NGĀ TOKI WHAKARURURANGA

TE TIRITI O WAITANGI ASSESSMENT

New Zealand - European Union Free Trade Agreement

An independent assessment prepared by:
NGĀ TOKI WHAKARURURANGA

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FOREWORD

Tēna koe e kara,

E mihi atu ana ki a koe, mōu e whakatere ana i ēnei kaupapa nui kia pūmau ngā ohakī o ngā tūpuna, i whakarerea mai i roto i Te Tiriti o Waitangi, He Whakaputanga me ēra atu o ngā kawenata.

Ngā Toki Whakarururanga has prepared this Te Tiriti o Waitangi assessment of the *Free Trade Agreement between the European Union and Aotearoa New Zealand* pursuant to our 2021 Mediation Agreement with the New Zealand Crown.[1]

That Agreement arose from the Wai 2522 Inquiry into the *Trans-Pacific Partnership Agreement* (TPPA) and the subsequent *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP).

To ensure a consistent approach to such assessment, Ngā Toki Whakarururanga developed a template that applies a Te Tiriti o Waitangi lens to any free trade agreements (FTAs) that Aotearoa New Zealand negotiates, with specific reference to the four articles of Te Tiriti.

Despite our Mediation Agreement, the New Zealand Ministry of Foreign Affairs and Trade (MFAT) has commissioned a separate independent assessment of the impact of this FTA for Māori.

We have expressed our concerns that the Crown's approach lacks full independence, is not sourced in Te Tiriti o Waitangi, and allows the Crown to "play theirs off against ours". Further, the Crown's terms of reference give priority to perceived economic gains to Māori exporters over the range of Tiriti-based issues and concerns that Ngā Toki Whakarururanga has brought to the Crown's attention throughout the negotiations.

Nevertheless, in the spirit of cooperation, Ngā Toki Whakarururanga has provided the Crown's chosen assessor with an advance copy of our Te Tiriti assessment as well as published it independently.

Our thanks to our pūkenga Carrie Stoddart Smith and Jane Kelsey for preparing this report and to our kaihautū and other pūkenga for their input and advice.

E mea ana te korero, ina tere ngā kapua, he hau kei muri.

Pita Tipene
Co-Convenor

Moana Maniapoto
Co-Convenor

INTRODUCTION

Ngā Toki Whakarururanga brings a Te Tiriti o Waitangi perspective to the trade-related policy space, to advance and protect Māori interests and set the bar for achieving trade policy, negotiations and agreements that are consistent with Te Tiriti o Waitangi. Ngā Toki Whakarururanga will not shrink from its mandated responsibility to set that threshold.

Consistent with that Kaupapa, this report provides an independent assessment of the *New Zealand European Union Free Trade Agreement* (NZ EU FTA) as measured against Māori rights, interests, duties and responsibilities, and the Crown's obligations, under Te Tiriti o Waitangi.

BACKGROUND

Te Tiriti o Waitangi anticipates the Crown and Māori, in the exercise of kāwanatanga and rangatiratanga, work together as equals. This means that, in Aotearoa New Zealand (NZ), both rangatiratanga and kāwanatanga occupy the trade policy space when developing international relationships and agreements, setting the mandate for any negotiations, and at the negotiating table.

That requires trade and related policy objectives to uphold and actively protect Māori rights to exercise authority over our lands, waters, resources and all taonga, including the ecosystem in its holistic entirety, as well as Māori laws, beliefs, and philosophies.

Our Mediation Agreement recognises the Crown's obligation to ensure that Māori have genuine influence over trade policy and negotiations.

This makes it imperative that potential Te Tiriti implications are identified by Māori before a decision is taken to begin a negotiation and that these are effectively addressed before the text of an FTA is signed to avoid repeating existing, and committing further, breaches of Te Tiriti. Where Te Tiriti issues remain unresolved, such breaches could potentially remain in perpetuity.

The Crown has consistently cited the inclusion of a Treaty of Waitangi Exception clause in its FTAs since 2001 as fulfilling its Treaty obligations. However, that exception is widely recognised as inadequate to a) protect Māori rights and interests and b) to preserve the policy space required to address outstanding or ongoing Te Tiriti issues, given its intrinsic limitations and the far-reaching scope of contemporary FTAs.[2]

Risks to Māori rights, interests, duties, and responsibilities are heightened by the secrecy of FTA negotiations. The NZ EU FTA text did not become available to the public, including Māori, until it had been agreed by the parties.

Only a handful of advisers who had clearance and signed a Confidentiality Agreement could gain access to the draft text during the negotiations, and only once the European Union (EU) had agreed. That was arranged only in the last few months of the multi-year negotiation. Those advisers were sworn to secrecy, which prevented them from communicating with Māori who have specialist expertise to identify particular issues and remedies and/or those whose interests are affected by the text.

Now that the negotiations are concluded, the text has been made public. The parties will insist it cannot be changed, which undermines the public's democratic right to participate in the development of the FTA and breaches Māori rights to exercise rangatiratanga under Te Tiriti o Waitangi.

PURPOSE

Ngā Toki Whakarururanga's Mediation Agreement explicitly includes the responsibility for assessing the Te Tiriti-compliance of FTAs that have been negotiated by the Crown.

