

UK trade negotiations: Agreement with New Zealand

Friends of the Earth written evidence

26 October 2021

About us

1. Friends of the Earth England, Wales and Northern Ireland was established in 1971. We have local groups in around 130 neighbourhoods, and support more than 260 Climate Action groups. We are part of an international network of 75 national groups, counting over 2 million members and supporters globally. Friends of the Earth supports strong environmental standards and alternative approaches to trade, which put the needs of local communities and our environment at the forefront.

Summary

2. It is essential that the UK develops a coherent trade policy that lays down ambitious norms for international trade - and which promotes sustainable development, prevents the exporting of environmental harms, and protects the climate and biodiversity. The Agreement in Principle (AiP), published by the UK government on 20 October 2021, outlines the 'key elements' of the proposed Free Trade Agreement (FTA) with New Zealand and is the most recent expression of UK trade policy.
3. In summary, our main concerns with the AiP are focused around:
 - a. **Coherence:** We remain concerned that the UK does not have an overarching, public trade strategy. Negotiating objectives for this deal were unambitious, narrowly interpreted, and could have been bolstered if supported by a wider strategy developed over time with civil society engagement.
 - b. **Evidence:** There is no full Environmental Impact Assessment for the deal yet, nor is the full text of the draft agreement public. The low level of detail makes it hard to determine the true environmental and social impacts of the deal.
 - c. **Ambition:** It does not appear that key features of modern trade deals have been developed upon – for example, opportunities to ensure derogation from or non-enforcement of existing environmental laws, or inaction in relation to Paris Climate goals, could result in action under the FTA.
 - d. **Engagement:** Civil society engagement has been piecemeal and transparency lacking. Limited improvements to parliamentary scrutiny are not enough to ensure that there is proper engagement.
4. Overall the AiP suggests little negligible economic benefit and a number of risks, that are not adequately compensated for in terms of progressive provisions and ambition within the deal.

How good a deal does the AiP represent for the UK?

5. The AiP provides only limited detail on the content, enforceability, and potential impact of any final trade deal. This means it is difficult to judge the 'quality' of the agreement: whether the AiP adequately prepares the ground for a trade agreement that has the potential to uphold environmental protections in the future – or one that holds the potential to threaten and undermine progress.
6. Overall, modelling suggests that the deal may boost New Zealand's GDP by \$970m (0.3%), while the impact on UK GDP may vary over the long term between an increase of 0.01% or a decrease of -0.01%. The economic impact of the proposed free trade agreement (FTA) therefore appears negligible. While no

Written evidence from Friends of the Earth England, Wales and Northern Ireland (ANZ0009) full assessment of potential environmental impact is yet available, initial scoping suggests that the deal will increase greenhouse gas emissions.

7. To answer this question fully, the government should carry out an environmental and social impact assessment of the full text prior to ratification of the deal. This assessment, which should inform parliamentary scrutiny, should consider the potential impacts of the agreement in relation to the UK's net zero ambitions, the Paris Agreement, and the outcomes of COP26.

To what extent has the Government achieved its stated negotiating objectives?

