



## **SUBMISSION TO THE MINISTRY OF FOREIGN AFFAIRS AND TRADE**

### **EUROPEAN UNION-NEW ZEALAND FTA NEGOTIATIONS AUGUST 2018**

This submission is made on behalf of the NZ International Business Forum (NZIBF), whose members are listed at Annex A<sup>1</sup>. NZIBF is a forum of senior business leaders working together to promote New Zealand's engagement in the global economy.

NZIBF warmly welcomes and supports the negotiations for a free trade agreement (FTA) with the European Union (EU). New Zealand's economic relationship with the EU Member States is in good shape, but there is significant potential to expand and deepen the relationship for mutual benefit; an FTA would provide the optimal platform for this.

As a leadership body, NZIBF leaves to sectoral groups the task of identifying specific issues in the negotiation. This submission therefore comments on cross-sectoral or wider issues arising in the FTA.

#### **Summary**

An EU-New Zealand FTA would generate benefits for business and consumers in both markets. Reducing trade barriers and increasing awareness of commercial opportunities will generate new business for firms and individuals, both bilaterally and potentially into wider markets. Specifically, there would seem to be potential to grow New Zealand exports in the dairy, meat, seafood, horticulture, niche manufacturing and services sectors including digital trade and the creative economy, and likewise new opportunities for innovative European goods and services. Stronger links could potentially also deepen shared involvement in global value chains, including into Asia. European and New Zealand investors are already active in each others' markets but there is scope for this to increase too, for mutual benefit. Importantly, an FTA would also help to ensure that New Zealand exporters remain competitive with other third-country exporters into the European market, and vice versa.

NZIBF believes that the goal of the FTA should be a high-quality, ambitious and comprehensive agreement with a commitment to eliminate all barriers in all goods and services sectors by an agreed deadline. We recognise that sensitivities could mean that a small number of products may be subject to differing timetables for liberalisation, but any such flexibility must take into account current commercial and economic realities in the EU as well as in New Zealand, including Europe's international competitiveness in the sectors

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<sup>1</sup> The views in this submission are those of NZIBF as a whole. Individual members may have different views on specific issues covered in this submission.

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involved. The negotiating agenda should encompass all issues of relevance to both sides including market access for goods and services and related provisions, investment (including, eventually, appropriate protections to give greater certainty and security for both outward and inward investment) competition policy, intellectual property, government procurement, labour and environment issues and additional elements around ensuring that trade is both sustainable and inclusive. The right of governments to regulate for legitimate public policy reasons, and the ability of the New Zealand Government to meet the Crown's obligations to Maori, must be preserved.

NZIBF recommends that the New Zealand Government pursue a substantive and advantageous outcome to the negotiations as quickly as possible, aiming towards a prompt conclusion to the negotiating process. Now more than ever, given broader geopolitical turmoil, deepening and broadening the bilateral trade relationship will contribute to sustained prosperity for New Zealand and will provide New Zealand business with a range of secure and high-value options for trade and cross-border partnerships.

### **About the New Zealand International Business Forum**

NZIBF provides a voice to articulate the needs and priorities of New Zealand's international business community, and in particular the importance of open markets, to the New Zealand Government and public stakeholders. The NZIBF Board brings together leaders from amongst New Zealand's largest internationally oriented companies and peak business organisations. (A list of Board Members is in Annex A.)

Incorporated in May 2007, NZIBF works with companies, business organizations and government agencies to implement projects in the international trade and economic sphere, including working to develop New Zealand's key international business relationships and conducting research relative to New Zealand's competitiveness.<sup>2</sup> NZIBF receives no direct government funding for its operating budget but from time to time receives funding for jointly-funded projects. Funding is also provided in respect to the policy advice and support NZIBF provides to the New Zealand members of the APEC Business Advisory Council (ABAC).

While this submission is made on behalf of the NZIBF membership, a number of NZIBF members are likely to make their own submissions containing more detailed comments on specific issues relevant to their individual business interests.

### **The case for transforming our EU trade and economic relationship**

New Zealand's trade and economic relationship with the EU is in reasonable shape: Europe is already a very significant trade and investment partner, ranking as our third-largest overall market for goods and services (fourth-

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<sup>2</sup> NZIBF is a successor organisation to the NZ Trade Liberalisation Network Inc which was established in 2001.

