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Study | 12.07.2021

Seeking Progress Towards Climate-Supportive Trade

The EU-NZ FTA Negotiations

EXECUTIVE SUMMARY

The winds of change are sweeping through the halls of the World Trade Organisation and the offices of trade negotiators. Many of the foundations of trade policy are being questioned. It is no longer sufficient that trade liberalisation be pursued as an aim in itself – as the impacts of trade agreements are pervasive, trade policy needs to play a role in meeting the challenges of our time, including the inter-linked crises of climate change, biodiversity extinction and inequality.

Yet, there is resistance to change. Almost three decades after the signing of the Framework Convention on Climate Change trade rules all too often continue to provide a basis for legal cases to undermine government policy for climate action. Trade rules still primarily protect trade from climate policy, rather than protecting the climate from trade-related impacts.

However, there are now opportunities for trade reform, largely reflecting processes with the EU's institutions and member states, notably the European Green Deal and the EU Trade Policy Review.

The New Zealand Ministerial agreement to the recommendations of the Trade for All report also signals a new direction for trade policy, setting out an agenda for a shift towards sustainability. Trade negotiations tend to be evolutionary, building on provisions in previous agreements. This means that progressive trade partners can introduce advances in trade policy that then become a baseline for the future. This report examines whether the European Union – New Zealand Free Trade Agreement (EU-NZ FTA) can set a new standard in its approach to integrating climate action and sustainability into trade agreements. Even after ten rounds of negotiations over the past two and a half years, this report finds that there are still untapped opportunities to do so.

Trade, Climate and Sustainability Challenges for New Zealand's Primary Sector

Uniquely amongst OECD nations, New Zealand's trade is dominated by the export of primary products. These depend on natural resources that are increasingly under stress. Analysis of New Zealand's climate

emissions, biochemical flows, biodiversity, and land use changes shows that costs are being externalised from producers into the environment. Past patterns of trade and trade rules have focused on low-cost commodity production, allowing pollution havens and impacts such as poor river quality, loss of biodiversity and little progress in reducing greenhouse gas emissions. A new generation of trade agreements, integrated into broader government policy, should support incentives for producers to adopt zero carbon, sustainable and regenerative practices.

Such incentives could be provided by a framework of principles and criteria for certified, sustainable production entitled to trade privileges such as tariff- and quota-free market entry. International certification schemes for climate neutrality and organic production already exist and, even at this advanced stage of negotiations, it is not too late for the EU-NZ FTA to make a commitment to support the development of a system of certified agricultural production alongside cooperation in the development of a broader framework for sustainable agriculture, embracing climate, soil, water, biodiversity and social considerations.

Opportunities for Progress in the EU-NZ FTA

Negotiations on the FTA started in July 2018 and there have been ten rounds so far. Both the EU and New Zealand included objectives to promote sustainability and climate action in their negotiating mandates. The closed nature of trade negotiations, with secret texts, little accountability and inadequate assessments make it difficult to analyse the degree to which these aims have been realised. Research and analysis undertaken in this report shows that these objectives are far from achieved. However, there has been progress, and important advances in the EU-NZ FTA are still possible. Achieving these gains will require leadership and strong political direction.

A high priority for New Zealand negotiators is to ***eliminate environmentally-damaging subsidies***, specifically in fisheries, agriculture and fossil fuels. While some targeted subsidies have beneficial effects or create little or no impact, there is evidence that a significant proportion of EU subsidies have the effect of increasing capacity and economic activity, introducing trade distortions, increasing emissions and damaging the environment. New Zealand is using trade precedents and international agreements as a basis for their proposals to eliminate environmentally-damaging subsidies.

The EU has previously agreed text in existing trade agreements on fisheries and fossil fuel subsidies, and there appears to be little rationale for not including provisions in the EU-NZ FTA. Negotiations are underway and it is likely the form of the final text on these issues will be part of the trade-offs for the FTA as a whole. The elimination of environmentally-damaging subsidies is an important part of the EU's programme on climate action and sustainability and has trade effects. Commitments in this regard should be included in the final agreement.