8. The stated negotiating objectives for the UK-New Zealand trade agreement were published in June 2020. While presenting some positive aims, including protecting existing standards and furthering ambition on climate change, these initial UK objectives were fairly broad and unambitious – particularly given the public enthusiasm of New Zealand's negotiators for environmental ambition in trade. This means that, while the AiP does appear to broadly meet many of these negotiating objectives, it does not represent a significant departure from existing practice and does not significantly or urgently further UK objectives.
9. For example, objectives to 'reaffirm' commitments to international climate, environment and labour standards are seemingly secured in the FTA. However, they are also a feature of all modern trade agreements and are present in many of the UK's historic 'rollover' trade agreements. The AiP does not build upon these by suggesting any additional support or enforcement related to achieving these international commitments will feature in the deal. The non-derogation clause also appears to replicate the standard, somewhat unhelpful limitation of the commitment not to derogate from ('waive or fail to enforce') environmental protections to actions taken only 'in order to encourage trade and investment'. The UK and New Zealand had an opportunity here to remove this caveat and link trade benefits to ongoing compliance with domestic environmental law, but did not take it.
10. The UK objectives stated that government would 'seek sustainability provisions, including on environment and climate change, that meet the shared high ambition of both parties on these issues', and 'secure provisions that support and help further the Government's ambition on climate change and achieving Net Zero carbon emissions by 2050'. The AiP confirms that the text will 'recognise that nothing in the FTA will prevent either the UK or New Zealand from fulfilling their commitments under the United Nations Framework Convention on Climate Change (UNFCCC) or Paris Agreement' and 'Affirm commitments made by New Zealand and the UK under the UNFCCC, Paris Agreement and Montreal Protocol'. However, none of this suggests that the FTA will situate compliance with these treaties as a core element of the deal, as in the UK's Trade and Cooperation Agreement with the EU (Title III and Title XI, article 8.5), nor actively support partners to accelerate – or 'actively further' - progress towards climate goals. It would not, for example, motivate New Zealand to move away from the use of purchased carbon offsets to meet climate commitments, and towards a real-term decrease in emissions. This objective, then, has been nominally achieved, but again opportunities to demonstrate innovation and build on good practice have been missed.
11. Positively, the objective to secure 'appropriate mechanisms for the implementation, monitoring and dispute resolution of environmental and labour provisions' may have been met through replicating the CPTPP approach, in which environmental disputes have access to the overarching dispute settlement mechanism of the agreement. If this is the case, this could offer valuable enforceability to these provisions, as detailed below.
12. In relation to the UK's stated SPS objective to 'uphold the UK's high levels of public, animal, and plant health, including food safety', the AiP suggests that the FTA will permit bilateral SPS recognition. This means the agreement would pose no direct threat to UK import bans relating to hormone-treated beef or chlorine chicken. The AiP also references commitments by the UK Government to audit and monitor

Written evidence from Friends of the Earth England, Wales and Northern Ireland (ANZ0009) hormone and non-hormone beef supply chains, and to approve slaughterhouses in New Zealand to ensure that the standards are equivalent to the UK's. These measures are all welcome and support the stated objective. However, in relation to wider standards related objectives, it is debatable if the AiP guarantees the “meaningful protection” promised. The government has thus far failed to clearly set out how the recommendations of the Trade and Agriculture Commission will be applied to the resulting FTA, and how the UK will protect core domestic standards from downward pressure from imports produced to lower environmental standards (for example with use of banned pesticides, chemicals, or antibiotics) in New Zealand.

13. Finally, it is important to recognise that the government compromised on some objectives even within the initial negotiating strategy document. One overall objective was to ‘ensure high standards and protections for UK consumers and workers [...] not compromising on our high environmental protection, animal welfare and food safety standards.’ Yet this was immediately clarified to equate primarily to a guarantee that food regulators would continue to ensure that food imports to the UK meet food safety standards. This is a far narrower protection than a promise to ensure that the final deal would neither directly decrease nor indirectly undermine environmental protection or animal welfare standards, and is an area that will require close further monitoring.

What is likely to be the impact of the agreement on: Social, labour, environmental and animal welfare issues and UK consumers?

14. It is difficult to ascertain in detail the prospective impacts of a UK – New Zealand trade agreement, from the level of detail provided in the AiP. There is also no full impact assessment yet available from either government – although the UK's scoping study states that under both scenarios considered, the deal leads to higher greenhouse gas emissions and a movement of the composition of UK output towards sectors which are relatively more carbon intensive¹.
15. The agricultural tariff reductions spelt out in the AiP point towards an acceleration and facilitation of the import of cheap meat and dairy to the UK. The Climate Change Committee² and the National Food Strategy³ have concluded that a reduction in meat consumption of at least a third will be important to decrease impacts on climate and biodiversity, as well as to improve health.
16. However, the government's current approach to trade negotiations appears likely to increase the volume of meat imported, thus possibly increasing the UK's overall meat consumption, and hence global footprint, in addition to shifting consumption from UK to New Zealand production.
17. Farmers in the UK have said they will get little out of the deal apart from increased competition, while the government's own scoping paper concluded that ‘New Zealand's producers may be able to supply UK retailers at lower cost relative to domestic producers’. The NFU has also raised concerns about the cumulative impact of deals liberalising agricultural imports on the viability of UK production – particularly concerning as the New Zealand AiP appears to follow terms set by the Australian AiP, laying down a worrying precedent ahead of future negotiations with other nations including Canada, the US and Brazil.
18. It is positive to see that the AiP contains a specific animal welfare chapter, as there are opportunities for improvement on both sides of this agreement. While animal welfare standards are broadly equivalent between the UK and NZ, there are some areas of discrepancy. World Animal Protection's Animal Protection Index rates New Zealand ‘C’ for animal welfare in general and ‘C’ specifically for farm animal welfare standards, compared to the UK ratings of ‘B’ and ‘D’ respectively (ratings are A - G with A being