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largest export market for goods, second-largest for services) and our largest source of imports overall. Two-way trade in goods and services was worth \$22 billion in the year ended December 2017. The EU is our second-largest source of foreign investment and third-largest destination for investment abroad.<sup>3</sup>

However, there are both economic and strategic reasons to seek to expand and deepen the relationship. Our 2015 paper, *'Towards a New Zealand-European Union FTA'*<sup>4</sup> and our earlier submission to MFAT<sup>5</sup> both make this case.

In the view of the NZIBF, the trade and economic relationship has yet to realise its full potential. Given current geostrategic and global trade uncertainties, deepening and broadening the bilateral trade relationship has never been more important to ensure sustained prosperity for New Zealand and to provide New Zealand business with a range of secure and high-value options for trade and cross-border partnerships. An FTA will provide the robust architecture to take the economic and trade relationship forward despite current global turmoil.

The EU is an economic powerhouse, with a GDP of over NZD\$17 trillion last year and a market of more than 512 million consumers (pre-Brexit, at least).<sup>6</sup> Although New Zealand is in the top quartile of economies worldwide and has an impressive GDP growth rate (3% in 2017, compared to the EU and OECD average of 2.4%<sup>7</sup>), we ranked only 51<sup>st</sup> in the list of European merchandise trading partners last year; New Zealand was the 52<sup>nd</sup>-ranked source of imports into the EU and 47<sup>th</sup>-ranked destination for European exports.<sup>8</sup> There is surely scope to move New Zealand considerably up those rankings.

NZIBF believes that there is scope to transform the relationship with the EU in ways that reflect our shared history, our respective economic strengths and the complementarities of our two economies, and our values – including that economic growth should be inclusive and sustainable. We should be able to set in place a framework that will help enable New Zealand to take best advantage of the modern global trading environment.

New Zealand has strengths as a supplier of innovative, high-quality sustainably-produced food and agricultural products such as dairy, sheepmeat, beef, kiwifruit, apples, fish, wine, hides and skins – in the main, produced counter-seasonally to Europe. New Zealand also has comparatively modest but high-value niche manufacturing and services sectors (agritech, software and digital goods and services, education, tourism, transport, logistics, business and professional services, specialised areas such as environmental services and technical agricultural services, and creative economy exports).

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<sup>3</sup> All statistics from Statistics New Zealand, *Global New Zealand* (Year Ending December 2017)

<sup>4</sup> <http://www.tradeworks.org.nz/towards-a-new-zealand-european-union-fta/>

<sup>5</sup> <http://www.tradeworks.org.nz/to-the-ministry-of-foreign-affairs-and-trade-on-the-proposal-of-a-new-zealand-european-union-free-trade-agreement-february-2016/>

<sup>6</sup> World Bank data, 2017

<sup>7</sup> World Bank data, 2017

<sup>8</sup> [trade.ec.europa.eu/doclib/html/122530.htm](http://trade.ec.europa.eu/doclib/html/122530.htm)

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These areas of relative advantage complement Europe's strengths in value chains for both agri-food and other manufactured goods and services, and its role as a major world exporter and importer. Addressing the remaining barriers to market access for both goods and services would enhance commercial opportunities and the availability of competitive inputs for business and provide more choice for consumers on both sides.

An FTA could also be expected to focus commercial attention on opportunities in Asia and other markets achieved through global value chains. New Zealand's extensive suite of FTAs in the Asia-Pacific can be expected to offer an attractive pathway for the EU in that regard.

European investors may be interested in specific opportunities in New Zealand's natural resource base including agriculture and food processing, building on the extensive investment relationship that already exists. Enhanced capital flows, fostered through the FTA, could potentially enhance New Zealand productivity and competitiveness, the adoption of new technologies, the generation of new intellectual property and other innovative approaches, and could deliver more effective integration into global value chains.

An additional important goal for the FTA would be at a minimum to help to ensure that New Zealand exporters remain competitive with other third-country exporters into the European market – and vice versa. In recent years, the EU has negotiated and concluded new FTAs with a range of important trading partners, including Japan, Singapore, Canada, Viet Nam and others. The EU is also negotiating currently with Australia. It is crucial that New Zealand secure at least parity with those trading partners in the EU market; in turn, European exporters will be anxious to preserve a level playing field in the New Zealand market as others start to enjoy enhanced preferential access, for example, under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

### **Specific issues in the negotiation**

NZIBF is primarily a leadership body. Its members comprise representatives of key sectors as well as New Zealand's largest business organisations with an interest in promoting New Zealand's relationship with key economic partners. NZIBF's interest is to support the negotiating process so that it ultimately leads to the timely conclusion of an FTA which delivers value for New Zealand. By way of overarching objectives, NZIBF believes that the agreement should be of high quality, ambitious and comprehensive, and should conform fully to Article XXIV (8) (b) of the WTO's General Agreement on Tariffs and Trade, which stipulates that FTAs should cover "substantially all trade" of the participating countries.

