

## **International Trade Committee Call for Evidence: UK-New Zealand Trade Negotiations**

### **Trade Justice Movement**

**1st April 2022**

1. The Trade Justice Movement (TJM) is a UK-wide network of sixty civil society organisations, with millions of individual members, calling for trade rules that work for people and the planet. Our members include trade unions, NGOs, consumer groups and faith organisations. Together we are calling for trade justice, where the global system of trade ensures sustainable outcomes for ordinary people and the environment.

**How might the UK-New Zealand FTA affect you, your business or organisation, or those that you represent? If possible, please describe the current situation and what you expect to change as a result of this agreement.**

#### **Environment and climate change**

2. The deal with New Zealand does not replicate some of the troubling aspects of the UK's deal with Australia<sup>1</sup>. The environmental chapter makes more than one reference to the need to limit global warming to 1.5°C and both countries commit to implementing the Paris Agreement. Encouragingly, the deal makes specific reference to the importance of removing subsidies for fossil fuels and the need to phase out coal fired electricity generation. The chapter is also subject to the agreement's dispute resolution mechanism, putting it on a par with other chapters within the agreement. This means the UK could technically challenge New Zealand (and vice versa) if they fail to uphold the commitments in the chapter.
3. As with the Australian deal, the deal with New Zealand excludes Investor-State Dispute Settlement, a mechanism that allows companies to sue countries for policies that undermine their profits. It is often used by investors to challenge progressive environmental policies and can lead to instances of 'regulatory chill' when governments are discouraged from introducing such policies if ISDS is in place.
4. Despite these positive steps, the deal leaves unwanted room for manoeuvre on the environment when decisive action is needed. The language of the environment chapter stops short of making specific action binding, and commits the UK and New Zealand only to 'endeavour' to progress on issues like deforestation, waste reduction and air pollution. Whilst it is good to see fossil fuels and coal fired electricity mentioned, the agreement refers to eliminating 'harmful' fossil fuel subsidies and 'unabated' coal-fired electricity generation. The interpretation of these terms is unclear, although what is clear is that they are included to allow subjectivity in any interpretation. The bar for action under the dispute mechanism is also high: a disputing party must prove that a lowering of standards was done with the specific intention of gaining a trade advantage. This is difficult to do and has never yet been done, and it therefore remains to be seen whether this will make any meaningful difference.

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<sup>1</sup> <https://www.tjm.org.uk/blog/2021/australia-deal-is-a-disaster-for-uk-climate-policy>

5. It is also important to recognise that although there are no ISDS provisions in this agreement, given that this deal is regarded as a stepping stone towards CPTPP accession, there is very much a concern that the UK will eventually be party to ISDS provisions under that agreement. It is worthwhile to spell out the disastrous implications for environmental and climate policy this could have; ISDS allows firms to sue governments for policies which harm their profits, and while the aim is to mitigate against unreasonable and unpredictable government behaviour, in practice, ISDS has been used to challenge all sorts of important environmental regulations, including: the phase-out of coal-fired power stations, water pollution controls in Germany, a ban on fracking in Canada, and various regulations on mining in East Asia and South America.<sup>2</sup> There is a risk that ISDS is used to challenge new regulations which are essential for fighting climate change. the Government would have to seek explicit side-letters in CPTPP to be exempt, and they have not committed to this.
6. The impact assessment predicts an increase in transport emissions of 50%.<sup>3</sup> The Government dismisses this as “small when compared to UK production emissions”, and has made no attempt to mitigate this effect. The United Nations Framework Convention on Climate Change (UNFCCC) [says](#) that cuts of 7.6% per year for at least eight years will be needed to avoid the worst of climate change.

## Agriculture

7. There have been several worrying aspects of the impact of free trade agreements on New Zealand’s dairy industry in recent years which provide helpful context for understanding the impact such agreements can have. After the signature of its Free Trade Agreement with China in 2008, New Zealand experienced rising dependency on dairy exports to the Chinese market. These increased exports to China are commonly hailed as the main outcome of the New Zealand-China FTA: exports to China grew 270% from 2008 to 2013, and milk powder by 908%.<sup>4</sup>
8. This massive expansion of dairy exports has necessitated the expansion of troubling practices to support NZ farmland. This has frequently been on a scale where legal action has been required to slow expansion.<sup>5</sup> Grass production is stretched with heavy use of nitrate and phosphate fertilisers, and supplemented with significant amounts of palm kernel expeller. New Zealand is the largest importer in the world of the latter, importing ‘an estimated two million tonnes per year’ to support its expanded dairy industry despite evidence showing that palm oil plantations are destroying protected rainforests and other habitats.<sup>6</sup> Greenpeace have described this as ‘effectively outsourc[ing] environmental costs onto some of the most diverse remaining forests and species in the world’. With regard to phosphate, New Zealand imports huge quantities of it from disputed Western Sahara, a practice which has been the subject of

