

New Zealand - European Union Free Trade Agreement

Outline of ambition and scope of future negotiations

In a joint statement in October 2015, New Zealand and European Union (EU) leaders confirmed their commitment to start the process towards a deep, comprehensive, and high quality Free Trade Agreement (FTA). The EU and New Zealand are close partners who share core values, common interests and a growing and mutually beneficial trade and economic relationship. Establishing a modern framework for stronger economic connections through an FTA (the Agreement) will support the continued growth and development of this relationship. New Zealand and the EU also share a vision of driving economic progress in a way that protects the environment, tackling issues such as climate change and contributing to better living conditions.

To this end, joint scoping discussions were launched at the start of 2016 and were completed in March 2017. Both sides expect to be in a position to launch formal negotiations in 2017. The scoping discussions covered, at a high level, the shared ambition for some key issues often addressed in trade negotiations. These issues will be discussed in specific detail in formal negotiations.

This document describes the outcomes of these discussions and includes a Question and Answer section which provides some more detailed information on certain issues. This information is intended to provide a basis for engagement with the New Zealand public in the early stages of EU-New Zealand FTA negotiations, in line with the government's commitment to increased transparency and engagement as part of the recently released Trade Agenda 2030.

Objectives and principles

Scoping discussions with the EU led to agreement on a number of common objectives and guiding principles for the negotiations and the Agreement, including to:

- Enhance market access for goods, services, investment, and public procurement;
- Eliminate, reduce, or prevent unnecessary non-tariff barriers;
- Facilitate and promote the participation of small and medium-sized enterprises in trade;
- Ensure an adequate and effective level of protection of intellectual property rights;
- Contribute to sustainable development;

- Consider the principles of simplicity and transparency as well as approaches that minimise transaction costs for businesses;
- Reaffirm the flexibility of both sides to regulate to achieve public policy objectives;
- Reaffirm a commitment to promoting transparency and engaging in an active dialogue with stakeholders and the wider public as part of the negotiation.

Trade in Goods

Both sides agreed that all products will be part of the negotiations. The Agreement should aim at full tariff liberalisation and provide for the elimination and prohibition of export duties. It was agreed that most tariffs should be eliminated when the Agreement enters into force, with any phasing out of tariffs to occur over a relatively short period.

In recognition of possible sensitivities (such as, in the case of the EU, for some agricultural goods) it was agreed that consideration should be given to these sensitivities during negotiations using a range of possible methods.

Rules of Origin

Both sides agreed that rules of origin in the Agreement should be trade facilitating and should use the principles of simplicity, transparency and cost minimisation.

Customs and Trade Facilitation

Both sides agreed that the Agreement should provide a predictable, consistent, and transparent environment for trade, including possible ways to modernise and simplify relevant rules, requirements, and procedures related to import, export and transit. A work plan on customs regulatory cooperation will also be discussed in formal negotiations.

Sanitary and Phytosanitary

New Zealand and the EU agreed that the Agreement should aim at facilitating access to each other's markets while protecting human, animal or plant life or health, and will include mutually agreed provisions to this effect.

The importance of preserving the effective functioning of the existing Agreement between the European Community and New Zealand on sanitary measures applicable to trade in live animals and animal products (also known as the European Union – New Zealand Veterinary Agreement) was emphasised.

Animal Welfare

Given the high standards of animal welfare to which both sides adhere, the EU and New Zealand will look to continue cooperation and exchanges on these issues.

Technical Barriers to Trade

It was agreed that negotiations in this area should aim to promote good regulatory practices, facilitate trade by enhancing and promoting appropriate regulatory cooperation activities, seek greater compatibility of technical regulations, and explore ways to give positive consideration to acceptance of the equivalence of each other's technical regulations.

Non-Tariff Barriers

Both sides discussed the possibility of including specific disciplines to promote trade and investment in specific sectors of interest.

Trade Remedies/Trade Defence Instruments

It was agreed that the FTA should reaffirm World Trade Organisation disciplines in the area of anti-dumping, subsidies, and safeguards rules as well as explore possibilities for better rules in areas of common interest (for example disclosure, transparency, consultation, and the inclusion of a public interest test).