In the past, the National Interest Analyses (NIAs) prepared by MFAT have focused on the perceived economic benefits to Aotearoa New Zealand (NZ) with little consideration for the Crown's Te Tiriti o Waitangi obligations. This practice ignores the unique status of Māori as tangata whenua and the direct and indirect impacts that FTAs can (and in many cases do) have on the rights, interests, duties, and responsibilities of Māori under Te Tiriti o Waitangi.

This Tiriti assessment of the NZ EU FTA aims to hold the Crown, Cabinet Ministers, and all Members of Parliament (MPs) to account in terms of their Tiriti obligations before the Agreement is signed and seeks to empower Māori and others to participate on an informed basis in the debate on the Agreement, including at the select committee.

While this assessment acknowledges the Crown has made some positive changes to past practice and agreements, there are also some backward steps in this FTA. The Crown, led by MFAT, still have a long way to go to satisfy their obligations under Te Tiriti o Waitangi.

APPROACH

As mandated in our Mediation Agreement, Ngā Toki Whakarururanga has developed a template for a Tiriti o Waitangi assessment of the Crown's compliance with Te Tiriti o Waitangi as viewed through the lens of Te Ao Māori. As such, the NZ EU FTA is measured against two related reference points:

(a) The Crown's obligations and Māori rights under the four articles of Te Tiriti o Waitangi:

- **Kāwanatanga** – Article 1: Government exercises authority over its own and any authority positively delegated by Māori, subject to the obligation to recognise rangatiratanga and ensure the protection of Māori rights, interests, duties, and responsibilities.
- **Tino Rangatiratanga** - Article 2: Rangatira have unfettered ongoing power and responsibility to ensure the exercise of Māori authority collectively over their own affairs and resources in a manner consistent with tikanga Māori.
- **Oritetanga** - Article 3: Māori and the Crown's people have parity and equity in rights and outcomes, meaning equal rights to define and pursue aspirations according to a people's fundamental principles, laws, and beliefs.
- **He Whakapono** – Article 4: guarantees the active protection of philosophies, beliefs, faiths, and laws.

(b) The Tiriti-based Kaupapa of Ngā Toki Whakarururanga as set out in the Mediation Agreement with the Crown, which is to:[3]

- **Preserve** *mana tukuiho* (mana inherited) and *mana whakahaere* (exercise of that inherited power to preserve and maintain hapu mana and rangatiratanga)
- **Give effect** to Te Tiriti/the Treaty as a relationship of equals
- **Ensure** the exercise of mana and tino rangatiratanga through effective participation in decision-making through collective, participatory, and accountable processes and shared authority in the international domain
- **Recognise** the responsibilities of rangatira as leaders to preserve and uphold the mana and rangatiratanga of their hapu and the responsibilities of the Crown to represent Tauiwi
- **Achieve** a new approach to trade policy and the negotiation of international trade agreements that gives effect to the Tiriti relationship and establishes mutual respect and collaboration between the parties
- **Acknowledge** the importance of tikanga-based trading relationships
- **Ensure** the full, timely and reciprocal sharing of information to achieve this Kaupapa.

STRUCTURE

This report is organised into seven parts that address the main, although not all, the relevant issues using the Te Tiriti assessment template:

PART 1: Te Tiriti o Waitangi and Rangatiratanga	Assesses whether the Crown has delivered on its commitments and obligations under Te Tiriti o Waitangi in the NZ EU FTA, including through the processes for negotiation and implementation.
PART 2: Māori Trade and Economic Cooperation Chapter	Analyses the perceived benefits to Indigenous Peoples in Aotearoa NZ and the EU from this chapter and any deficiencies, including in light of other similar arrangements.
PART 3: Mātauranga Māori: Knowledge and Culture	Examines how the NZ EU FTA addresses issues relating to intellectual property rights that impact on rangatiratanga and kaitiakitanga of taonga, including those raised in the Wai 262 inquiry and its implementation through Te Pae Tawhiti.
PART 4: Mātauranga Māori: Data Sovereignty and Digital Trade	Evaluates the obligations and protections in Chapter 12: Digital Trade and other chapters that impact on rangatiratanga and kaitiakitanga in the digital space, especially considering the Wai 2522 Report's findings of a breach in the CPTPP.
PART 5: Ngā Pakihi Māori (Māori Businesses, MSMEs and Producers)	Assesses the projections of gains from this FTA to Māori exporters, producers and MSMEs from improved market access and removing the barriers that persist in the trade environment.

PART 6: Kaimahi and Wāhine Māori	Evaluates the perceived benefits and opportunities arising from this agreement for Māori workers and women, including with reference to similar provisions in other recent FTAs.
PART 7: Te Taiao	Reviews the NZ EU FTA's concept of sustainability through the lens of Te Ao Māori and the Crown's obligations to protect and advance Māori rights, interests, duties and responsibilities in relation to the environment and the ecosystems, the climate crisis, and safe food and food sovereignty.

