NGĀ TOKI WHAKARURURANGA

INTERIM TE TIRITI O WAITANGI ASSESSMENT OF THE FREE TRADE AGREEMENT BETWEEN NEW ZEALAND AND INDIA

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INTRODUCTION

1. This is an interim Tiriti o Waitangi Assessment of the free trade agreement between New Zealand and India (India NZ FTA) to be signed early in 2026. It has been prepared by Ngā Toki Whakarururanga as mandated in the Mediation Agreement with the Crown in the Wai 2522 Inquiry into the Trans-Pacific Partnership Agreement (TPPA), signed in 2021. It is informed by our Kaupapa:

> *Recognising He Whenua Rangatira ("We are an Independent and Sovereign Nation"), our duty and responsibility is to protect and advance Māori rights according to Te Tiriti o Waitangi me He Whakaputanga o te Rangatiratanga o Nu Tireni, and to hold the Crown to account to meet its responsibilities under Te Tiriti and He Whakaputanga in the arena of trade policy, negotiations and agreements.*

2. The Crown made a commitment in the Mediation Agreement to ensure that Ngā Toki Whakarururanga has genuine and meaningful influence on negotiations such as the India NZ FTA.

3. At the time of signing, the text of the India NZ FTA has not been made available. Contrary to well-established practice, and despite the repeated best endeavours of the Crown, including the Minister of Trade and senior officials, the Indian Government has refused to allow the negotiating text to be shared with Ngā Toki Whakarururanga on a confidential basis prior to the agreement being signed.

4. This Interim Tiriti assessment therefore focuses on the process of the negotiation and what is known as fact regarding matters of critical importance to Māori responsibilities and rights and Crown obligations under Te Tiriti o Waitangi. It refers to the Crown's summary of the content of the agreement at the time it was concluded,[1] but treats it with caution given past experience that the Crown presents the benefits in an unduly positive light and downplays the negative elements.

PART 1. TE TIRITI O WAITANGI & INDIGENOUS PEOPLES

5. Ngā Rangatira and the British Crown together established He Whakaputanga o Te Rangatiratanga o Nu Tireni in 1835 and signed Te Tiriti o Waitangi in 1840. Both guaranteed that Māori would continue to exercise tino rangatiratanga, or complete control over their people, resources and lives, as they had for time immemorial.

6. The four articles of Te Tiriti o Waitangi underpin this assessment:

[1] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-india-free-trade-agreement/key-outcomes

Kawanatanga – Article 1: Government exercises authority over its own, and any authority positively delegated by Māori, subject to the obligation to recognise rangatiratanga and ensure the protection of Māori rights, interests, duties and responsibilities.

Tino Rangatiratanga - Article 2: Rangatira have unfettered ongoing power and responsibility to ensure the exercise of Māori authority collectively over their own affairs and resources in a manner consistent with tikanga Māori.

Oritetanga - Article 3: Māori and the Crown's people have parity and equity in rights and outcomes, meaning equal rights to define and pursue aspirations according to a people's fundamental principles, laws and beliefs.

He Whakapono - 4th Article: guarantees the active protection of philosophies, beliefs, faiths and laws.

7. Since the Mediation Agreement, our Tiriti o Waitangi assessments of free trade agreements that have been negotiated unilaterally by the Crown have consistently found that it has failed to recognise and give effect to the rangatiratanga of Māori in the negotiation and implementation of agreements, in their substantive provisions, and in providing effective protections.

8. The Crown has made incremental steps towards addressing these obligations, whilst not redressing the power imbalance that excludes Māori from effective influence over these decisions. This is a matter Ngā Toki Whakarururanga has placed before the Waitangi Tribunal in the current Tomokia Ngā Tatau o Matangireia/Constitutional Kaupapa (Wai 3300) inquiry.

9. We deeply regret that the process of negotiating this agreement with India has gone backwards, despite attempts by the Crown to at least maintain the status quo.

10. We have also been unsuccessful in seeking equivalent engagement and dialogue with Indigenous Peoples (Adivasi) in India in a manner consistent with the United Nations Declaration of Indigenous Peoples (UNDRIP). In that regard, we note with dismay and disbelief the reservation made by India when it voted in favour of the Declaration that, following the Independence of India from the British Crown all Indians are considered Indigenous. The Indian Government therefore, inconceivably, does not accept the concept of "Indigenous Peoples", and therefore the UNDRIP, is applicable to India.