Trade in Services and Investment

New Zealand and the EU will aim for an Agreement that promotes high quality, commercially meaningful outcomes in services and investment, while also recognising that there are sensitivities in certain sectors. The detail of any specific obligations (for example domestic regulation, protections, and reservations) will be discussed in formal negotiations. In this specific context, both the EU and New Zealand reaffirmed the importance of governments' right to regulate for public policy purposes, including in relation to public services.

Movement of Business Persons

Both sides agreed that there is value in streamlining and facilitating access and procedures for the temporary movement of people for business reasons.

Digital Economy

Both sides agreed to examine the range of areas in which trade commitments can enhance and support the digital economy, while respecting important public policy considerations. It was agreed that the Agreement should consider areas in which new trade disciplines might be needed to address specific challenges arising in the digital economy.

Resolution of investment disputes

New Zealand and the EU agreed that the Agreement will also include a mechanism for resolution of disputes between investors and states, but also agreed that the detail of this mechanism will be an issue for negotiations, taking into account recent policy developments in this area.

Capital Movements and Payments

In negotiations, both sides will aim for a high degree of liberalisation of capital movements, payments, and transfers - in particular those associated with the trade and investment flows covered under the Agreement – but incorporating well-established exceptional circumstances.

Intellectual Property Rights

Both sides agreed to include an Intellectual Property chapter in the agreement which should aim at ensuring an adequate and effective level of protection and enforcement of all forms of Intellectual Property Rights. Provisions in this chapter should be mutually beneficial and take into account the further objectives of encouraging innovation and creativity, supporting trade in Intellectual Property Rights intensive goods and services between the two sides, and contributing to a more sustainable and inclusive economy for the parties.

Both sides also agreed to explore liability of Intermediary Service Providers, enhanced border enforcement measures, and issues related to genetic resources, traditional knowledge, and folklore during negotiations.

New Zealand already protects certain Geographical Indications (GIs) through a number of mechanisms, including our Trade Marks Act and our consumer protection laws. When the Geographical Indications (Wines and Spirits) Act comes into force in New Zealand this year, it will provide a further mechanism for protection of wine and spirits GIs in New Zealand. The EU has a particular framework for recognising and protecting GIs that is different, in many ways, to how New Zealand currently protects them. In scoping discussions, both sides agreed that negotiations should aim at providing a broader framework for recognition and protection of GIs beyond wines and spirits. However, any agreement on providing such a framework will be subject to a satisfactory overall outcome in the Agreement for New Zealand.

Public Procurement

Both sides agreed that the Agreement should aim to build on the World Trade Organisation Government Procurement Agreement and improve access to public

procurement markets at all levels of government, while taking account of any sensitivities. Negotiations in this area will also consider covering commitments for public-private partnerships.

Trade and Competition

Both sides agreed that there should be provisions in the Agreement relating to enforcement of competition law, principles of transparency, due process, procedural fairness, and non-discrimination, as well as provisions directed at merger control and anticompetitive business conduct. On the issue of subsidies, it was agreed that the aim should be to incorporate rules to restrict and discipline certain types of subsidies of concern, such as environmentally harmful subsidies. It was agreed that any rules in this area would not inhibit the rights of governments to provide public services.

State owned Enterprises, designated monopolies and state trading enterprises

The EU and New Zealand reaffirmed existing World Trade Organisation rights and obligations with respect to such enterprises, including the recent Nairobi export subsidy commitments affecting state trading enterprises. Negotiations will consider further possible rules in these areas while respecting the specific roles that such enterprises play.

Consumer Protection

Both sides agreed that the negotiations should explore incorporation of suitable provisions in the Agreement to support effective consumer protection, including in a digital environment.

Small and Medium-sized Enterprises

In formal negotiations, both sides will examine the full range of issues of importance to Small and Medium-sized Enterprises with the aim of ensuring that these types of businesses have full access to the benefits of the Agreement. The EU and New Zealand will look at specific provisions for inclusion in a dedicated Small and Medium-sized Enterprises chapter aimed at information sharing and effective implementation of the agreement with respect to Small and Medium-sized Enterprises

Energy and Raw Materials

Both sides agreed that negotiations would cover specific issues relating to energy and raw materials and would consider including dedicated provisions applying to trade and investment in energy and raw materials.