OVERVIEW

In October 2015, the political leaders of Aotearoa NZ and the EU announced a process to negotiate a "deep, comprehensive, and high-quality" Free Trade Agreement.[4] The negotiations were formally launched in July 2018 and concluded on 30 June 2022.

The joint scoping discussions from early 2016 to March 2017 were at a very general level.[5] The summary scoping document notes the negotiating parties agreed to include a provision ensuring the New Zealand government could "fulfil its obligations under the Treaty of Waitangi", which referred to the controversial Treaty of Waitangi Exception that New Zealand has rolled over unchanged in its FTAs since 2001.[6]

Māori appear to have had no direct input into the development of the Crown's negotiating mandate[7] and it is unclear what, if any, substantive engagement there was with Māori during the bulk of the negotiations.[8]

The Crown only engaged directly on the text with a range of Māori entities between March and June 2022. Ngā Toki Whakarururanga and the Crown signed a Memorandum of Understanding (MoU) to co-design a Political Declaration on indigenous trade. This was very late in the negotiations, when most of the FTA text had been finalised, and was limited to the Political Declaration. All engagement was on a strictly confidential basis involving a very few people who had no ability to consult other Māori who were directly affected. Technical experts from Ngā Toki Whakaruruanga and Te Taumata worked together to produce a draft Political Declaration on Indigenous Peoples Trade, which the Crown adapted and presented to the EU. A diluted version of the Declaration was included in the FTA as the Māori Trade and Economic chapter. Neither the Declaration nor the chapter was to be enforceable.

Ngā Toki Whakarururanga provided detailed input on other key areas of substance in the draft text with the goal of making it Te Tiriti-compliant and stressed the need for greater openness and for Māori to have an independent seat at the negotiating table.[9]

Some parts of the NZ EU FTA provide stronger provisions than some of earlier FTAs, notably on digital issues, which in part reflects our belated input. Other chapters perpetuate or expand existing breaches of Te Tiriti obligations and potentially create new ones, for which the Crown relies on the inadequate Treaty of Waitangi Exception for protection.

Our assessment concludes that Crown still has a long way to go to become compliant with its obligations under Te Tiriti o Waitangi in the trade and trade related policy space on both process and substance. The following issues are especially problematic in the NZ EU FTA:

- Exclusion of Māori from the negotiating table and access to information that directly affects them.
- Ineffective protections for most Māori rights, interests, duties, and responsibilities throughout the text.
- Continued reliance on the flawed Treaty of Waitangi Exception.
- Trading off Māori rights and interests for, at most, minimal commercial benefits to businesses and workers, including Māori businesses and workers.
- Failure to secure equivalent benefits for Māori that are provided for EU producers.
- The lack of substantive commitments in chapters that might provide benefits to Māori, including by lack of enforceability, resourcing, and participation in decision-making.
- Exclusion of Māori from the core institutional mechanisms to implement the FTA.
- The EU's refusal to extend cooperation activities and protections to Indigenous Peoples within its territory, particularly Sámi.

ONLY MĀORI, WHY NOT ALL INDIGENOUS PEOPLES

A key function of Indigenous Peoples' presence in an FTA involving Aotearoa NZ should be to enhance the people to people, culture to culture and rangatira to rangatira links between Māori and the Indigenous Peoples whose territories fall within the territorial borders of the Parties, during its negotiation, in its substantive provisions, and in its implementation.

Māori entities involved in the discussions on the text for this Agreement urged the EU to involve Indigenous Peoples from EU member states, and in particular to recognise the special and unique status of the Sámi, whose traditional territories fall within, but were settled long before, the established national borders of Finland, Norway, Sweden, and Russia – some of whom are also EU members.[10]

The EU supported the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2007, as well as the *Outcome Document of the World Conference on Indigenous Peoples*[11] in 2014.[12] Additionally, four EU Member States have ratified the *ILO Convention on Indigenous and Tribal Peoples* (No.169).[13]

This Agreement should have consistently referred to "Indigenous Peoples", with concepts and activities that actively involve and reflect the worldviews of Māori and the Sámi people.

The EU declined that inclusion, because that would involve the competency of Member States and would have made their negotiations more complicated. Yet, at the same time, the European Parliament was passing a suite of resolutions relating to Indigenous Peoples.[14] The EU's negotiating position also contradicted the statement on the European External Access Service's (EEAS)[15] own website that says:

> The European Union has been actively supporting [I]ndigenous [P]eoples since the late 1990s and has committed itself to maintain [I]ndigenous [P]eoples as a focus of attention given their disadvantage in all societies. This is manifest in two programmes

entitled 'Global public goods and challenges' (GPGC) and 'Support for civil society organisations and local authorities' prioritising the fight against poverty and supporting inclusive growth.[16]

The EU's refusal to support a positive forward-looking approach that would implement its international and domestic commitments meant Māori engagements with the Crown and EU representatives in Aotearoa NZ worked off an extremely low base, with a low level of ambition. As a result, and despite the Crown's efforts, the FTA only refers to Māori without reference to Indigenous Peoples in the EU. This creates a very poor precedent, given the Crown promotes Aotearoa NZ as a global leader in this area.