11. We are deeply concerned that India's state of denial regarding Indigenous Peoples in its territory may have affected the recognition of Indigenous Peoples in this FTA, and their response to proposals to give effect to the responsibilities and rights of Māori and to Te Tiriti o Waitangi.

12. It is clear from the interim analysis below that the Crown has yet again failed to meet the threshold required by Te Tiriti that reflects the genuine rangatiratanga / kāwanatanga relationship and the powers, responsibilities and rights of Māori under He Whakaputanga me Te Tiriti o Waitangi.

PART 2. THE NEGOTIATING PROCESS

13. This negotiation was driven by the political deadline set by the current New Zealand Government to conclude an agreement with India during this parliamentary term. That political imperative has given India massive leverage to set its own terms and to determine the outcomes, including on Te Tiriti o Waitangi and matters of importance to Māori.

14. Negotiations were announced in April 2025, began in June and were concluded in December 2025 after intensive and expensive shuttle-negotiations, mainly of New Zealand officials to India. At the same time, India was negotiating agreements with a number of other countries of much greater economic and strategic significance, notably the United States and the European Union. The speed with which the New Zealand negotiation was concluded reinforces the perception that signing off on an agreement was more important than its substance.

15. The negotiations were conducted under strict secrecy, with very little information made publicly available by the governments. The refusal of the Indian Government to allow the sharing of negotiating text with Ngā Toki Whakarururanga meant we were only able to comment on the initial proposals that were tabled by the Crown. We understand that officials shared our frustration and concern that this was inconsistent with commitments and expectations under our Mediation Agreement to ensure genuine and meaningful influence in such negotiations. This experience reinforces the importance of having an agreement-specific Toka Tūmoana that sets out the expectations and processes to be adopted in major negotiations such as this, which did not exist in this case.

16. Ngā Kaihautū, the leadership rōpū of Ngā Toki Whakarururanga, decided when the negotiations were announced to push for a positive outcome for Indigenous Peoples in areas known to be of importance to India as well as to Māori. These were set out in a letter to the Chief Negotiator Vangelis Vitalis in April and Minister McClay in July 2025, and reiterated throughout the negotiations. We stressed the desire *"to play a proactive role in these negotiations from the very start, so as to maximise the opportunities to build on areas of common interest with India and develop innovative approaches that will be a win-win for everyone."*

17. In September 2025 India's officials came to Aotearoa for a negotiating round in Queenstown. Ngā Toki Whakarururanga co-convenor Pita Tipene and kaihautū and rongoā expert Donna Kerridge attended a preliminary hui with the Indian negotiators to explain Te Tiriti and speak to these various kaupapa. However, they were not permitted to engage in the negotiations themselves, even those that impacted directly on Te Tiriti and Indigenous Peoples.

18. Within these constraints on information, Ngā Toki Whakarururanga provided input on various aspects of the negotiations under severe time pressures. This included draft text for mechanisms to help achieve the objectives in relation to Ngā Kaihautū's kaupapa and intensive input into a "non-paper" relating to Te Tiriti and Indigenous responsibilities and rights that referred to the kaupapa Ngā Toki Whakarururanga had raised.

19. The protection for measures taken to comply with Te Tiriti o Waitangi that might otherwise breach the FTA was particularly problematic. In July 2025, as a result of ongoing discussions that were mandated by the Mediation Agreement, MFAT and Ngā Toki Whakarururanga agreed on a new best practice Tiriti o Waitangi protection. This is to replace the limited, and in our view ineffective, Treaty of Waitangi Exception that dates back to 2001. The stronger protection applies to measures to protect or promote rights, interests, duties, and responsibilities of Māori, including in fulfilment of its obligations under Te Tiriti o Waitangi / the Treaty of Waitangi. It will operate as a 'carveout' from an agreement for such measures, rather than an as exception; omits problematic language from the 2001 exception; and clarifies points of ambiguity regarding disputes. MFAT tabled this provision for the first time in the India negotiation and Ngā Toki Whakarururanga provided an explanation for the wording to assist the Indian's understanding of the rationale behind the wording. MFAT sought to keep us broadly informed of progress with this part of the negotiation, but was unable to share India's formal response. The disappointing outcome is discussed below.

