

## New Zealand and EU approaches to legal and institutional issues

**We're negotiating chapters that will cover how an EU-NZ FTA will be implemented, how transparency of trade measures will be enhanced, anti-corruption measures, how to resolve state-to-state disputes, and general and special exceptions, like the Treaty of Waitangi clause.**

### **Initial provisions and general definitions**

The EU and New Zealand will negotiate a chapter on 'initial provisions' for the FTA. This chapter will include definitions of terms used throughout the Agreement, and will establish a free trade area in conformity with the World Trade Organization Agreements.

### **Administrative and institutional provisions**

The EU and New Zealand have agreed on the need to establish an institutional structure that will oversee the implementation of the Agreement. The administrative and institutional provisions chapter of the FTA will look to establish an overarching body, which will supervise the work of specific committees and working groups that are likely to be established under other chapters of the FTA.

The chapter will set out the functions of the overarching body or commission/committee, along with meetings arrangements. There are some differences in the way that the EU and New Zealand have approached institutional structures in our respective FTAs, and these details will be subject to negotiation. However, New Zealand and the EU have a shared ambition to ensure that an effective and streamlined way is found to implement the agreement in a flexible and resource-efficient way.

In New Zealand's FTAs, a review mechanism for the FTA is often included as part of that body's functions. We will discuss with the EU whether such provisions are appropriate for the EU-NZ FTA.

### **Transparency and anti-corruption**

The EU and New Zealand have agreed that the FTA should include rules seeking to enhance transparency of trade-relevant measures, for example laws and procedures.

Both the EU and New Zealand support rules that focus on publication of relevant measures; opportunities to comment on them; and mechanisms to respond to enquiries from interested parties about them. Additionally, there is shared interest in including rules that ensure that information on how relevant administrative proceedings operate is available to interested persons, and an appropriate opportunity is afforded for those affected by a proceeding to present views prior to any final action.

On anti-corruption, New Zealand and the EU agreed during scoping discussions that the FTA should include specific rules targeting and discouraging corruption affecting trade and investment. This desire comes from a shared concern about the negative impact of corruption on economies and societies, including the impact that corruption can play in holding countries back from development, distorting public procurement, wasting scarce public funds, discouraging investment, hampering trade, creating unfair competition, and undermining the rule of law and the trust of citizens.

The inclusion of anti-corruption rules in FTAs is relatively new for both the EU and New Zealand, but we both agree that an objective of the rules will be to ensure that key international conventions and principles against corruption are implemented.

### **Exceptions**

The EU-New Zealand FTA will include a chapter on 'exceptions' to the obligations contained in the agreement. While the obligations throughout the rest of the FTA will be designed so as not to impair the ability of governments to make legitimate public policy, and to take measures to implement that policy, the exceptions in this chapter will provide a 'safety net' to allow these measures in unusual situations where they would otherwise result in the breach of an obligation under the FTA.

In scoping discussions, the EU and New Zealand agreed that a Treaty of Waitangi exception would be included in the Agreement. This protects the New Zealand Government's ability to adopt policies it considers necessary to fulfil its obligations to Māori.

Consistent with New Zealand's other FTAs, we will also seek the inclusion of a 'creative arts' exception, which preserves the ability of governments to adopt measures necessary to protect national works or specific site of historic or archaeological value, or to support creative arts of national value. Both New Zealand and the EU, in our respective FTAs, have also included exceptions that cover areas including national security; human, animal and plant health; environment; taxation, and situations involving serious balance of payments difficulties.

### **Dispute settlement**

Both New Zealand and the EU recognise the importance of establishing a state-to-state consultation and dispute settlement mechanism to resolve disputes that result from the interpretation and application of an FTA. These mechanisms are the means by which the obligations in the agreement are made legally enforceable. In scoping discussions, New Zealand and the EU agreed that the EU-NZ FTA would establish a state-to-state dispute settlement mechanism which would have the following characteristics:

- assurance that one side cannot block the mechanism
- an efficient and effective procedure, including allowing for prompt composition of a panel to hear disputes, shorter timeframes, and final and binding arbitration
- a transparent and open system, including provision for open hearings and amicus curiae submissions<sup>1</sup>
- an innovative system which includes an effective mediation mechanism.

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<sup>1</sup> 'Amicus curiae' means, in literal terms, 'friend of the court.' Amicus curiae submissions are provided to the panel by someone who is not a party to the dispute, and assist the panel by offering information, expertise or insight that has a bearing on issues in the case.

The EU includes in its FTAs a comprehensive mediation mechanism that is not present in New Zealand's FTAs. This is because New Zealand's approach to dispute settlement is modelled on the World Trade Organization's rules, alongside other elements of international best practice. We will discuss, in the course of our negotiations with the EU, the degree to which these provisions are fit for purpose in the context of the EU-NZ FTA.

### **Final provisions**

The EU and New Zealand will negotiate a chapter that sets out 'final provisions' for the FTA. This will address how the FTA may be amended, how and when the FTA will enter into force, and how the FTA may be terminated. This chapter will also establish the authentic languages of the FTA.