PART 1: TE TIRITI O WAITANGI AND RANGATIRATANGA

1. *He Whakaputanga o Te Rangatiratanga o Nu Tireni* 1835 and *Te Tiriti o Waitangi* 1840 guarantee that Māori continue to exercise tino rangatiratanga, over their people, resources, and lives, while the Crown assumed responsibility for its own. Rangatiratanga is a foundational philosophy of te Ao Māori that encapsulates, sovereignty, self-determination, and autonomy.

2. An innovative MoU was signed in May 2022 between Ngā Toki Whakarururanga and the Crown for the joint development of the text and negotiating strategy for a proposed (non-binding) Political Declaration. Both were to use best endeavours to reach consensus and agreement. Ngā Toki Whakarururanga developed the first draft and provided it to MFAT and other Māori rōpū. Te Taumata's technical experts worked with Ngā Toki Whakarururanga on the proposed text and accompanying work programme. This was a significant advance on previous practice, but it applied only to the side agreement for an unenforceable Political Declaration and Māori still had no seat at the table even for that.

3. MFAT also agreed to resource Ngā Toki Whakarururanga to provide expert and strategic direction on Māori rights, interests, duties and responsibilities and drafting, but that was capped below the actual work done.

4. There was no rangatiratanga in the process of negotiating the NZ EU FTA beyond the MoU to co-design the proposesd Political Declaration, which in practice the Crown still controlled. Nor is there any room to exercise rangatiratanga over taonga in any of the FTA's substantive provisions, as explained throughout this assessment. Additionally, there is no rangatiratanga in its governance and decision-making structures or implementation.

MFAT'S MĀORI INTERESTS PAPER

5. In its Māori Interests paper, the Crown claimed that the NZ EU FTA would recognise the special status of Te Tiriti o Waitangi / Treaty of Waitangi and guaranteed to Māori that the agreement would not impair the ability of the Crown to honour its obligations to Māori, including under Te

Tiriti. However, when seeking the negotiating mandate from Cabinet for this FTA, MFAT had sought only to include the flawed Treaty of Waitangi Exception clause.[17]

6. The Crown also said that it would seek general regulatory flexibility to ensure it can continue to take measures that are in the interests of Māori, as well as seeking a range of general protections to provide further flexibility where a policy might otherwise breach an obligation of the FTA.[18]

TE TIRITI O WAITANGI REFERENCES IN THE TEXT

7. The consolidated text (preamble and chapters) is 502 pages long. In total, there are 17 references to Te Tiriti o Waitangi, 68 references to Māori and 27 references to various Māori concepts and values, with the majority in the unenforceable Chapter 20: Māori Trade and Economic Cooperation chapter. Aside from that Chapter and Chapter 12: Digital Trade, the main references are in the Preamble and the Exception.

8. The text acknowledges both versions of the Treaty, and in the correct order Te Tiriti o Waitangi/ Treaty of Waitangi. Those unfamiliar with Te Tiriti would likely view these versions as the same rather than distinct texts. There is no footnote acknowledging the differences in the texts to ensure they are not assumed to be direct translations. We are also concerned that the Crown has referred to Te Tiriti/The Treaty "and its principles" in Article 12.4 – a term that has been used by the Crown to dilute rangatiratanga and assert a claim to government as equal to sovereignty.

THE PREAMBLE

9. The Preamble outlines the intention and principles that inform the text of the FTA. A preamble has no legal force except as one of a range of possible interpretive aids where the text is unclear.

10. The Preamble affirms the right to regulate for legitimate policy objectives and contains an important new reference that, for Aotearoa NZ, that includes the full spectrum of rights, interests, duties and responsibilities for Māori, in response to concerns raised in the Wai 2522 inquiry.[19] This may be referred to as an interpretive guide where the right to regulate or the meaning of a legitimate policy objective arises that involves Māori or Te Tiriti.

11. The Preamble also asserts the importance of international trade in enabling Māori wellbeing, as well as the challenges for Māori, including the disparities for wāhine Māori, in accessing trade and investment opportunities, including in this FTA. However, it fails to recognise that the FTA's transactional and commodity-based model of international trade is inconsistent with relational and durable relationships that Māori have long practiced and stand to benefit from. Nor does it acknowledge that the rules in the Agreement may have negative impacts on indigenous rights that also need to be addressed.

THE TREATY OF WAITANGI EXCEPTION

12. The general exceptions in Chapter 25 are essentially the same as the CPTPP, which the Wai 2522 Tribunal found would offer inadequate protection in relation to mātauranga Māori, even when supplemented by the chapter-specific flexibilities. While that report applied specifically to data and the digital domain, it has broader application.

13. The Crown continues to rely heavily on the Treaty of Waitangi Exception set out in Article 25.6. As noted earlier, that wording has remained unchanged since 2001 despite intensive criticism. It applies only where a government measure gives "more favourable treatment" (which could be narrowly interpreted as positive discrimination or affirmative action) to Māori in relation to Te Tiriti/The Treaty. It does not apply where the government elects *not* to perform an obligation in the FTA because it would breach Te Tiriti (e.g. overriding an intellectual property right) or where a new law is adopted to give effect to a Tiriti obligation (e.g. relating to water or mining).

