

## New Zealand and EU approaches to intellectual property in trade agreements

**New Zealand will seek a chapter on intellectual property that supports businesses to protect and enforce their IP when they send their goods and services across borders. We will look to ensure that any commitments promote innovation, creativity and economic growth, and that any cost or disadvantage to New Zealand is avoided or minimised.**

### **Intellectual property**

Intellectual property (IP) rights can help to promote innovation and creativity in an economy. They can also encourage competitiveness and productivity, contribute to jobs and growth and support social and cultural development.

IP rights should also reflect a proper balance between the interests of rights-holders and users so as to enable follow-on innovation, and to support important social objectives in areas such as education, culture and health.

Both New Zealand and the EU have modern and robust IP regimes that provide effective and efficient protection and enforcement of IP rights tailored to meet the needs of our respective economies.

### **Intellectual property in trade**

IP rights-intensive goods and services now account for a large part of international trade. International IP agreements (including FTAs) can support trade in IP rights-intensive goods and services between countries by guaranteeing a minimum level of protection for IP rights owners when they send their goods and services across borders, and by reducing difficulty and costs for businesses looking to protect or enforce their IP rights through alignment or transparency in IP processes.

However, obligations in international agreements can also limit the flexibility and policy space a country has to tailor its IP regime to fit its particular domestic circumstances and values, now and in the future.

### **Intellectual property in the EU-NZ FTA**

The EU and New Zealand have agreed to include an IP chapter in the EU-NZ FTA. The two sides have agreed that the IP chapter should include mutually beneficial provisions on the protection and enforcement of IP rights, taking into account the objective of encouraging innovation and creativity and supporting trade in IP rights-intensive goods and services between the two sides, while contributing to a more sustainable and inclusive economy for the Parties.

IP chapters in past EU FTAs have included obligations on a wide range of intellectual property subject matter including copyright and related rights, trade marks, designs, patents, data protection, undisclosed information, geographical indications, together with provisions on enforcement and cooperation.

Some obligations can have implications for sensitive areas such as the cost of public health. New Zealand's approach to any such proposals will be to discuss with the EU whether such provisions are mutually beneficial, and whether they are necessary to encourage innovation and creativity and support trade between our two countries. If we do make commitments in these areas, our focus will be on ensuring that any cost or disadvantage to New Zealand is avoided or minimised.

Both New Zealand and the EU have raised specific issues of interest to be discussed and dealt with in the FTA, and both countries have agreed to explore these issues during negotiations. The EU wishes to cover liability of intermediary service providers<sup>1</sup>, and enhanced border enforcement. New Zealand wishes to discuss issues related to genetic resources, traditional knowledge, and folklore. New Zealand will be considering what the content of those discussions might be in consultation with Māori.

### **Geographical indications (GIs)**

GIs are also an issue of core cultural and economic importance to the EU. The EU has an extensive regime that includes systems for the registration and protection of GIs for foodstuffs, wines and spirits. In its FTAs the EU seeks obligations to protect EU GIs that include:

- establishment of a list of EU GI names to be protected directly through the agreement
- rules guaranteeing a high level of protection for EU GIs (with specific arrangements for certain GI names)
- administrative enforcement against the misuse of EU GIs.

New Zealand currently protects GIs through a number of mechanisms, including our Trade Marks Act 2002 and our consumer protection laws. The Geographical Indications (Wine and Spirits) Registration Act 2006 provides a further mechanism for protection of wine and spirits GIs in New Zealand. This framework is different, in many ways, to how the EU protects GIs. In scoping discussions, both sides agreed that negotiations should aim at providing a broader framework for recognition and protection of GIs, but that any agreement on providing such a framework will be subject to a satisfactory overall outcome in the EU NZ FTA for New Zealand.

GIs are likely to be a sensitive issue for some New Zealand industries. Some of the GIs that the EU could ask New Zealand to protect are currently used by New Zealand producers as commonly used names for their products. The detail of any broader framework that may be agreed has been left for the negotiations. We will be considering what is in New Zealand's overall interests when negotiating this and other chapters.

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<sup>1</sup> Also known as "internet service providers" or "ISPs", these are organisations that provide services for accessing, using, or participating in the [Internet](#). ISPs can include providers of connectivity services such as broadband, ADSL, VDSL fibre, mobile data and wifi, social media platforms, operators of email systems and providers of electronic data storage and retrieval systems. Businesses, schools, universities and libraries providing online-services for their staff, customers, students or users can also be included.