It is not NZIBF's role to represent specific industry viewpoints – this will be left to industry sectoral groups – but rather to champion an ambitious outcome across the board. However some general comments on specific elements of the negotiations are set out below.

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### *Goods*

Although its average applied tariff is modest, the EU maintains high tariffs and/or restrictive non-tariff measures on a number of key items of export interest to New Zealand, particularly in the primary sector. Very high tariffs and/or non-tariff barriers are found on some dairy products, high-quality beef, hides and skins, some fruits and vegetables, some fish and seafood products, processed food and wine – with some barriers so restrictive that they effectively prohibit trade outside of the limited volumes of tariff-quota access agreed in the WTO Uruguay Round.

Addressing the remaining tariff peaks, tariff rate quota limitations and non-tariff barriers would provide new opportunities for New Zealand exporters. Reforming market access in this way would also offer European consumers a wider variety of competitively-priced products and services, and manufacturers with access to high-quality, competitively-priced inputs.

NZIBF recommends that the negotiations should aim for the complete elimination of tariffs and tariff rate quotas between the EU and New Zealand, and complementary disciplines intended to ensure that only robust and at most minimally trade-restrictive non-tariff measures, designed to meet legitimate policy objectives, remain in place.

NZIBF acknowledges that there may be sensitivities on the European side in relation to some agricultural products. New Zealand is a counter-seasonal producer of many of those products and NZIBF notes that there are strong demonstrated and potential complementarities in working together to offer year-round supply in a range of markets, to grow brands and consumption, and to develop innovative and complementary approaches. NZIBF also notes that in some sectors, the EU is itself a large and competitive exporter – for example of dairy products – and that the volumes of imports currently make up a tiny share of total domestic consumption in the EU.

Nevertheless NZIBF recognises that a very limited number of products may ultimately be subject to differing timetables for liberalisation in light of these sensitivities. In general, the NZIBF recommends any timetables should reduce, and in no case extend, the timeframe for liberalisation set by other agreements to which New Zealand is already a Party, including the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

NZIBF supports the inclusion of ambitious trade-facilitating provisions associated with goods trade, including around rules of origin, regulatory coherence including mutual recognition of goods standards and conformity assessment (building on our existing Mutual Recognition Arrangement on Conformity Assessment) and WTO-consistent approaches to Sanitary and Phytosanitary Measures (building on the EU-New Zealand Veterinary Agreement) and technical requirements, Customs procedures and trade facilitation, including an emphasis on digital trade facilitation.

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NZIBF notes the non-exhaustive list of areas where it has been discussed that sectoral annexes could be considered (automotive, green tech, organic farming, pharmaceuticals and wines and spirits). While such sectoral annexes may facilitate trade considerably in those specific sectors, we would not want to see this come at the cost of higher ambition overall across all sectors.

### *Goods issues arising from the Brexit process*

NZIBF has been deeply concerned at the approach that the EU and the United Kingdom are taking with respect to proposing the splitting (in volume terms, on the basis of historical average sendings) of the WTO Uruguay Round country-specific tariff rate quotas for New Zealand dairy products, sheepmeat and beef, among others. This approach is totally unacceptable to NZIBF. The TRQs are part of the EU's legally binding commitments in the WTO. They were part of the finely-tuned balance of concessions, rights and obligations that was negotiated among WTO members in the Uruguay Round. Splitting the existing quota volumes between the United Kingdom and the 27 remaining EU Member States, as has been proposed, in effect represents a significant erosion of New Zealand's rights. It is a reduction in the quality and quantity of the market access opportunity available to New Zealand exporters into Europe and, as such, would not deliver on the UK's and EU's bound WTO commitments, nor on their political undertakings to leave no trade partner worse off as a result of Brexit.

This is a separate issue to the FTA negotiations, and we would not want to see any merging of the issues. The promise of addressing negative impacts of the Brexit negotiations in the FTA would not be acceptable. These are entirely separate processes that should not be conflated at any stage.