¹ P69 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/901870/uk-strategy-uk-nz-free-trade-agreement.pdf

² P48 <https://www.theccc.org.uk/publication/sixth-carbon-budget/>

³ P11 <https://www.nationalfoodstrategy.org/the-report/>

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19. However, in relation to other, welfare-related practices, and wider environmental standards, there are some ongoing differences between practice which do not look to be narrowing, and in relation to which the AiP is very light on detail:

- a. As noted above, in relation to hormone beef and chlorine washed chicken, the AiP suggests that the FTA will not challenge import bans, and will ensure that chlorinated chicken and the small number of New Zealand cattle treated with hormonal growth products do not enter UK supply chains. This is positive. However, maintaining current UK standards will be dependent upon ministers continuing to uphold existing import bans, resisting pressure to lower standards to compete with import competition, and putting in place mechanisms to protect UK consumers, producers and the environment from the negative impacts of imported goods produced to standards lower than the UKs.
- b. New Zealand still permits the use of some antibiotics not currently used in human medicine at growth-promoting dosages, as well as the use of medically critical antibiotics to prevent infection at the site of hormone injections in cattle. Data shows a trend of increasing sales of farm antibiotics in New Zealand between 2014 and 2017. This dropped back by 3% in the latest available year (2018), with overall rates of usage lower than those in the UK, but laxer rules governing the type and usage of antibiotics permitted. The Alliance to Save our Antibiotics⁴ notes that in New Zealand the antibiotic bambermycin is used as a growth promoter in poultry, while several ionophore antibiotics (lasalocid, monensin and salinomycin) are also used as growth promoters in pigs and cattle and for increased milk production in dairy cows. The UK ended the use of antibiotics for growth promotion in 2006. It is unclear from the AiP how UK prohibitions and maximum residue limits will be maintained, and what implications there might be for the existing Sanitary Agreement with New Zealand.
- c. Since 1990, the annual application of nitrogen via fertiliser across New Zealand has increased 627% (from 59,000 tonnes in 1990 to 429,000 tonnes in 2015)⁵. Nitrogen usage in the UK over the same period has fallen by around 40%⁶. A 2020 report by the New Zealand government found that nearly 60% of rivers carried unacceptable levels of pollution – linked to the growth of dairy farming and large-scale irrigation⁷. It will be important that the full environmental impact assessment explores the impact that an increase in imports from New Zealand might have on the UKs global footprint in relation to soil and water quality, as well as nitrogen emissions, and considers how this might be mitigated.
- d. New Zealand permits the use of 35% more highly hazardous pesticides than the UK (99, compared to 73 in the UK) and allows far greater levels of pesticide residues on food – in some instances hundreds of times more. Grapes grown in New Zealand are allowed to contain 1,000 times the amount of the fungicide Iprodione (a carcinogen and suspected endocrine disruptor) than their UK equivalents⁸. The insecticide Chlorpyrifos is currently approved in New Zealand for commercial use in crops, as a veterinary medicine, and as a timber treatment chemical – although this is under review. It was banned in the UK in 2016. Again, it is unclear from the AiP how protections will be maintained in the face of increased import levels and other commitments made in the full trade agreement.