14. The Treaty Exception is subject to the further conditions (known as the "chapeau") that the measure must not amount to arbitrary or unjustified discrimination against EU trade and investment interests or to a disguised trade preference to this country's interests.

15. Whether the government's measure involves a Treaty of Waitangi obligation cannot be disputed, but the rest of those elements can be.

16. In 2001 that exception was innovative. Today, other countries are more progressive. For example, the US, Canada and Mexico Agreement (USMCA) in 2020 adopted stronger wording that is not limited to "more favourable treatment" (Art 32.5) and allows the adoption of measures the government deems necessary to fulfil its legal obligations to Indigenous Peoples (although it still has the chapeau).

17. Significantly, Aotearoa NZ has proposed an even stronger version in the WTO plurilateral Joint Statement Initiative on e-commerce, which would allow it an unfettered ability to meet its Te Tiriti obligations.[20] We unsuccessfully urged the Crown to adopt similar wording in the NZ EU FTA.

18. MFAT argues that "combined with other provisions in the Agreement, the inclusion of [the existing Treaty of Waitangi] exception will protect the ability of the Crown to implement domestic policies that fulfil its obligations to Māori, including under the Treaty of Waitangi, without being obliged to offer equivalent treatment to members of the EU".

19. We disagree. This solution involves ad hoc clarifications in various other parts of the FTA text. However, that only works for those areas that were identified and where Aotearoa NZ and the EU were prepared to insert them (e.g. not for most intellectual property rights). They also depend on the strength of the wording, whether the provisions provide carveouts from the scope of a chapter or rule or are exceptions that have to be justified, and whether there are other conditions on their application.

20. The Treaty Exception also applies only to Māori in Aotearoa NZ. There is no equivalent exception for measures to protect the rights of Indigenous Peoples in the EU, notably the Sámi in Finland and Sweden.

21. To be Tiriti-compliant, the government needs to adopt the stronger version of the Treaty of Waitangi Exception. If it is unable to do so before signing and ratification, then the Crown needs to work with Māori and counterparts in the EU to build acceptance of a general Indigenous Peoples exception prior to the first review of the FTA.

22. That process needs to involve Indigenous Peoples themselves to promote active support for their rights, interests, duties, and responsibilities in alignment with the broader policy objectives and international obligations of both Aotearoa NZ and the EU, and our Mediation

Agreement. Such a cooperative dialogue should form a non-negotiable element of the Parties' work programme in its first three years.

RANGATIRATANGA AND THE FTA GOVERNANCE STRUCTURES

23. The governance structures for the Agreement are set out in Chapter 24. There is no guaranteed role for Māori in any of those structures, even where Te Tiriti and/or Māori interests are explicitly mentioned, and no power over any decisions.

24. A Trade Committee will meet annually to oversee the implementation of the Agreement, including problem solving, amendments and reviews. It will be co-chaired by the trade ministers from the EU and Aotearoa NZ and made up of government representatives from each.

25. The Trade Committee oversees several specialised committees and bodies and can dissolve them or create new ones. The established specialised committees cover:

- Trade in Goods
- Sanitary and Phytosanitary Measures
- Sustainable Food Systems
- Wine and Spirits
- Trade and Sustainable Development
- Investment, Services, Digital trade, Government Procurement, and Intellectual Property
- Joint Customs Cooperation

26. These committees are all comprised of government officials from the EU and Aotearoa NZ. There is no Māori representation or right of input into any of these committees.

27. We emphasise here that it is not an acceptable solution for the representative burden on such committees to be placed on Crown officials of Māori descent when such representation is the realm of mandated hapū and iwi rangatira or their nominated representatives. It would also be inappropriate to assume that high-ranking Crown Māori will have a mandate or the level of cultural expertise and accountability to fulfil the duties expected of rangatira. We appreciate that many of the discussions at these committees will be of a technical nature. However, where specific subject matter expertise is required, rangatira must be provided an opportunity to seek their own independent advice and to determine for themselves through their own consensus building processes with Māori, the positions and views that they will bring to the table.

28. The Trade Committee is meant to liaise with the Joint Committee of the little-known *Partnership Agreement on Relations and Cooperation Between the European Union and its Member States, of the one part, and New Zealand, of the other part* ("Partnership Agreement") signed in 2016.[21] This seems to be relic of the days before the EU was willing to negotiate an FTA with Aotearoa NZ. There is a single reference to the "Treaty of Waitangi" in the preamble to the Partnership Agreement that merely acknowledges the New Zealand Government's commitments to the "principles of the Treaty of Waitangi".

REVIEW

29. It is important that as Māori we can fulfil our obligations of manaakitanga, especially when entering arrangements that could fundamentally change or impact our rights, interests, duties,

or responsibilities. While engaging with foreign embassies based in Aotearoa NZ is important, this is not sufficient for fully exercising our rangatiratanga. As our tupuna demonstrated, we must also have access to the decision makers to uphold the mana of te Ao Māori. Doing so, would also give effect to the Crown's Tiriti obligation to uphold the rangatiratanga of Māori under Te Tiriti o Waitangi.