Trade and Sustainable Development

New Zealand and the EU will aim to achieve an ambitious outcome on trade and sustainable development issues. This includes the issues of trade and environment and trade and labour as well as in key areas of cooperation such as climate change. Trade, investment, and sustainable development can, and should, be mutually supportive, and this will be a guiding principle in negotiations.

The two sides agreed that the FTA should aim to promote a greater contribution of trade and investment to sustainable development in areas such as climate-friendly products and technologies, voluntary sustainability assurance schemes and corporate social responsibility.

During scoping discussions, both sides agreed that the Agreement will cover effective implementation of relevant multilateral environment agreements and International Labour Organisation conventions that they are a party to. The Agreement will also include ways to promote sustainable development as well as commitments to support the conservation and sustainable management of natural resources, forestry, fisheries, and freshwater, marine and atmosphere domains (which includes climate change).

It was also agreed that the two sides will aim to include provisions to support international instruments and practices that promote trade in legally obtained and sustainably managed natural resources.

Good Regulatory Practice and Regulatory Cooperation

New Zealand and the EU recognise the importance of good regulatory practice and regulatory cooperation, while fully recognising the right of governments to regulate to achieve public policy objectives. Both sides agreed to consider provisions on regulatory dialogue and different options for cooperation in specific areas of mutual interest.

Transparency and Anti-Corruption Issues

Recognising that transparency in public decision-making is a key issue for both sides, negotiations will examine provisions on transparency underpinned by the promotion of quality regulation and good administrative practices. The EU and New Zealand will also look at provisions targeting and discouraging corruption affecting trade and investment.

Treaty of Waitangi

Both sides agreed to include a provision ensuring the New Zealand government will be able to fulfil its obligations under the Treaty of Waitangi. Such a Treaty of Waitangi clause has been used in all of New Zealand's recent FTAs.

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Questions and Answers

What happens next in the EU-New Zealand FTA process?

Scoping discussions are a formal EU requirement in preparation for all of their FTAs. Now that New Zealand and the EU have completed these discussions, the next step is to (independently) develop negotiating mandates.

In the coming weeks New Zealand officials will seek a negotiating mandate from Cabinet. As part of this process there will be public consultation opportunities so that New Zealanders' views can be considered (See the below Question and Answer for more details).

At the same time the European Commission will also develop a set of negotiating directives and complete an internal impact assessment on the proposed FTA for approval by the Council of the EU.

Once both sides' initial mandates have been agreed, formal negotiations can begin. It is expected that this will occur later in 2017.

What public engagement has been done so far for the EU-New Zealand FTA?

The New Zealand government is committed to engage effectively with stakeholders, with Māori and with the wider public at all stages of the FTA process in line with our commitments as part of Trade Agenda 2030. In 2016, a public submissions process was run on the Ministry of Foreign Affairs and Trade's website before the scoping discussions began (received responses are [available here](#)). We have also signalled our openness to receiving any other relevant input on an ongoing basis ([details here](#)). If you are interested in any of the issues outlined in this document or any other trade issues related to the EU, the New Zealand government welcomes your input at any stage.

What public engagement is planned?

During the mandate-seeking process, domestic public engagement on the EU-New Zealand FTA is critical to ensure all New Zealanders have the opportunity to register their views and engage on issues of interest. The primary objective of the engagement is to ensure that the public has a fuller understanding of the issues under negotiation, as well as what is involved in the FTA process negotiation. The provision of this document is the first part of this process.

As a next step, a range of general and specific engagement opportunities are planned for the general public, Māori, and exporters in the coming months. A key challenge for past engagement has been determining how to effectively and efficiently balance engagement with different groups with diverse interests (for example, different industry sectors, Māori, and the wider public). In the past, “catch all” engagement has not always been effective due to the wide range of specific issues of interest to these disparate groups. This is why various engagement opportunities have been planned for the coming months. Please check the Ministry of Foreign Affairs and Trade’s website ([here](#)) or the Ministry’s twitter account for details of these opportunities.

Both sides agreed to consider sensitivities regarding trade in certain agricultural goods, what does this mean?

New Zealand’s approach in all trade agreements is to seek comprehensive tariff liberalisation for all goods. The EU’s well documented sensitivities with respect to certain agricultural goods were, however, made clear by the EU during scoping discussions. The Agreement may therefore include a range of measures that might be used to address these types of sensitivities, including long phase-out periods for tariffs or tariff rate quotas. Any agreement, regardless of the measures used, must achieve meaningful commercial outcomes for New Zealand.