⁴ <https://saveourantibiotics.org/media/1864/farm-antibiotics-and-trade-could-uk-standards-be-undermined-asa-nov-2020.pdf> and <https://www.saveourantibiotics.org/media/1956/211021-differences-in-farm-antibiotic-standards-in-the-uk-and-new-zealand-oct-2021.pdf>

⁵ <https://www.stats.govt.nz/indicators/nitrogen-and-phosphorus-in-fertilisers>

⁶ <https://www.gov.uk/government/collections/fertiliser-usage>

⁷ <https://www.abc.net.au/news/2021-03-16/new-zealand-rivers-pollution-100-per-cent-pure/13236174>

⁸ <https://www.pan-uk.org/toxic-trade-cptpp/>

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- e. While much has been made of the potential for the import of lower-emission meat from New Zealand (often ignoring the wider implications of farming practices on water and biodiversity, as outlined above), agriculture remains the source of nearly half of New Zealand's greenhouse gas emissions – primarily in the form of methane from cattle. Agriculture has been exempt from the domestic Emissions Trading Scheme since its inception in 2008, and is expected to begin paying for just 5% by 2026. Even under recently increased ambitions, New Zealand will meet approximately 68% of its 2030 Nationally Determined Commitment via the purchase of offshore carbon offsets⁹. The AiP suggests no measures to prevent UK complicity in this potential double-offshoring of emissions and responsibility.
20. It is unclear from the AiP and initial scoping to what extent the FTA will increase trade in products linked to practices banned within the UK, or associated with negative environmental externalities in New Zealand.
21. The AiP suggests that the environment chapter of the UK-NZ deal will primarily focus on replicating unenforceable and unambitious commitments we have seen in previous FTAs. While commitments on sustainable agriculture, biodiversity and the circular economy are to be welcomed, there is little detail, and no suggestion that these provisions will go beyond the usual aspirational yet non-binding language, including 'reaffirming' (previous commitments), 'recognising' (existing problems), and 'cooperating' (on non-specific solutions). The chapter also appears to refer to Māori concepts and terms, including mauri (the life force of all things) and kaitiakitanga (the guardianship and protection of mauri), but without confirmation these will be accompanied by guaranteed rights to exercise the responsibilities of such guardianship.
22. These commitments are unlikely to drive progress – a fact recognised in the initial UK government scoping study, which noted that the impact of provisions in FTAs intended to protect the environment is unclear, particularly 'where high existing environmental standards are expected to be enforced already' by both parties. For example, it seems likely that references in the AiP to agreement on reduction in ozone depleting substances and combatting illegal logging point to a replication of the approach taken in CPTPP (via clauses 20.5 and 20.17), which simply reaffirms existing commitments under the Montreal Protocol and CITES. These are likely to have limited impact as the UK and NZ already broadly fulfil requirements under these treaties.
23. Additionally, while references to 'non-regression' of protections as well as 'non-derogation' from environmental laws are helpful, again they appear likely to replicate restrictive wording preventing action under the FTA unless the reduction in protection is undertaken in order to secure economic advantage.
24. However, in some areas the environment chapter of the forthcoming deal does appear likely to contain some aspects that could represent progress. Commitments on environmentally harmful subsidies, clean energy and sustainable trade are described as 'precedent setting' – these include pledges to move away from fossil fuels and end fossil fuel subsidies. Yet the devil will be in the detail - if these commitments are not formulated in binding language, and backed up by strong horizontal enforcement mechanisms, they will also have limited effect. It is worth noting that both the UK and New Zealand have made unilateral commitments to reforming or ending funding for fossil fuels abroad via other fora – and most recently at COP 26. It is unclear what impact the negotiation of this FTA might have had on the policy decisions taken by each side.
25. The AiP suggests that the final FTA will 'Include CPTPP consultation and enforcement provisions with amendments to ensure a comprehensive and collaborative approach to dispute resolution in a bilateral context.' This could be helpful as CPTPP features a full hybrid Dispute Settlement Mechanism that begins with consultations "regarding any matter" under the environment chapter (described in TPP Articles 20.20-23) and provides for unresolved disputes to be taken to dispute settlement under Chapter 28.

⁹ <https://www.stuff.co.nz/environment/climate-news/126929434/cop26-could-new-zealand-be-forced-to-take-more-climate-action>

How well is the Government communicating its progress in negotiations – and how much is it listening to stakeholders during those negotiations?