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<sup>2</sup> [https://www.citizen.org/wp-content/uploads/egregious-investor-state-attacks-case-studies\\_4.pdf](https://www.citizen.org/wp-content/uploads/egregious-investor-state-attacks-case-studies_4.pdf)

<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1057311/uk-new-zealand-free-trade-agreement-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057311/uk-new-zealand-free-trade-agreement-impact-assessment.pdf)

<sup>4</sup> Kelsey (2017). See: <https://quakers.nz/deepen-ako-atu-an%C5%8D/quaker-lectures>

<sup>5</sup> <https://www.ruralnewsgroup.co.nz/dairy-news/dairy-general-news/dairy-conversion-hits-legal-wall>

<sup>6</sup> <https://www.greenpeace.org/aotearoa/press-release/report-shows-nz-dairy-linked-to-illegal-indonesian-palm-oil-plantations/>

extensive criticism from human rights groups. By importing the phosphate from Morocco, whose claim to the territory is widely disputed, NGOs have described that "New Zealand stands alone now as the main funder of the illegal occupation... They are buying stolen goods."<sup>7</sup> In recent years, Australia, American, Canadian and other companies have ceased their trade in the phosphate from the region, while New Zealand remains intensely reliant on it. New Zealand's national herd, currently around 6.6 million in a country with a population of around 5 million, has caused significant environmental health problems in the country. 2013 data showed that it was unsafe to enter 60% of New Zealand's water.<sup>8</sup> It is worth noting that studies have suggested there was 'no observable impact on GDP per capita' as a result of the NZ-China FTA.<sup>9</sup> All of these impacts on agriculture are helpful in understanding the prevalent notion that trade liberalisation in these areas will inevitably bring increases in standards and welfare.

### **Labour rights**

9. It is important that the UK's future trade and investment agreements uphold workers' rights, decent jobs and fair pay, not just in the UK but worldwide. Some of the expansions in the dairy industry described in the previous chapter have also led to poor labour conditions for workers; a 2017 report on farming conditions for migrant workers there highlighted significant 'concerns about health and safety, and employment standards', including 20 hour days and extensive exposure to chemicals used for weed spraying with no protective equipment.<sup>10</sup> It has been highlighted frequently that New Zealand has not ratified two core ILO conventions – those on freedom of association and child labour - and the agreement does not provide any measures to enforce ratification of these measures. Indeed, the language used in the labour chapter does not contain binding commitments to improve workers rights, and has been criticised by the TUC as 'not contain[ing] adequate measures to enforce working people's rights'.<sup>11</sup>
10. Investment protection provisions could also impact labour rights, which must be noted in light of any potential future accession to CPTPP. There are a limited number of known ISDS cases challenging labour regulations, however, such challenges are possible. For example, when Egypt raised its minimum wage, which had previously been kept unsustainably low by the Mubarak regime, it was sued by French multinational Veolia. Although the government won on this occasion, the case took six years, and whilst the cost to the government was not publicised, it is likely to have been in the region of US\$8 million.<sup>12</sup>

### **Other areas**

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<sup>7</sup> <https://www.stuff.co.nz/business/farming/105947470/precious-rock-new-zealand-is-accused-of-stealing-from-the-sahara>

<sup>8</sup> <https://www.economist.com/asia/2017/11/16/dairy-farming-is-polluting-new-zealands-water>

<sup>9</sup> <https://www.otago.ac.nz/economics/otago709660.pdf>

<sup>10</sup> <https://www.business-humanrights.org/en/latest-news/new-zealand-new-report-reveals-unsafe-work-conditions-for-filipino-workers-on-farms/>

<sup>11</sup> <https://www.tuc.org.uk/news/uk-new-zealand-trade-deal-lacks-important-protections-workers-says-tuc>