20. The time pressures for finalizing the text and signature, and India's determination that the text was not shared until signing, means that the National Interest Analysis (NIA) that will accompany the Crown's release of the text cannot include our Tiriti o Waitangi assessment as recent NIAs have done. This compounds the lack of balance whereby the Crown alone has been able to provide an uncontested interpretation of the text, including its compliance with Te Tiriti and the implications of the agreement for Māori.

PART 3. NGĀ TOKI WHAKARURURANGA'S KAUPAPA PROPOSALS

21. The following specific areas were identified as offering potential for win-win outcomes for Aotearoa New Zealand, Māori, India and Adivasi:
    - *Traditional knowledge*
    - *Intellectual property rights and the Convention on Biological Diversity*
    - *Ayurveda and rongoā*
    - *Organics, plant variety rights, seeds, huā parakore and GMOs*
    - *Data sovereignty and digital governance*
    - *Generic medicines and health products*
    - *Creatives and culture.*

22. We note that MFAT's summary makes general reference to the following, but without the precise wording, levels of commitment and enforceability, we are unable to assess hence the implications for Māori:
    - The Technical Barriers to Trade chapter has an interim mutual recognition arrangement for organic products, but this does not appear to recognise hua parakore certification.
    - The services chapter contains annexes on financial services, telecommunications, professional services, health mobility and traditional medicines, and the movement of natural persons. The health mobility and traditional medicine annex "sets up a process for Rongoa Maori practitioners to engage with the Indian market", which has been the

subject of discussion with the Crown, but the nature of the process and terms on which rongoā practitioners can engage in India are not known.

- It is unclear whether the audio-visual and cultural services commitments allow for more local content and Te Reo Māori requirements, and active co-production arrangements, that are dis-allowed in most existing agreements.
- Working groups to be established under the "Economic Cooperation and Technical Assistance" chapter potentially include traditional knowledge and medicine, audio visual production, apiculture and honey. However:
  - This list refers to "potential" topics, and whether a working party is established is left to the relevant government agencies.
  - To be effective the relevant agencies in both governments will need to act.
  - It is unclear what resourcing will be available, but cooperation provisions in previous agreements explicitly say action will depend on availability of resources and there is no commitment to provide resources.
  - While working parties "can include experts from outside Government", there is no reference to Indigenous Peoples, and hence no assurance that these will reflect Indigenous People's participation, knowledge and values in both countries.
- The Intellectual Property chapter is said to provide "opportunities for greater cooperation with India on IP issues including issues related to genetic resources, traditional knowledge and traditional cultural expression". For a number of years India has called for member states at the World Trade Organization (WTO) to conduct a promised review of how its western IP rules impact on these areas, especially the Convention on Biological Diversity. New Zealand has not supported India's call and Ngā Toki Whakarururanga has been pressing the Crown to do so. It is unclear whether or not this agreement signals a change in the Crown's position.

PART 4. MĀORI- & TIRITI-SPECIFIC OUTCOMES

23. There is no reference in the Crown's summary to any generic recognition of Te Tiriti o Waitangi, or Indigenous Peoples of both countries, in the agreement or the application of mātauranga and tikanga Māori in the relevant chapters.

24. It is clear from MFAT's summary that the new Tiriti o Waitangi carveout has not been included in the FTA and that the flawed 2001 Treaty of Waitangi Exception has been retained. That is deeply problematic, and unacceptable that the Crown still misrepresents the 2001 exception as "allow[ing] allows the New Zealand Government to fulfil its obligations under the Treaty of Waitangi" when it does not.

25. The chapter entitled Cultural, Trade and Traditional Knowledge and Economic Cooperation appears to have the agreement's only reference to The Treaty of Waitangi (not Te Tiriti o Waitangi). According to the Crown's summary: "for New Zealand, cooperation under this

Chapter should be implemented in a manner consistent with the Treaty of Waitangi." There is no commitment from India to Indigenous Peoples participation.

26. The chapter does not follow the pattern of recent agreements that have Māori or Indigenous Trade Cooperation chapters, as it is appears not to be focused on Indigenous Peoples. This reinforces our fears that India's refusal to recognize its own Indigenous Peoples is reflected in the agreement.