26. Levels of transparency and meaningful engagement have been disappointing across the board, including in relation to negotiations with New Zealand. The lack of an overarching trade strategy or meaningful action to lay out UK core standards and guiding principles has also hampered efforts to consider and debate the cumulative impacts of and precedents set by new FTAs.
27. Updates within parliament and via stakeholder forums have been extremely high level. They indicate only subjects under discussion, not whether the UK is taking an ambitious or a regressive approach on them. Levels of transparency and granularity are far higher for stakeholders in New Zealand – see for example the [UK update on the 5th round](#) of negotiations in comparison to the [NZ update on the same round](#). The NZ approach to communicating progress across working groups is particularly helpful.
28. However, we note the concerns of academics in New Zealand that many recommendations of the ‘Trade for All’ Advisory Board have been ignored, and levels of transparency have decreased, particularly during the UK negotiations¹⁰. It also appears that neither side published any details of negotiations in the two months immediately prior to the publication of the AiP. Given that it is likely that the most contentious issues would have been resolved at this point, it would have been helpful to provide more clarity publicly. This transparency gap should be addressed by both sides.
29. There are some signs that the government is listening to civil society concerns – since the initial consultation DIT has set up further stakeholder advisory mechanisms and offered quarterly updates on progress. However, these have been marred by confidentiality requirements and a lack of clear feedback. Equally, while the establishment of a Trade and Agriculture Commission (TAC) to provide recommendations on maintaining standards, and the placement of the TAC on a statutory footing to provide future scrutiny were both welcome, progress on responding to recommendations and establishing the permanent body have been slow.
30. The extent to which civil society concerns have actively informed negotiations is also unclear. There is no clear feedback loop between concerns fed in during the consultation or stakeholder engagement sessions and the positions taken by the UK government, nor the outcomes of negotiations. For example, Friends of the Earth was pleased to see that this deal will not contain an ISDS mechanism, and that it has been disapplied between the UK and New Zealand in the context of any future accession to CPTPP. Many NGOs raised concerns about the potential impacts of such a mechanism during the consultation and negotiation process, and in meetings with government departments. However, there was little space for discussion on the issue and public concerns were regularly dismissed by government, until it became clear that New Zealand’s negotiators were reluctant to pursue ISDS in new FTAs. It has proven difficult to engage with government to determine how ISDS may be approached in future negotiations, or to get clear feedback on the level to which stakeholder concerns and evidence are informing the government’s position.
31. It is impossible to properly assess the possible impacts of this deal without access to the full chief negotiators text, setting out in more detail what has been agreed and what is yet to be resolved. However, this document is not currently publicly available.
32. The exact nature and timings of remaining parliamentary scrutiny is still unclear, as is the extent to which existing and new stakeholders will be engaged in scrutiny, impact assessment and the monitoring and oversight of the deal. While the government has committed to make the text available to Select Committees for full scrutiny, and to provide time for a debate on the final deal, these important democratic checks are not formally guaranteed in legislation. We are yet to see new scrutiny mechanisms, including the TAC, be

¹⁰ <https://www.bilaterals.org/?jane-kelsey-such-a-good-free-trade>

Written evidence from Friends of the Earth England, Wales and Northern Ireland (ANZ0009) put to the test. In evidence to the International Trade Committee on 27 October, Minister Penny Mordaunt and (DIT official) Oliver Philips suggested that the time for TAC scrutiny is still to come – despite the value early application of TAC expertise might have had to negotiators. As Anthony Mangnall MP stated in questioning: ‘The Constitutional Reform and Governance Act, which Jack Straw put in, is not good enough and it needs to be updated and modernised [...] But the TAC could have had the ability, had it been set up at the very beginning, to go through the process, look at what your objectives are around food, farming, fishing and all of this side of things, and then monitor that as the negotiations went on¹¹’. It is important that a formal and transparent process for the scrutiny of future deals is put in place as soon as possible – including through a revision of the CRaG act, and that all possible opportunities are taken to provide full scrutiny and monitoring of this deal going forward.

For more information please contact:

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¹¹ <https://committees.parliament.uk/oralevidence/2922/pdf/>