30. This needs to form part of the review that is required to take place four years after the FTA enters into force. The Trade Committee can decide to amend the Agreement to "correct errors, or to address omissions or other deficiencies". That is surprisingly open-ended wording. Given the EU's attitude during the negotiations it is unlikely to provide an avenue to address the Tiriti deficiencies of the FTA, but the Crown must try.

DOMESTIC ADVISORY GROUPS

31. Non-government participation in activities concerning the FTA is only available at the domestic level. Aotearoa NZ and the EU must each set up a Domestic Advisory Group (DAG) within a year of entry into force to advise on issues covered in the FTA (Article 24.6). The Government must meet with the DAG at least once a year and consider its views and recommendations.

32. The DAG must have a "balanced" representation of "independent civil society" ranging across NGOs, business, unions, human rights, environment. But it is discretionary whether the government makes the membership public.

33. In the case of Aotearoa NZ, the Group must include Māori representatives (plural). However, Māori will still be outnumbered by other "stakeholders". There is no requirement for the EU to include Indigenous representation in its DAG.

34. The DAG *may* be convened in different configurations to discuss the implementation of different provisions of the FTA. This suggests that sub-committees might deal with specific chapters. That could result in a Māori sub-group if the Crown saw fit. That might be useful, as the DAG must advise on issues covered by the unenforceable Māori Trade and Economic Cooperation chapter and *may* submit recommendations on the implementation of the chapter. But the Crown would decide the membership and the terms of reference for any sub-committee, it would presumably have to report back to the full DAG, and it would not have any real power in relation to the implementation of the Agreement.

35. This approach looks very similar to the Trade for All Advisory Group, which the Trade Minister appointed in 2018, and the subsequent Ministerial Strategic Advisory Group on Trade. There were several Māori representatives on each group, again appointed by the Minister. Decisions among the large and diverse grouping of stakeholders was by consensus, which diluted their voice in both cases. Then the Crown decided what recommendations it would accept.

36. So, it is unclear whether the DAG would provide any benefit to Māori. If a different DAG configuration were convened, for example a genuinely independent Māori-appointed committee with equal status to the stakeholder-based DAG, it could be favourable, or not disadvantageous, to Māori, but there is no guarantee as its role is still linked to the content of the FTA itself.

CIVIL SOCIETY FORUM

37. The EU and Aotearoa NZ must also "facilitate the organisation" of a Civil Society Forum (Article 24.7) to dialogue with the parties on implementation of the FTA, apparently at the bilateral level.

38. The forum is open to participation of "independent civil society organisations" including from the DAG, with an "endeavour" to be balanced.

39. For Aotearoa NZ, it must include Māori representatives, but again that is among other stakeholders and there is no requirement for Indigenous representation on the EU side.

40. The Forum is required to meet at least once a year, and one of its functions is to conduct a dialogue on the implemention of the Māori Trade and Economic Cooperation chapter. It is unclear how that would work given the composition of the Forum.

41. The institutional processes provide that the Civil Society Forum shall "endeavour" to meet in conjunction with the meeting of the Trade Committee and Members of the Trade Committee must "as appropriate" take part in a session of the Forum to present information and engage in dialogue and publish any formal statement that comes out of the Forum. Again, there is no assurance that Māori would have any influence in that process.

RESOURCING

42. There is no commitment in this FTA for resourcing participation in the DAG, or the Civil Society Forum whose meetings with the Trade Committee may be held in the other Party, so it is likely to favour business lobbies, and well-resourced NGOs or Māori that have the capacity or willingness to freely volunteer their time.

43. Additionally, the growing preference or shift toward virtual meetings assumes that representatives bear no personal costs in their participation. But virtual meetings still require preparation that requires resources, and in many cases, representatives are required to take time out of their work schedule or get time off work from their employer to participate. For MSMEs or self-employed representatives this is at a cost to their businesses or organisations, particularly for those in services, where participation depletes their total available billable hours. More generally, it must not be assumed that Māori will make their valuable knowledge, expertise, and time available as volunteers.

44. Selection based on the ability or willingness to freely volunteer time may also not result in representatives that are the most knowledgeable about the issues and implications of the FTA implementation and may not provide an accurate assessment of the issues of the communities who are expected to represent in these forums. Nor would they enjoy the necessary legitimacy and accountability.

NOT A TIRITI RELATIONSHIP

45. The Crown cannot claim that any of these institutional processes in the FTA is in any way Te Tiriti compliant. Despite references to "inclusiveness" of Māori, inclusion comes after the secretive negotiations have been concluded and the "inclusiveness" provisions are to implement an agreement that Māori had no role in negotiating. The exception was the MoU on a proposed Political Declaration on the side of the FTA. Disappointingly, there is no

empowerment of Māori to influence any decisions of the parties, or even the Domestic Advisory Group and Civil Society Forum. With no power vis-à-vis the Crown at the FTA table, there is no rangatiratanga/kāwanatanga relationship.