27. Ngā Toki Whakarururanga has been critical of those earlier agreements because the Māori Trade and Economic Cooperation chapters:

    - are unenforceable;
    - their focus is commercial;
    - coverage of other important kaupapa that are affected by the agreement is very limited;
    - whether action is taken on any particular Kaupapa is discretionary and requires the parties to agree;
    - there is no commitment to resource the chapter, and
    - Māori independent of the Crown are not empowered to lead on those matters.

28. While the chapter in the India FTA appears to downplay Indigenous Peoples, the potential areas for cooperation in the chapter appears to be broader in scope. In particular, there is a focus on traditional medicines, both AYUSH and rongoā, and other kaupapa of importance. Cooperation activities can include "exchanges, training, and research on traditional medicines and health standards and qualifications, biodiversity, traditional cultural expressions, arts, crafts, dance, music and tourism". However, the chapter will be unenforceable and subject to the drawbacks of previous chapters, meaning nothing could actually happen.

29. There is no guarantee for Māori to participate in, let alone to lead, along with Indigenous Peoples from India the relevant committees and potential activities proposed in the agreement.

PART 5. FURTHER OBSERVATIONS ON THE REPORTED OUTCOME

30. The final agreement contains 21 chapters. We are pleased that it omits some problematic elements of other recent agreements:

31. The Intellectual Property chapter appears not to include some of the WTO-plus provisions of other recent agreements that impact severely on mātauranga Māori and the exercise of rangatiratanga, kaitikitanga and tikanga Māori. That said, the reiteration of the WTO's intellectual property rights agreement, which Māori have objected to since the early 1990s, is problematic in itself.

32. There is no digital trade chapter. That avoids a repeat of the Trans-Pacific Partnership Agreement (TPPA) restrictions on regulation of Big Tech that affect Māori data sovereignty and digital governance and rights and responsibilities, and which the Waitangi Tribunal found

breached the Crown's Tiriti obligations. The Crown initially agreed to similar rules in several subsequent agreements, but has sought to provide more protections during recent negotiations. We remain concerned that the trade in services chapter will contain restrictions and commitments on computer and related and telecommunications services and on specific sectors, such as culture, healthcare, education and insurance. It is unclear what, if any, protections the Crown may have included in services schedules to address those issues.

33. The investment chapter focuses on potential cooperation and promotion activities, rather than investor rights. We welcome the statement that this chapter is unenforceable by India and by the extremely controversial investor state dispute settlement process. However, there is no detail about the "remedial processes" that will apparently be available only to India. We note, as well, that the Crown has set a target to increase private sector investment into India by US$20 billion in the next 15 years, which is US$20 billion not being invested into Aotearoa. We wait to see the details before commenting further.

34. It is unclear whether the chapter on Sustainable Development addresses the climate crisis and if so, how. As a party to the Waitangi Tribunal inquiry into the Climate Change (Wai 3325) Ngā Toki Whakarururanga has challenged the failure of trade agreements to do so, and to adopt trade rules that could exacerbate the crisis.

PART 6 WHERE TO FROM HERE?

35. By the time the text is available it will have been signed. Ngā Toki Whakarururanga will revisit this Tiriti o Waitangi assessment knowing that the Crown has already socialised its own version of the outcomes, including for Māori and Te Tiriti.

36. The FTA and the Crown's National Interest Analysis will be tabled in the Crown's Parliament and referred to the Foreign Affairs Defence and Trade Committee. From past experience the committee will treat the agreement with a rubber stamp. As a group submitter, Ngā Toki Whakarururanga will be given ten minutes to present its submission and answer any questions, knowing that the agreement is a fait accompli. The Committee could not alter it even if it has the political will to do so. Ngā Toki Whakarururanga has made a submission to the Standing Orders Committee seeking a Tiriti-based review of the entire international treaty negotiation process.

37. There is talk that the New Zealand First might oppose the agreement because of its policy position on immigration, but that the Labour Opposition may support it. Whatever the outcome it is clear that these political parties are not interested in the Tiriti o Waitangi implications of the agreement. That is why a zero based Tiriti o Waitangi transformation of international treaty making is required. We will continue to press for that in the Waitangi Tribunal's Constitution Kaupapa Inquiry.