken on non-compliant non-food products, other than those covered by paragraph 4.

6. The Parties shall use the information obtained pursuant to paragraphs 3, 4 and 5 for the sole purpose of protection of consumers, health, safety or the environment.

7. Each Party shall treat the information obtained pursuant to paragraphs 3, 4 and 5 as confidential.

8. The arrangements set out in paragraphs 4 and 5 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data

EU-New Zealand Free Trade Agreement
Without prejudice

protection rules. The Joint Committee shall have the power to adopt decisions in order to determine or amend arrangements set out in Annexes [XX] and [YY].

9. For the purposes of this Article, “Market surveillance” means activities conducted and measures taken by public authorities including those taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address compliance or safety of products with the requirements set out in its laws and regulations.

ARTICLE X.10

Technical discussions and consultations

1. Each Party may request to discuss any draft or proposed technical regulation or conformity assessment procedure of the other Party that the Party considers might significantly adversely affect trade between the Parties. The request shall be made in writing and identify:
 - (a) The measure at issue;
 - (b) The provisions of this Chapter to which the concerns relate; and
 - (c) The reasons for the request, including a description of the requesting Party’s concerns regarding the measure.
2. A Party shall deliver its request to the Chapter Coordinator of the other Party designated pursuant to Article 11.
3. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or via video or teleconference, within 60 days of the date of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the

EU-New Zealand Free Trade Agreement
Without prejudice

matter is urgent, it may request that any meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

4. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the Chapter Coordinator of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

5. For greater certainty, this Article is without prejudice to a Party's rights and obligations under Chapter XX (Dispute Settlement).

ARTICLE X.11

TBT Chapter coordinator

1. Each Party shall nominate a TBT Chapter coordinator and inform the other Party if it changes. The TBT Chapter coordinators shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties in all TBT matters.

2. The functions of the Chapter coordinators shall include:

- (a) Monitoring the implementation and administration of this Chapter, promptly addressing any issue that either Party raises related to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures, and upon either Party's request, consulting on any matter arising under this Chapter;
- (a) Enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;
arranging the establishment of regulatory dialogues as appropriate in accordance with Article 10;
- (c) Arranging the establishment of working groups, where relevant;

- (d) Exchanging information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures.
3. The Chapter coordinators shall communicate with one another by any agreed method that is appropriate to carry out their functions.

ARTICLE X.12

Cooperation

1. The Parties may cooperate in respect of particular areas of mutual interest, with a view to eliminating, reducing or avoiding the creation of technical barriers to trade, and facilitating trade between the Parties, including via digital solutions.
2. The Parties may cooperate and exchange information on any issues relevant to or for Annex 1, including its implementation.

ARTICLE X.XX

Prohibition of animal testing

1. Each Party shall continue to actively support and promote the research, development, validation and regulatory acceptance of alternative methods to animal testing.
2. Each Party shall accept, for the purpose of the safety assessment of products falling under the definition of a cosmetic product in their jurisdiction, test results generated from validated alternatives to animal testing.

EU-New Zealand Free Trade Agreement
Without prejudice

3. No Party shall require that a product falling under the definition of a cosmetic product in their jurisdiction be tested on animals to determine the safety of that product

1. Agreed fields:
 - (a) safety aspects of electrical and electronic equipment as defined in paragraph 2;
 - (b) safety aspects of machinery as defined in paragraph 3;
 - (c) electromagnetic compatibility of equipment as defined in paragraph 4;
 - (d) energy efficiency including eco-design requirements as defined in paragraph 5; and
 - (e) restriction of the use of certain hazardous substances in electrical and electronic equipment.

2. For the purpose of this Annex 'safety aspects of electrical and electronic equipment' means the safety aspects of equipment other than machinery which is dependent on electric currents in order to work properly and equipment for the generation, transfer and measurement of such currents and which is designed for use with a voltage rating of between 50 and 1000 V for alternating current and between 75 and 1500 V for direct current, as well as equipment which intentionally emits or receives electromagnetic waves of frequencies lower than 3000 GHz with the purpose of radio communication or radiodetermination, with the exception, among others, of:
 - (a) Equipment for use in an explosive atmosphere;
 - (b) Equipment for use for radiology or medical purposes;
 - (c) Electrical parts for goods and passenger lifts;
 - (d) Radio equipment used by radio amateurs;

EU-New Zealand Free Trade Agreement
Without prejudice

- (e) Electricity meters;

- (f) Plugs and socket outlets for domestic use;

- (g) Electric fence controllers;

- (h) Toys;

- (i) Custom built evaluation kits destined for professionals to be used solely at research and development facilities for such purposes;

- (j) Construction products for permanent incorporation in buildings or civil engineering works and the performance of which has an effect on the performance of the building or civil engineering works, such as cables, fire alarms, electric doors.

3. For the purpose of this Annex 'safety aspects of machinery' means the safety aspects of an assembly consisting of at least one moving part, powered by a drive system using one or more sources of energy such as thermal, electric, pneumatic, hydraulic or mechanical energy, arranged and controlled so that they function as an integral whole, with the exception of high risk machinery, as defined by each Party.

4. For the purpose of this Annex 'electromagnetic compatibility of equipment' means the electromagnetic compatibility (disturbance and immunity) of equipment which is dependent on electric currents or electromagnetic fields in order to work properly and equipment for the generation, transfer and measurement of such currents, with the exception of:

- (a) equipment for use in an explosive atmosphere;

- (b) equipment for use for radiology or medical purposes;

- (c) electrical parts for goods and passenger lifts;

EU-New Zealand Free Trade Agreement
Without prejudice

- (d) radio equipment used by radio amateurs;
- (e) measuring instruments;
- (f) non-automatic weighing instruments;
- (g) inherently benign equipment;
- (h) custom built evaluation kits destined for professionals to be used solely at research and development facilities for such purposes.

5. For the purpose of this Annex “energy efficiency” means the ratio of output of performance, service, goods or energy to input of energy of a product with an impact on energy consumption during use, and in light of the efficient allocation of resources.

6. This Annex shall not cover whole aircrafts, vessels, railways, vehicles (including internal combustion engine (ICE) and electric), as well as specialised maritime, railway, aviation and vehicle (including ICE and electric) equipment. This Annex shall include Electric Vehicle (EV) charging equipment, with the exception of on-board chargers.

7. At the request of either Party the [Joint Committee or appropriate institutional mechanism] shall review, based on the agreed recommendation of the Chapter Coordinators, the list of fields in this Annex.

8. In the fields listed in the Annex, either Party may introduce requirements for the mandatory third party testing or certification of the product areas referred to in this Annex, provided that such requirements are justified on grounds of legitimate objectives and are proportionate to the purpose of giving the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks that non-conformity would create.

EU-New Zealand Free Trade Agreement
Without prejudice

9. A Party proposing to introduce the conformity assessment procedures referred to in paragraph 9 shall notify the other Party at an early stage and shall take the comments of the other Party into account in devising any such conformity assessment procedures.