

NZ EU FTA

INTERIM TIRITI O WAITANGI
ASSESSMENT OF NZ EU FTA

OVERVIEW

NGĀ TOKI
WHAKARURURANGA




Ngā Rangatira and the Crown established He Whakaputanga/the Declaration of Independence in 1835 and signed Te Tiriti o Waitangi in 1840.

Māori were guaranteed ongoing control of their people, resources and lives, while the Crown was responsible for their own.

On 30 June 2022 the NZ government and EU concluded a free trade treaty. Only the Crown was at the negotiating table for NZ. It will be signed some time in 2023.

The free trade treaty creates obligations on NZ that impact on Māori rights, interests, duties and responsibilities under te Tiriti.



**ASSESSING
COMPLIANCE OF THE
EU NZ FTA WITH TE
TIRITI O WAITANGI**

This Tiriti o Waitangi assessment **holds kāwanatanga in Aotearoa NZ to account** by measuring the EU FTA against

- the Crown's obligations under the **4 articles of Te Tiriti o Waitangi** and

the Kaupapa of **Ngā Toki Whakarururanga** in the Mediation Agreement between Māori claimants and the Crown in the Waitangi Tribunal Inquiry on the TPPA (Wai 2522).

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NGĀ TOKI
WHAKARURURANGA
—
KAUPAPA

“Mana whakahaere
in the global domain is
informed by Rangatiratanga
and Kāwanatanga working
together in a mana-enhancing
relationship of equals
consistent with Te Tiriti o
Waitangi and He
Whakaputanga o Te
Rangatiranga o Nu Tireni”

THE TIRITI ASSESSMENT FRAMEWORK

SEPARATE ASSESSMENTS HAVE BEEN MADE OF:

Te Tiriti o Waitangi and
Rangatiratanga

Māori Trade and
Economic Cooperation
chapter

Mātauranga Māori, data
and digital trade

Mātauranga Māori, Wai
262 & Te Pae Tawhiti

Māori Exporters, Wahine
and Kaimahi

Te Taiao



**THE RIGHT TO EXERCISE TINO
RANGATI RATANGA**



**KAWANATANGA
DENIED OUR
RANGATIRATANGA**

There was more timely information sharing than with the UK FTA, but Kāwanatanga alone decided

- that only the Crown should negotiate,
- what would be negotiated,
- what information would be shared on what terms,
- whether and how far to actively protect Māori rights, interests, duties and responsibilities,
- not to correct the flawed Treaty of Waitangi Exception,
- acceptable trade-offs that deny our Rangatiratanga, and
- that only Kāwanatanga should govern the arrangement.



MĀORI TRADE AND ECONOMIC COOPERATION

(CHAPTER 20)



**NO COMMITMENTS TO
ACTION, NO RESOURCES,
NO PROTECTIONS FROM
HARM, NO POWER,**

The chapter contains lots of **good rhetoric**, and is to be **implemented in a manner consistent with Te Tiriti and tikanga**, but **the content is even more token than the UK FTA:**

- It lists 4 possible areas of “cooperation”
- the EU & NZ must agree and there is no obligation to do or fund any of those activities
- claims Māori benefit from many other chapters but ignores the known risks
- doesn't apply to indigenous peoples within the EU
- Māori and other “relevant stakeholders” “may” be invited to participate in activities
- has no sub-committee with responsibility for the chapter (which the UK FTA has)
- Māori only have a voice through a Domestic Advisory Group and Civil Society Forum
- it is unenforceable.

This explains why the EU was prepared to include the chapter in the FTA.



**MĀTAURANGA MĀORI,
DATA AND DIGITAL TRADE**



THE CROWN
PARTLY FIXED DIGITAL
TRADE RULES THAT
BREACH TE TIRITI

The Waitangi Tribunal found ...

- *the CPTPP digital trade rules affected governance and control of Māori data ...*
- *which involves matters fundamental to Māori identity, such as whakapapa, mana, mauri and mātauranga. ... and*
- *can't easily be balanced against other interests & Crown can't decide that on its own.*
- *Exceptions and exclusions don't meet the active protection standard.*

The EU FTA digital rules are basically the same.

There are new **exceptions that provide more protection for Māori**, but some problems remain.

The digital chapter provides for a **review**, but **no guarantee of change**, and **only for that chapter**.



**MĀTAURANGA MĀORI, WAI
262 & TE PAE TAWHITI**



The Wai 262 claim said Western IP laws are incompatible with Māori values, rights, responsibilities and legitimise the exploitation and misappropriation of taonga.

NZ needs:

- *a domestic regime to protect mātauranga Māori and taonga works; and*
- *minimum standards of protection in FTAs.*
- *But :*
- *Te Pae Tawhiti is still far away from developing a Tiriti-based domestic regime;*
- *the FTA guarantees the EU some stronger IP rights;*
- *there are no real protections for Tiriti rights from IPRs*
- *Eg. no protection for haka Kā Māte or other taonga*
- *Eg. tariffs cuts for mānuka honey, but no protection for the name, just a possible future possibility*

The EU FTA will make it even harder for Te Pae Tawhiti to deliver.



**MĀORI EXPORTERS,
WĀHINE & KAIMAHI**



**MINIMAL GAINS FOR
MĀORI EXPORTERS,
WORKERS OR WOMEN**

Gains for Māori exporters will be part of limited gains in sectors where Māori are strong, like kiwifruit, fish, wine, honey.

But these are a **drop in the bucket**: MFAT puts gains for all exports at NZ\$1.4 billion to GDP in 15 years time – but GDP in 2021 was \$250 billion

The farming lobby described the FTA as **“crap”**.

There will be **few new NZ jobs** and **kaimahi Māori** may not get any that are created.

Promises to cooperate to support **wāhine Māori and small business could be helpful** but they are all “maybe” and unenforceable.



TETAI AO



Many FTA chapters impact on Te Taiao eg investment, services, goods, IP, labelling, but with **no effective protection** for Te Tiriti.

The **Sustainable Development chapter**

- recognises Māori knowledge and practices are important to conservation and biodiversity
- but provides **no effective protections** and
- there's **no role for Māori in its governance**.

Climate change provisions let the EU & NZ basically **continue as usual**.



This FTA will take about a year to be translated and signed.

HAS KĀWANATANGA MET ITS OBLIGATIONS . . .

At first the Waitangi Tribunal said ...

- Kāwanatanga has not honoured Rangatiratanga in the process or outcomes of the FTA
- Māori rights, interests, duties and responsibilities have not been effectively protected and are further at risk

But the Tribunal's 2021 report on digital issues

- our proposals had more influence on the EU FTA than the UK FTA
- Kāwanatanga took some steps to meet its Tiriti obligations on mātauranga Māori, especially for data, but not for other areas like intellectual property
- Kāwanatanga remained in total control of the process and decisions about trade-offs
- Secrecy requirements prevented participation of all affected Māori.

WHAT NEEDS TO CHANGE FOR THIS FTA TO BE TIRITI COMPLIANT?

Parts of this FTA are better than earlier ones, and parts are worse.

Kāwanatanga has taken small steps to improve its process and listen to proposals.

But it is still world away from meeting its obligations to

- negotiate a Tiriti-based trade agreement that maintains the mana of the Rangatira o Ngā Hapu o Aotearoa and Kāwanatanga
- honour what our ancestors envisaged in 1835 and 1840,
- co-governance with independent Māori genuinely at the table with real power,
- adopt an agreement that is truly transformative of the status quo
- lay down and apply a tika and pono foundation for future relations between states that are party to these agreements.



**NGĀ TOKI
WHAKARURURANGA**