46. This is not the first time this unequal relationship has been brought to MFAT's attention. The Tiriti audit of APEC 2021 noted that "a treaty-based partnership means shared decision-making, equitable access to resources, and Māori authority over Māori people and Māori Kaupapa", and described that relationship in APEC 2021 instead as "hierarchical between kāwanatanga and rangatiratanga."[22]

47. Ngā Toki Whakarururanga has developed a model that would bring all the existing entities actively engaged in the trade-related space together for the purpose of building cooperation and cohesion amongst the various entities in the interests of ngā Māori katoa.[23] The Tiriti audit of APEC 2021 also endorsed Te Rangitūkupu, the Māori governance entity developed for APEC 2021, as an effective Tiriti-based model for partnering with the Crown and proposed a broadened version of it as the basis for Tiriti-based co-governance in the trade-related space.[24]

48. The Crown needs to support Māori to develop such an entity. That entity must have genuine authority in relation to decision-making and review under this FTA as it affects Māori, not be limited to advice or implementing activities, and not be subordinated within a DAG of CSF.

49. It will be equally important for the Crown to support Māori to ensure that there is consensus on an appropriate process that is transparent and accountable for the nomination and selection of those who represent Māori, rather than the shoulder tapping approach that is often taken by the Crown.

50. The IPETCA Partnership Council could provide a useful model for this purpose.[25]

PART 2: MĀORI TRADE AND ECONOMIC COOPERATION

OVERVIEW

51. Chapter 20 on Māori Trade and Economic Cooperation is strong on rhetoric, including that it is intended to be implemented, in the case of Aotearoa NZ, in a manner consistent with Te Tiriti o Waitangi and tikanga Māori. The substance is similar to the NZ UK FTA. Both chapters are unenforceable and make no commitments to action or providing resources to fund them, no protections from harm, and no power sharing. However, the EU version is weaker because it provides no guaranteed role for Māori in any activities and does not establish any role for Māori in decisions regarding the chapter.

52. Presumably, this lack of substance is why the EU was ultimately prepared to include the chapter instead of its initial preference for a political declaration, especially the Tiriti-based version Ngā Toki Whakarururanga had co-drafted with the Crown and the work plan developed by its technical advisers along with those from Te Taumata.

53. While acknowledging the Crown worked hard to secure even this much from the EU, it oversells the purported benefits without acknowledging the issues arising under the FTA that could or do adversely affect Māori. The outcome creates a new low bar for indigenous-specific chapters in Aotearoa NZ's recent FTAs.

DEFINITIONS

54. This chapter improves on the UK FTA's definitions and descriptions of kupu and whakaaro Māori. Concepts such as tikanga and taonga are acceptable (although the macron use in "taonga" in the FTA will need to be removed) and "wellbeing" is given a broad meaning sourced in te Ao Māori.

55. But the definition of Mātauranga Māori as "traditional knowledge that relates to te Ao Māori" is incomplete. Mātauranga Māori is dynamic and includes knowledge and practices applied, developed, adapted, and evolved by Māori through a Māori worldview in diverse contemporary settings also.

56. "Aotearoa" is ascribed a literal translation as "long white cloud", and as a Māori "term" that refers to New Zealand. This seems an odd thing to do given Aotearoa is widely used as a name for the country and ought not need a translation, but it also fails to acknowledge that some iwi histories do not use Aotearoa as a term for New Zealand.[26]

57. There is a deeper concern that the growing use of kupu Māori in FTAs is window-dressing. Those fundamental concepts only appear in this unenforceable chapter and are not connected in any meaningful way with the substance of the other chapters that are incompatible with them, such as intellectual property.

58. There is also some discomfort around way that kupu are defined, or their definitions are simplified for the ease of understanding by the other Party, and the downstream risks of potentially mis-defined or incomplete descriptions.

CONTEXT AND PURPOSE

59. Article 20.2 recognises the importance of enabling and advancing Māori wellbeing and the challenges that may exist in accessing trade and investment opportunities through international trade. It also endorses the need for mutual cooperation to contribute towards Aotearoa NZ's efforts to enable and advance Māori economic aspirations and wellbeing. Further, cooperation needs to be implemented, in the case of Aotearoa NZ, in a manner consistent with Te Tiriti o Waitangi and where appropriate informed by those Māori concepts (as defined).

60. It also recognises in Article 20.6 that the value of increased Māori participation in international trade and investment includes promotion of Māori relational approaches informed by Māori values, including the value of enhancing people-to-people links that may arise from opportunities of the chapter.

61. The MFAT website refers to this chapter as a "new modality" and "a valuable new platform to advance Māori economic aspirations in the EU".[27] However, this "modality" is not reflected anywhere else in the Agreement. It remains ghettoised in an unenforceable and un-resourced chapter that makes no commitment to any action and has no guaranteed role for Māori in its implementation.

INTERNATIONAL INSTRUMENTS

62. Article 20.3 merely "notes" several international instruments including the UNDRIP, UN Sustainable Development Goals (SDGs), Convention on Biological Diversity, UN Guiding Principles on Business and Human Rights, and UNESCO Convention on cultural diversity. It does not even "affirm" any of the commitments contained within them.

63. The EU has not even "noted" the ILO Convention 169 on Indigenous and Tribal Peoples, to which four of its members are signatories. This may be to avoid highlighting the ongoing failure of Aotearoa NZ to ratify that Convention.