### *Services and Digital Trade*

Seeking to lock in and liberalise commitments on services trade has the potential to grow that important sector in key areas of interest to New Zealand exporters, including in global value chains, and to deepen regulatory coherence and cooperation on behind-the-border issues of concern to business. In particular, reforming rules around skilled labour mobility/limitations on the temporary movement of business people, visa requirements, commercial presence, the recognition of qualifications and other complex regulatory requirements would enhance New Zealand services exports to the EU.

NZIBF considers that the approach to services trade liberalisation, as for other FTAs, should be on the basis of a "negative list" approach, meaning that FTA commitments apply to all services categories unless specifically excluded. We also strongly endorse the importance attached by New Zealand to ensuring that FTAs protect the continuing rights of governments to regulate in the public interest. We welcome the support for this approach in the relevant MFAT background paper.<sup>9</sup> We regret, however, the a priori exclusion of audio-visual

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<sup>9</sup> <https://www.mfat.govt.nz/assets/FTAs-in-negotiations/EU-FTA/Information-package/New-Zealand-and-EU-approaches-to-trade-in-services.pdf>

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services from the FTA. This risks diminishing the benefits that the creative economy, and in particular the audio-visual services sector, may gain from the FTA.

NZIBF also encourages New Zealand to seek to negotiate a forward-looking, ambitious digital trade-friendly outcome in the FTA, including a high-quality outcome on electronic commerce, recognising the transformative power of the digital economy. Such an outcome should include free cross-border data flows for business, subject to appropriate provisions to protect consumer privacy, enhance trust and promote cyber security, in such a way that those protections do not act as a disguised barrier to trade. We note that in respect of privacy protections, New Zealand's Privacy Regime has a privacy adequacy ruling from the EU.

With regard to cross-border data flows more broadly, we note that the background paper prepared by MFAT indicates that New Zealand looks to include provisions allowing for cross-border data flows "except in situations where there are legitimate public policy reasons not to allow the data transfer". NZIBF would observe that the design of relevant measures, including those seeking to limit cross-border data flows, should be fit for purpose and should in fact enable the achievement of the legitimate objective (whether privacy or cybersecurity, for example) in the least trade-restrictive manner possible. The latter is not always achieved by a simple limitation on cross-border data flows and indeed may be inadvertently undermined by such a limitation.

### *Investment*

Foreign direct investment is a key element in New Zealand's sustained prosperity, supplementing our relatively shallow capital base, fostering the development of productive businesses and infrastructure, facilitating the innovation that drives domestic competition and productivity growth, and generating new employment opportunities. There is also scope to increase New Zealand business investment offshore. NZIBF is accordingly a longstanding strong supporter of foreign investment in New Zealand and of provisions in our trade agreements which provide appropriate protection for foreign investment (inward and outward), while also recognising the Government's continuing right to regulate in the public interest.

NZIBF recognises that the New Zealand Government opposes the inclusion of Investor-State Dispute Settlement (ISDS) in FTAs. NZIBF also acknowledges that ISDS and investment protection provisions are not included in the EU mandate for negotiations with New Zealand, and that the EU may at some stage in the future propose a separate agreement to cover these areas. NZIBF urges the New Zealand Government to negotiate for an outcome that not only supports meaningful outcomes to foster inward investment, but that also – in due course, if necessary – addresses the need for greater certainty and security for both outward and inward investment flows.

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### *Other issues*

NZIBF believes that the FTA should seek to set a global benchmark for ambition, including not just market access for goods and services (and related provisions), but also good regulatory practice and regulatory coherence, competition policy, intellectual property, government procurement, trade remedies, labour and environmental issues. The New Zealand Government should seek to ensure that the agreement does not impair the ability of the Crown to honour its obligations to Māori, including under the Treaty of Waitangi. The general protections for governments to act to make and implement legitimate public policy should also be included.

An appropriate focus should also be given to ensuring that trade is both inclusive and sustainable. NZIBF believes that provisions should be included in the FTA that would ensure that all can benefit from the gains from trade, including helping small and medium-sized enterprises, women, Māori and disadvantaged regions to participate more successfully in trade and global value chains; and that trade is environmentally and developmentally sustainable.

In many of these areas, New Zealand and the EU are already like-minded to a greater or lesser extent, and will be able to build on existing cooperation to develop new approaches – potentially even new global benchmarks – for the trade and economic architecture of the bilateral relationship.

### *Priority issues for the EU*

NZIBF recognises that issues of particular concern or priority for the EU are included in the negotiating agenda. These encompass, for example, aspects of intellectual property rights, including in relation to pharmaceuticals and geographical indications (GIs), and competition policy. NZIBF is concerned to minimise any cost or disadvantage to New Zealand arising from these sensitive areas, in relation both to public policy issues and commercial interests.