In relation to Sanitary and Phytosanitary issues, both sides agreed to explore ways to facilitate access to each other’s markets. What might this entail?

The EU and New Zealand are generally likeminded on Sanitary and Phytosanitary issues and have a strong basis to work from on SPS issues, particularly through the existing EU-New Zealand Veterinary Agreement. A range of possibilities were specifically discussed to build on this strong base, including harmonisation of Sanitary and Phytosanitary measures, creating appropriate mechanisms to address specific trade concerns related to Sanitary and Phytosanitary measures, establishing strong and comprehensive provisions on transparency and exchange of information on Sanitary and Phytosanitary measures, facilitating trade through regulatory cooperation, and cooperation on other technical matters (for example antimicrobial resistance). Any agreed provisions would need to continue to safeguard respective levels of protection for human, animal, or plant life.

Both sides discussed the possibility of including specific disciplines addressing non-tariff barriers in certain sectors, what sectors were discussed?

Possible sectors that were discussed in this context included automotive, green technology, organic farming, pharmaceuticals (building on the existing EU and New

Zealand Mutual Recognition Arrangement) and wines and spirits. Additional sectors may also be considered during negotiations.

Will the EU-New Zealand FTA include Investor-State Dispute Settlement?

The EU and New Zealand agreed in the scoping discussions that the EU-New Zealand FTA will include an Investor-State Dispute Settlement mechanism; however the two sides have not agreed any specifics for this mechanism.

As with New Zealand's previous FTA negotiations, the objective in discussions on an ISDS mechanism will be to carefully balance the need to protect New Zealand investor's interests abroad with the need to safeguard the government's right to regulate for legitimate public policy purposes. All of New Zealand's existing FTAs that include ISDS provisions also include a range of safeguards that ensure, as far as possible, the government can regulate for legitimate public policy purposes such as for public health or environmental reasons.

Will New Zealand agree to the EU's model for an investment court under the EU-New Zealand FTA?

The EU has developed a proposal for an investment court system that will likely be introduced by the EU into negotiations. New Zealand and the EU have yet to agree any specifics for Investor-State Dispute Settlement related provisions.

Does New Zealand support the EU's proposal for a multilateral investment court system?

We are interested to learn more about the EU's evolving approach to Investor State Dispute Settlement. It is likely that the EU's proposal for a multilateral investment court system will be introduced for consideration by the EU as part of formal EU-New Zealand FTA negotiations. Details of the EU's multilateral investment court system proposal can be found on its website [here](#).

Will the EU-New Zealand FTA infringe on the government's right to regulate?

New Zealand will not agree to an outcome that would prevent the government from regulating for legitimate public policy purposes, such as for public health or environmental reasons.

Will the EU-New Zealand FTA require New Zealand to change the overseas investment screening regime?

Specific issues relating to New Zealand's overseas investment regime were not raised during scoping discussions. The nature of any commitments in this area will be determined in negotiations.

What was discussed in relation to digital economy issues?

Various issues were discussed on this topic including the security, confidentiality, reliability, and accessibility of data and Information Technology networks, as well as the protection of personal information. Negotiations may also examine ways that confidence in digital trade can be enhanced and how practical cooperation might support the growth and development of each side's involving integration in the international digital economy.

Why was a discussed objective of the intellectual property chapter to ensure an adequate and effective level of protection and enforcement of intellectual property rights? Doesn't New Zealand already have this?

Ensuring adequate and effective protection and enforcement of intellectual property in New Zealand and the EU was discussed. There has not been any discussion of the current status of protection and enforcement in the EU or New Zealand. It is expected that this topic will be discussed as part of negotiations.

Will the proposed EU-New Zealand FTA intellectual property chapter restrict New Zealand's policy space on innovation and intellectual property protection?

New Zealand recognises the importance of a balanced intellectual property framework in promoting innovation, creativity and economic growth. This principle was agreed with the EU in scoping discussions and informs New Zealand's approach to negotiations on intellectual property in FTAs.

Why is Intermediary Service Provider liability and enhancement of border enforcement specifically mentioned? What is the EU seeking on these issues?

