

Date: 22/11/2023
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EU-New Zealand Free Trade Agreement: Trade and Sustainable Development Chapter

Executive Summary:

- The EU-New Zealand FTA is a landmark FTA for the EU; for the first time, there are repercussions for failure to meet Trade and Sustainable Development (TSD) commitments.
- This is intended to set a precedent for future FTAs signed by either party and indeed for the global community.
- Whilst the agreement does not have direct implications for UK agriculture, it does signify a step change in direction for EU trade policy following on from the UK's own agreement with New Zealand which included similar provisions.
- The ability to replicate this agreement in future trade agreements will depend on the commitment of the parties to uphold their own, and each other's, environmental obligations.

Introduction

With European Parliament due to approve the EU-New Zealand trade agreement in November, this briefing provides an analysis of the provisions included in the chapter in the FTA on Trade and Sustainable Development (TSD). This is a landmark FTA for the EU, as it is the first agreement reached by the EU and its trading partners where the TSD chapter is subject to dispute resolution, thereby representing the EU's new approach to sustainability as part of trade policy. With multinational fora, such as the WTO, being shown to be weak in the enforcement of trade rules, the bilateral enforcement of climate obligations signed up to in the Paris Agreement included in the EU-NZ FTA is a positive new line of defence, setting a useful precedent for the bloc, but one which may be difficult to replicate in future EU agreements.

EU Policy Background

The EU sees a more assertive enforcement of TSD chapters in FTAs as a further tool at its disposal to pursue sustainability objectives. The EU is a large and valuable market and wishes to use this market power to persuade trading partners to comply with international agreements (such as the Paris Agreement) which otherwise lack effective methods of enforcement. In New Zealand, the EU found a likeminded partner, as both parties consider themselves to be leaders in environmental sustainability.

The New Zealand FTA is the first agreement signed by the EU since a review of its approach to Trade and Sustainable Development in 2022. Moving forward, within EU agreements TSD commitments should be legally binding and enforceable through a dedicated state-to-state dispute settlement mechanism. The 2022 review was released with the communication “*The power of trade partnerships: together for green and just economic growth*”¹ and identified actions across several policy priorities, most importantly including “strengthening enforcement by means of trade sanctions as a measure of last resort” in instances of serious violations of core TSD commitments, namely the Paris Agreement on Climate Change².

EU – NZ Trade and Sustainable Development Chapter

Within Chapter 19 of the agreement, concerning Trade and Sustainable Development, the EU and New Zealand agree to recognise the importance of taking urgent action to combat climate change and commit to implementing the UNFCCC and Paris Agreement including commitments with regard to nationally determined contributions (Article 19.6). There is both the positive obligation to implement the agreements, as well as the negative obligation to refrain from any action or omission that *materially* defeats the object and purpose of the Paris Agreement. Standard trade agreements limit this language to actions which have a direct impact on trade.

Enforcement of the Provisions

Enforcement of the commitments on sustainable development is made possible in this agreement through a formal dispute settlement process, albeit a high burden of proof would be required to bring a successful claim to bear. The use of the word ‘materially’ in the Article means that a breach would have to be significant for the complaining party to have a high chance of success. Climate science, by its nature, is constantly shifting so it would be difficult to prove a breach. In the case of this agreement between two like-minded partners, it is difficult to see a situation where a breach would be serious enough to pass this burden of proof.

In the unlikely scenario of a successful case being brought to bear, then the complaining party reserves the right to suspend tariff preferences, on goods relevant to the dispute. This is a measure of last resort if no compromise can be negotiated but serves as an incentive for signatories to come together and find the solution to a dispute.

Implications for the UK

While this agreement does not directly impact the trade of agri-food products between the UK and any of our trading partners, it does follow the UK’s own agreement with New Zealand, which included enforceable commitments to the Paris Agreement, thereby adding momentum to this approach towards

¹ [Circabc \(europa.eu\)](#)

² [Sustainable development in EU trade agreements \(europa.eu\)](#)

trade and sustainable development. As with the UK-NZ FTA, the EU and New Zealand have used the agreement to hold each other to account on their environmental obligations.

A key consideration for the EU and the UK will be the negotiability of agreeing similar levels of enforceability with trade agreements with countries or trade blocs that are unwilling to be bound in a trade agreement to meeting their Paris Agreement obligations. For example, despite the UK Government's strategic approach to the UK-India FTA including a commitment to negotiating enforceable environment provisions³, leaked reports suggest that neither the labour nor environment chapters are set to be subject to dispute resolution⁴.

Conclusions

The EU-NZ FTA represents a milestone for the EU in the way that a climate conscious economy can enforce multilateral commitments via a trade agreement. Trade sanctions as a threat of last resort provides a counterweight against changes in government or unexpected swings in public opinion leading signatories to row back on environmental commitments.

The EU-NZ FTA sets a 'gold standard' against which future EU deals will be compared. The UK can benefit from the significant added momentum which this agreement gives to a more assertive approach to promote climate and environment responsibility overseas, including in agriculture.

³ [UK-India Free Trade Agreement - The UK's Strategic Approach \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/711111/uk-india-fta-strategic-approach.pdf)

⁴ Politico