

# **TIRITI O WAITANGI ASSESSMENT OF NZ UK FTA:**

## ***MĀORI TRADE AND ECONOMIC COOPERATION CHAPTER***

*\*This analysis is as accurate as possible within the time available*


# MĀORI VISION FOR A TIRITI CHAPTER

Members of the Māori Reference Group on the UK FTA established by the Crown expressed the need for a Tiriti o Waitangi chapter that

- was pragmatic,
- had Te Tiriti at its centre,
- provided for benefits for Māori businesses, and
- had protections for Māori rights, interests and responsibilities,
- with Māori participation as Tiriti partners at the table for these matters.

The final text has not addressed those concerns.





MĀORI TRADE  
AND  
ECONOMIC  
COOPERATION  
(CH 26)

**The long “context and purpose” of the chapter repeats the FTA’s Preamble:**

- Te Tiriti/The Treaty is a foundational document of constitutional importance, *but only to NZ;*
- the UK “notes” its role as an original signatory to Te Tiriti/The Treaty but has no obligations today.

**Other paragraphs highlight**

- Māori leadership,
- promote the relational approach to trade,
- Mātauranga Māori,
- Kaupapa Māori methodologies, ...



**BUT THIS IS  
NOT A TIRITI  
CHAPTER**

The chapter is a “first”.

From what we can see of the UK’s attitude to Te Tiriti throughout the text, it will have been hard for NZ negotiators to get anything.

But the chapter says nothing about protecting Māori rights, interests, duties and responsibilities under Te Tiriti o Waitangi, and it ignores how the agreement creates risks to Māori wellbeing and the need for protections.

Instead, **it makes weak promises on cooperation to assist Māori** commercial interests participating in trade and investment in the FTA.

# WHY ARE THE PROMISES WEAK?

**At first glance, the packaging of the “Māori trade” chapter looks impressive.**

The chapter is big on rhetoric and short on action.

**The devil is in the details:**

- this chapter is only about Māori trade and economic interests,
- it lists 3 possible areas of cooperation, which could be helpful to Māori business,
- but says explicitly there is no legal or financial commitment to do any specific activities,
- it makes no attempt to address Māori rights, interests, duties and responsibilities under Te Tiriti, and
- the chapter is unenforceable.



# WHAT DOES THE CHAPTER REQUIRE UK & NZ TO DO?

**It promises 3 “cooperation activities” (Art 26.5):**

- Collaborating to enhance Māori-owned enterprises’ ability to access and benefit from opportunities in the FTA;
- Collaborating on developing links between UK and Māori-owned enterprises and entrepreneurs, which “may” include various commercial opportunities, or activities like road shows; and
- Continuing to support science, research, and innovation links.

NZ “may” invite Māori views and participation in these activities in accord with Tiriti/Treaty “principles”.

Cooperation should be implemented for New Zealand, in a manner consistent with Te Tiriti/The Treaty, and “where appropriate” informed by Te Ao Māori, Mātauranga Māori, and tikanga Māori.

**But how do you have “cooperation” when only NZ operates according to Te Tiriti and how will NZ and UK operate based on tikanga?**



# AND THE UK DOESN'T HAVE TO DO ANY OF THIS ...

There's no guarantee even those limited activities will happen, not just because the chapter is unenforceable, but **because careful wording lets the UK avoid any of these “cooperation activities”**:

- NZ and UK “may facilitate” the 3 activities – “may” is not “shall” and “facilitate” is not “conduct”,
- and only where it is “appropriate and practicable” to do so,
- and when one country asks for cooperation on one of these activities
- and both NZ and UK agree on the terms
- and both NZ and UK agree on the details and resources for any cooperation activities,
- and that is subject to the resources “available” (ie made available by) to each country,
- and using *existing* ways of organising UK NZ cooperation activities on Māori-related issues

Just to make sure this is clear, **the chapter does “not impose any obligations requiring the Parties to explore, commence or conclude any individual cooperation activities”**  
(Art 26.5, fn 1)



# UNENFORCEABLE COOPERATION VS BINDING RULES FOR BIG BUSINESS

NZ and UK

*“recognise the value of increased Māori participation in international trade and investment ... including through the promotion of Māori relational approaches, Mātauranga Māori, technologies, and Kaupapa Māori methodologies, in the case of New Zealand”. (Art 26.2.5)*

**But this is only for the cooperation activities, and only applies “in the case of New Zealand” - whatever that means for cooperative activities with the UK...**

**Contrast that to the binding and enforceable rules in the main chapters of the UK FTA which stand for exactly the opposite values ...**

**The goods trade, digital trade, intellectual property, foreign investment, services, etc chapters are based on Western, capitalist, commodified, and transactional approaches to commerce.**

(see the Tiriti Assessment of Māori business, kaimahi and wāhine Māori)





# UK ALSO DENIES ANY IP PROTECTION FOR CULTURAL RIGHTS

The chapter explicitly protects UK intellectual property (IP) laws from any hint of challenge.

