

New Zealand and EU approaches to state-owned enterprises

New Zealand and the European Union are negotiating a chapter on state-owned enterprises to help ensure that businesses engaged in trade, including small and medium enterprises, can compete fairly against them.

NZ and the EU have agreed to negotiate rules on state-owned enterprises (SOEs), designated monopolies and enterprises granted special rights or privileges as part of a free trade agreement.

We both recognise the right of each government to designate and maintain SOEs, public or private monopolies, and enterprises granted special rights or privileges. Neither the EU nor New Zealand is seeking to privatise SOEs through the free trade agreement, nor prevent the establishment of new SOEs.

New Zealand's approach will also ensure that nothing in the chapter will limit the Government's ability to provide public services in New Zealand. This will ensure that current and future governments can pursue policy objectives through existing or new SOEs.

The aim of the SOEs chapter is to promote a level playing field for both private and public enterprises when engaging in commercial activities. The chapter will enable New Zealand businesses to compete fairly and efficiently on the basis of quality and price in the European market.

Why do we negotiate state-owned enterprises rules in free trade agreements?

New Zealand SOEs are already set up to operate on a level playing field with privately owned companies and are subject to competition laws and regulations.

New Zealand's SOEs governance regime is in line with international best practices. In some countries, however, SOEs and monopolies may be exempt from competition laws and are given government-guaranteed advantages, such as preferential financing or preferential regulatory treatment, which can give them a competitive advantage over privately owned enterprises. There may also be little transparency on how these SOEs operate.

For New Zealand businesses, rules in the SOEs Chapter will promote a level playing field and create a more transparent environment so that our traders, especially smaller businesses, will be able to make more informed decisions about their existing or future operations in the European market.

Key obligations to be included in the FTA

- *Non-Discriminatory Treatment and Commercial Considerations:* To ensure that SOEs do not discriminate against the enterprises, goods and services of the other Party and only act in accordance to commercial considerations in their purchases or sales of goods or services. An exception is made for SOEs acting to fulfil a public service mandate.
- *Neutral Regulation:* To ensure that any domestic administrative body regulating SOEs does so in a non-discriminatory and impartial manner.
- *Transparency:* A Party may ask for access to information regarding a SOE's ownership, and governance structure. Greater access to such information will allow New Zealand exporters to be more informed about the markets in which they are operating.

The category of enterprises "granted special rights or privileges" includes state-trading enterprises (STEs), which are covered by World Trade Organization (WTO) rules. In scoping discussions, the EU and New Zealand reaffirmed existing WTO rights and obligations with respect to such enterprises, including the 2015 Nairobi WTO Ministerial Conference export subsidy commitments affecting STEs. Negotiations will consider further possible rules in these areas while respecting the specific roles that such enterprises play.