On GIs in particular, NZIBF would be very concerned at any approach that meant that New Zealand was limited from using, in New Zealand or third markets, generic food names such as those for cheeses that are commonly in commercial production around the world.

NZIBF encourages the Government to continue to consult and to take into account the views of relevant stakeholders throughout the negotiating process to ensure that the overall balance of New Zealand interests continues to be met. NZIBF recognises that whether concessions are made will be determined by the New Zealand Government after consultation with stakeholders and in the context of a satisfactory overall balance of interests achieved in the negotiation.

### *Transparency*

NZIBF supports an inclusive and consultative negotiating process and one which allows all stakeholders the opportunity to have their voices heard. The



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negotiating process should be as transparent and maximally inclusive as the negotiation's parameters and sensitivities of the negotiating partners allow. We have appreciated the release of the summary of the joint scoping paper and other background materials on the MFAT website.

NZIBF prepared its own discussion paper in 2015 advocating for an ambitious FTA, entitled "Towards a New Zealand-European Union FTA: A Business Perspective". A copy can be found on <http://www.tradeworks.org.nz/towards-a-new-zealand-european-union-fta/>.

### Recommendations to the Ministry of Foreign Affairs and Trade

NZIBF recommends that the Ministry:

- a. **note** the NZIBF's support for the negotiation of a high-quality, ambitious and comprehensive FTA between New Zealand and the EU;
- b. **agree** that the goal of the FTA should be the elimination of all barriers in all goods and services sectors by an agreed deadline;
- c. **agree** that the negotiating agenda should encompass all issues of relevance to both sides including market access for goods and services, non-tariff barriers to trade, investment, competition policy, intellectual property, electronic commerce and digital trade, government procurement, labour, environment and "inclusive trade" issues, seeking to use WTO disciplines as a starting point in the negotiation as appropriate;
- d. continue to **consult widely** with sectors likely to be impacted directly by the negotiation, and with other stakeholders, operating on the basis of a maximally inclusive and transparent process as far as the negotiating parameters and sensitivities allow;
- e. **develop** an active communications and outreach programme aimed at deepening New Zealand business' understanding of the opportunities presented by the FTA negotiation; and
- f. **agree** to seek to conclude these negotiations as soon as a substantive and mutually advantageous outcome is to hand;

#### For further information

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**NZ International Business Forum  
August 2018**

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### Annex A

#### Board members of the NZ International Business Forum

##### Executive Committee

Malcolm Bailey (Chair), Chair, Dairy Companies' Association of New Zealand  
Michael Barnett, Chief Executive, Auckland Regional Chamber of Commerce and Industry (*representing the New Zealand Chambers of Commerce*)  
Philip Gegan, Chief Executive, NZ Winegrowers  
Kirk Hope, Chief Executive, Business NZ  
John Loughlin, Chairman, Meat Industry Association  
Peter McBride, Chairman, Zespri International Ltd  
Andrew Morrison, Chairman, Beef + Lamb New Zealand  
Alan Pollard, Chief Executive, NZ Apples and Pears  
Hon Simon Power, General Manager, Consumer Banking and Wealth, Westpac  
Sarah Salmond, Special Counsel/Head of International Trade, Russell McVeagh  
Simon Tucker, Director, Global Stakeholder Affairs, Fonterra  
Steve Yung, Chief Executive, Sealord Group Ltd

##### Alternate Directors

Catherine Beard, Executive Director, Export NZ/Manufacturing NZ  
Jeffrey Clarke, General Manager, Advocacy, NZ Winegrowers  
David Courtney, General Manager, Zespri International  
Jenny McGregor, General Manager, Trade Strategy, Fonterra  
Sam McIvor, Chief Executive, Beef + Lamb New Zealand  
John Milford, Chief Executive, Wellington Chamber of Commerce  
Tim Ritchie, Chief Executive, Meat Industry Association

##### Executive team

Stephen Jacobi, Jacobi Consulting Ltd (*Executive Director*)  
Fiona Cooper, Cooper Clarke Consulting (*Associate Director*)  
Stephanie Honey, Honey Consulting (*Associate Director, Staffer ABAC*)

##### Associate members

NZIBF's membership comprises a range of associate members who are listed on our website, [www.tradeworks.org.nz](http://www.tradeworks.org.nz).