These are two issues the EU considers should be dealt with in the Agreement. New Zealand agreed to explore these issues during negotiations. Nothing substantive has been discussed or agreed during scoping discussions. New Zealand has raised its own interest in exploring during negotiations, issues like genetic resources, traditional knowledge and folklore.

What is New Zealand seeking to achieve through discussing genetic resources, traditional knowledge and folklore (GRTK)?

As in all our recent FTA negotiations, New Zealand will seek to ensure that we retain the policy space for a domestic conversation to take place on this issue. There may be other GRTK issues that we may wish to discuss during negotiations and New Zealand will be considering what those might be in consultation with Māori.

Will the proposed EU-New Zealand FTA include provisions that could cause the cost of medicines to go up?

The New Zealand government will strongly resist proposals that would increase the prices New Zealanders pay for medicines.

Will the proposed EU-New Zealand FTA require the term of copyright in New Zealand to be extended or will it require New Zealand to put in place a technological protection measures regime or patent term extension regime?

These specific issues were not covered during the scoping discussions. If you are interested in these issues there will be consultation opportunities where you can have your views heard (see the specific Question and Answer above).

Will New Zealand have to implement the EU's existing Geographical Indications (GIs) regime?

We agreed in scoping discussions that the Agreement should aim at including a broader framework for the recognition and protection of geographical indications if there is a satisfactory overall outcome in the Agreement for New Zealand. The detail of any such framework has been left for the negotiations. We will be considering what is in New Zealand's overall interests when negotiating this and other chapters.

Does this mean New Zealand will be protecting EU Geographical Indications?

New Zealand already protects certain GIs through a number of mechanisms including our Trade Marks Act and our consumer protection laws. When the Geographical Indications (Wines and Spirits) Act comes into force in New Zealand later this year, it will provide a further mechanism for protection of wine and spirits GIs in New Zealand. The EU has a framework for protecting GIs that is different, in many ways, to New Zealand's system. New Zealand agreed in scoping discussions to aim at providing a broader GIs framework, subject to a satisfactory overall outcome in the Agreement for New Zealand.

The summary of the public procurement discussion mentions the Government Procurement Agreement; what is this and what might "building on" it mean?

The World Trade Organisation Agreement on Government Procurement (GPA) establishes open, fair, and transparent conditions of competition in over 40 Government Procurement markets around the world. As a signatory to the GPA, New Zealand companies are able to compete on equal terms with their international counterparts for government procurement contracts to provide a broad range of goods and services. "Building on" this might mean expanding some types of government procurement that are covered under the GPA; however, any specifics would be an issue for negotiations.

Will an EU-New Zealand FTA prevent the government from buying from New Zealand companies?

New Zealand companies will continue to be able to bid for New Zealand government contracts, which are awarded on the basis of best value for money. In addition, New Zealand businesses are likely to have better access to bid for government contracts in the EU.

What specific measures were discussed for making the Agreement more accessible and useful for Small and Medium-sized Enterprises?

New Zealand and the EU discussed the types of provisions that could be developed to assist Small and Medium-sized Enterprises to fully benefit from the Agreement, such as information sharing (for example, each party establishing their own information websites, with a database providing updated comprehensive market access information) and developing an appropriate institutional set-up to ensure Small and Medium-sized Enterprise-relevant issues are considered during implementation.

What are some of the ways the agreement might promote sustainable development?

Examples of the types of things that were raised in this context during discussions included environmental goods and services liberalisation, voluntary sustainability assurance schemes, and corporate social responsibility.

How might climate change issues be covered by the agreement?

Climate change was specifically discussed in regard to commitments to support the conservation and sustainable management of natural resources. In addition, the trade and sustainable development discussions covered the issue of ensuring adherence to multilateral environmental agreements that both sides are party to. New Zealand sees the United Nations Framework Convention on Climate Change and Paris Agreement as examples of relevant multilateral environmental agreements in this context.

What does New Zealand's Treaty of Waitangi provision in Free Trade Agreements normally cover?

It was agreed that, consistent with all of New Zealand's recent FTAs, the Agreement should include a provision enabling the New Zealand government to adopt domestic policies according more favourable treatment to Maori, including in fulfilment of obligations under the Treaty of Waitangi. In doing so, any measures taken under this provision will not be used as a means of arbitrary or unjustified discrimination against persons of the other side or as a disguised restriction on trade in goods, trade in services and investment.