It says (Art 26.2.10) that nothing in the chapter

- gives rise to any obligations relating to IP
- creates any requirement for the UK to change its IP laws or policies
- means the UK recognises genetic resources, traditional knowledge or traditional cultural expressions are forms of IP
- means the UK recognises that any examples of genetic resources, traditional knowledge or traditional cultural expressions can be protected as IP, except where UK law says so.

**NZ is more subtle:** it “*may* adopt measures to respect, preserve, promote, protect traditional knowledge and traditional cultural expressions, *subject to its international obligations*”, but “international obligations” include this FTA and other FTAs that prevent them doing so.





OTHER  
INTERNATIONAL  
TREATIES CAN BE  
OVERRIDDEN

The chapter “notes” (Art 26.3) that NZ and UK are parties to other international “instruments” that involve their commitments or their rights and responsibilities

(presumably they mean agreements that are relevant to Māori, but Māori rights under those agreements are not mentioned here.)

Only 4 instruments are listed:

1. UNESCO Convention on Cultural Diversity
2. UN 2030 Agenda for Sustainable Development
3. The Convention on Biological Diversity
4. UNDRIP – noting national positions of UK and NZ on the UNDRIP that limit their obligations.

“Notes” is about as weak wording as you can get in an FTA and does nothing to stop this FTA overriding those or other international treaties.



OTHER  
PROVISIONS  
SUPPOSED TO  
BENEFIT  
MĀORI

The article headed “**Provisions across the Agreement Benefitting Māori**” (Art 26.4) lists 7 chapters, including Digital Trade, Intellectual Property and Government Procurement, that it claims

- enhance Māori trade and investment opportunities and
- further contribute to the ability of Māori to exercise their rights under Te Tiriti/The Treaty.

**This just asserts** there will be benefits, and totally **ignores the known** risks, limitations and lack of protections for Māori rights, interests, duties and responsibilities in those chapters.



NZ and UK “acknowledge” the significance of *Ka Mate* to Ngāti Toa Rangatira.

A side-letter records NZ’s recognition (not the UK’s) of the historical importance of Haka *Ka Mate*, and Ngāti Toa Rangatira’s responsibility to ensure its performance respects the values of ihi, wehi and wana, and to protect it from mistreatment.

That recognition is significant for Ngāti Toa Rangatira.

# BUT THERE IS NO COMMITMENT TO PROTECT IT

But the fine print says NZ and the UK only agree to jointly *endeavour to identify appropriate* means to *advance* recognition and protection of Haka Ka Mate.

- NZ will invite Ngāti Toa Rangatira to take part in these “cooperation activities”.

This is some advance, where there was nothing before.

But, consistent with UK’s opposition to recognising cultural property rights, **there is no promise** that any effective action to recognise and protect Haka *Ka Mate* will result from this.



**NO  
RANGATIRATANGA  
IN GOVERNANCE  
OF MĀORI TRADE  
CHAPTER**

**The Māori Trade chapter is not enforceable.**

Unlike the environment and labour chapters,

- it has no separate sub-committee to oversee its implementation and operation.
- the Māori Trade chapter instead comes under an Inclusive Trade Sub-committee (Art 26.7, 30.8)
  - together with the (also unenforceable) gender, SME, and development chapters.



# NO RANGATIRATANGA IN GOVERNANCE OF MĀORI TRADE CHAPTER

There is provision for (non-Crown) Māori to be on that sub-committee (it doesn't say how many)

and it should operate in a manner that, for NZ, is consistent with Te Tiriti/the Treaty,

and sensitive to tikanga (how can a joint committee operate under tikanga for only 1 party?).

But **the impact of Māori participation will be limited** because the role of the sub-committee is only

- to discuss and reflect on the Māori Trade chapter's cooperation activities and
- consider input from experts or representatives on relevant issues.