Climate change should be integral to the FTA across all chapters, as well as being a major focus of the Trade and Sustainable Development chapter, including strong commitments to the targets and mechanisms of the Paris Agreement. While New Zealand's record on climate action over the past 30 years has been poor, the current government has built a robust framework of a Zero Carbon Act, an independent Climate Commission and an improved Emissions Trading Scheme. Even so, action on agricultural emissions is a major missing element, as detailed in this report.

The New Zealand government will be a willing partner for some provisions on climate in the EU-NZ FTA, including long term commitments to carbon neutrality, but will be reluctant to agree to specific proposals on issues such as a ***Carbon Border Adjustment Mechanism***. The EU is also wary of some of New Zealand's proposals, such as elimination of tariffs and Non-Tariff Barriers for a comprehensive list of ***environmental goods and services***. Both parties should be bold and include these issues along with strong protection of the right to regulate, tangible commitments to the Paris Agreement and linking of carbon

markets.

Enforceability of social and environmental issues is also a priority for New Zealand. They

have proposed that the Trade and Sustainable Development (TSD) chapter is subject to the same Dispute Settlement Mechanism as core FTA issues. This would represent a much stronger form of enforcement than previous EU FTAs, none of which have led to fines or the withdrawal of trade benefits when TSD commitments are not implemented. So far, the EU has not agreed to New Zealand's proposal.

However, there is momentum building for a change in EU Trade Policy. The European Parliament has expressed deep concerns over the EU-Mercosur FTA at least partly because of a lack of enforcement for key provisions on the climate, environment and social equity. The creation of a position of EU Chief Trade Enforcer is a step towards stronger prioritisation of the enforcement dimension.

A credible enforcement mechanism, including a central role for civil society, is now needed and should be included in the EU-NZ FTA. Specific commitments to support civil society participation and public engagement should be built into improved enforcement and accountability processes. These should include transparency of information and reporting (lacking in most aspects of trade policy), objective and independent research on progress and implementation, involvement of experts and affected parties, mechanisms for involvement of civil society and other Non-State Actors, and stronger processes for Parliamentary oversight.

In addition to strengthening enforcement processes and specific provisions, this report alsohighlights the urgent need for a ***reform of the process of EU trade negotiations***. The lack of basic transparency in the negotiations is out of step with commitments to greater transparency at the national level, in the EU and across other international forums. This undermines democratic oversight and accountability as well as limits opportunities for external engagement to build climate, environment and social provisions into the negotiating text. Prior to the completion of negotiations, independent and objective assessments of the draft agreement are needed from the perspective of gender equality, climate change, environment and human rights. This can provide an input to stronger accountability to public and Parliamentary oversight.

In a number of other areas, including much of the Trade and Sustainable Development chapter, there is alignment between the parties. There is a basis for agreement on issues such as implementation of ***international treaties, sustainable forest management, animal welfare standards, voluntary certification and labelling, sustainable procurement, trade and gender, the circular economy and responsible business standards***. Negotiations are well advanced on most of these issues, although there are outstanding issues remaining on trade and labour (New Zealand has yet to ratify two core ILO conventions) and ***indigenous rights*** issues.

Emerging alignment between the parties does not mean that there is sufficient ambition. The negotiations were launched with the aim of an agreement that would integrate climate action, sustainability and human rights into the trade framework. The EU-NZ FTA was seen as a means to set a new standard for good practice in trade agreements. While there have been advances in this direction, the core of the FTA provisions still prioritises trade liberalisation over sustainability aims. The draft FTA falls well short of the changes that are required to meet the challenges ahead.

Specific challenges to raise the level of ambition are identified in this report. A comprehensive shift towards sustainability will need changes to trade rules, so that they can prevent production that damages the environment, emits greenhouse gases, causes social harm and violates human rights, while providing incentives for sustainable trade. This will require agreements on trade restrictions and preferences built around a framework of transparency, standards-setting, certification and labelling. Specific proposals such as a Carbon Border Adjustment Mechanism, addressing the embedded carbon in traded products, need to

be further developed and supported.

This report shows that significant improvements to the draft FTA are still possible. Even at this stage of negotiations, it is not too late to strengthen the text so that broad statements of intention are backed by collaboration on setting a more progressive framework for trade and specific commitments to action. The EU Trade Policy Review and New Zealand's Trade for All report have expressed a higher level of ambition, and this EU-NZ FTA could still make a step change towards a new model for trade. This is a crucial opportunity for change.

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Responsible MEPs



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