<sup>12</sup> [https://www.citizen.org/wp-content/uploads/egregious-investor-state-attacks-case-studies\\_4.pdf](https://www.citizen.org/wp-content/uploads/egregious-investor-state-attacks-case-studies_4.pdf)

11. Outside of these chapters, there are other areas of concern. Provisions on intellectual property have been bolstered, which is likely to reduce technology transfer, in direct contradiction with the UNFCCC finding that this is a priority.<sup>13</sup> The procurement chapter permits commissioning bodies to take environmental considerations into account; however, it bans local content requirements, provisions which would otherwise allow the government to ensure that the transition to a low-carbon economy doesn't negatively impact on workers in carbon-intensive industries. The TUC have described the deal as 'leav[ing] public services exposed to privatisation and profiteering'.<sup>14</sup> Extension of patent terms is of concern because IP protections in trade agreements can undermine international commitments, particularly in areas such as global health and development, and the fight against climate change.

**How well has the Government communicated its progress in negotiations – and how much has it listened to stakeholders during those negotiations?**

**Consultation with civil society**

12. We, along with many other stakeholders including NGOs, trade unions and businesses, have been disappointed at the level of communication from DIT when it comes to UK-New Zealand negotiations. Despite being on a DIT 'Thematic Working Group' and signing legally-binding confidentiality agreements, we were not given any prior sight of the UK-New Zealand AiP or FTA, or any meaningful opportunity to comment on the general direction of the deal, let alone specific provisions. We shared the ITC's frustration that despite specific pledges from DIT that they would receive embargoed copies of the agreement prior to publication, the Department failed to follow through on this pledge.<sup>15</sup>
13. Updates to both civil society and Parliament have been extremely high-level and lacking in detail. These updates have only covered subjects under discussion, and not what the UK is actually pursuing in these areas, including whether the UK is taking an ambitious or a regressive approach. It is interesting to compare this to the situation in New Zealand. For example, the UK and New Zealand's respective updates on the fifth round of negotiations shows New Zealand providing far more detail and transparency. Our New Zealand partner organisations have complained of secrecy within the Ministry of Foreign Affairs and Trade (MFAT), and a failure to take up recommendations from its Trade for All Advisory Board. Given the important role that the TAC might play, and some of the specific concerns about the UK-New Zealand FTA on food and animal welfare standards, it is essential that the TAC has enforcement powers, and representation of civil society groups.
14. In future, civil society must be engaged in all stages of negotiating FTAs. There should be a separate public consultation when the UK has begun any such negotiations including details of the UK's aims for the negotiation, so that individuals and civil society organisations can assess specific provisions of the proposed FTA. With all trade deals, there is a risk that those groups with the most financial interest - such as multinational businesses - have the most

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<sup>13</sup> <https://unfccc.int/topics/climate-technology/the-big-picture/what-is-technology-development-and-transfer>

<sup>14</sup> <https://www.tuc.org.uk/news/uk-new-zealand-trade-deal-lacks-important-protections-workers-says-tuc>

<sup>15</sup> <https://committees.parliament.uk/publications/9030/documents/159144/default/>

influence over countries' negotiating positions. However, it is important that negotiating positions are in the public interest, and accountable to the electorate, not just corporations. DIT should build in mechanisms for meaningfully including the views of civil society groups - through online consultations, events in local communities and meetings with representatives of key groups, such as trade unions, NGOs and faith organisations. This will help to ensure that any resulting trade deal is reflective of the concerns and interests of wider society.

### **Parliamentary Scrutiny**

15. TJM is concerned about the level of parliamentary oversight, scrutiny and public involvement in the negotiation and agreement of new Free Trade Agreements. We believe Parliament should have a clear scrutiny role in the development of trade deals. Specifically, Parliament should be given:
  - a. A role in setting the mandate for negotiations and the ability to approve or reject the commencement of trade negotiations.
  - b. Access to key negotiating texts in a timely manner and be able to feed in to negotiations, including via full debates in parliament.
  - c. The ability to approve or reject trade deals via a binding vote at the end of the negotiations.
  - d. A formal role in the review of implemented trade deals.
  
16. These steps are necessary to ensure the level of democracy and transparency that will empower Parliament to decide whether or not a negotiated trade deal is in the public interest.