PROVISIONS SAID TO "BENEFIT MĀORI"

64. Article 20.4 lists ten other chapters in the Agreement that it describes as "benefitting Māori" by enhancing Māori participation in trade and investment opportunities and that "further contribute to the ability for Māori to exercise their rights and interests under Te Tiriti o Waitangi/The Treaty of Waitangi".

65. There is no explanation of how those chapters/provisions do (or do not do) so. For example:

- The intellectual property chapter (chapter 18) is listed, even though it is based on a western IP regime that was heavily criticised in Wai 262 *Ko Aotearoa Tēnei.* It fails to protect mātauranga and other taonga, has rules that are incompatible with the UNDRIP, and does not even protect any Māori geographical indications.
- The (unenforceable) Chapter 21 on Small and Medium-Sized Enterprises (SMEs) promises to establish an SME-specific website to provide information about the

Agreement, tariffs etc, and appoint a contact point to "ensure SME needs are taken into account in implementation of the Agreement". There is no specific reference to Māori. Soon-to-be-released research by MFAT on the impact of the TPPA/CPTPP shows no gains to Māori SMEs from a similar chapter in that Agreement.

- Other chapters in the list, such as Government Procurement or cross-border services and investment, imply that Māori will benefit generically from the chapter when there is no evidence they will do so.

COOPERATION ACTIVITIES

66. The only commitment to do anything in the chapter is in Art 20.5 Cooperation activities. This stipulates that the Parties "*may* coordinate activities" and those activities "*may* include" four possible areas of cooperation:

    - collaborating to enhance Māori businesses accessing and benefitting from opportunities under the Agreement;
    - developing links between EU and Māori-owned businesses, especially SMEs, and facilitating cooperation between enterprises on trade in Māori products;
    - supporting science, research and innovation links pursuant to a 2009 agreement between the EU and NZ that is squarely based on Western science and intellectual property rights and does not recognise Māori concepts;[28] and
    - cooperating and exchanging information and experience on geographical indications.

67. These are purely discretionary activities. Both the EU and NZ must agree to do them. "Cooperation" will require resources but (as with the NZ UK FTA) a footnote says explicitly there is no legal or financial obligation on the Parties to explore, commence, or conclude any individual cooperation activities. On top of which, the chapter is not enforceable.

IMPLEMENTATION OF CHAPTER 20

68. Unlike most other chapters of the NZ EU FTA, there is no sub-committee responsible for this chapter (which the UK FTA has). The Parties *may* (not will) coordinate cooperation activities with Māori and "other relevant stakeholders, as appropriate". Again, there is no reference to Indigenous Peoples within the EU. There is not even any guarantee that Māori would be a part of these activities. The EU and Aotearoa NZ "may" invite the views and participation of relevant stakeholders, and for Aotearoa NZ that includes Māori.

69. Otherwise, Māori only have a voice through the agreement-wide DAG that includes business, NGOs, unions etc and Māori representatives and which "may" submit recommendations on the implementation of this chapter (Article 20.6.2). There is a possibility of specialist groups being formed, but no guarantee.

70. A bi-Party Civil Society Forum, that meets once a year, is also required to conduct a dialogue on the implementation of this chapter. But Māori will be a small minority in a Forum of disparate voices. This Forum and the DAG are discussed above in paragraphs 29 to 42.

71. The discretionary cooperation activities in Chapter 20 are also meant to occur within the framework of the Partnership Agreement on Relations and Cooperation between the EU and NZ signed in 2016, which is about "dialogue, mutual respect, equal partnership, consensus, and respect for international law".[29]

72. The only relevant reference to Māori in that partnership agreement is in the Preamble that "acknowledges" New Zealand's "particular commitment to the principles of the Treaty of Waitangi" – although they do "agree to exchange information and promote dialogue on the protection of genetic resources, traditional knowledge and folklore" (Article 21.3) and on "sustainable development" (Article 25.4)

73. It is unclear what the interface with this Partnership Agreement might involve. Its institutional mechanisms are an annual trade policy dialogue of senior officials and "other sectoral exchanges when determined by the Parties" (Article 14). While dialogue between government and NGOs is to be encouraged, there is no reference to Indigenous Peoples (Article 26).

74. The absence of Māori, and Indigenous Peoples from within the EU, from the governance of this chapter lowers the existing bar established between New Zealand, Australia, Canada and Taiwan in the *Indigenous Peoples Economic and Trade Cooperation Arrangement*[30] and the less Tiriti-compliant institutional arrangements in the NZ UK FTA.

PART 3: MĀTAURANGA MĀORI, KNOWLEDGE, AND CULTURE

MĀTAURANGA

75. The Wai 262 Report *Ko Aotearoa Tēnei* examined how western intellectual property laws have supplanted, rather than complemented, Māori values, rights and responsibilities, granted exclusive rights that conflict with kaitiakitanga responsibilities, and legitimised the exploitation and misappropriation of taonga.[31] The Te Pae Tawhiti project is tasked to develop a domestic regime to protect mātauranga Māori and taonga works and species. [32] Te Tiriti-compliant FTAs need to protect the space to do that. Instead, the NZ EU FTA strengthens the system of western IP rights and will make it even harder for Te Pae Tawhiti to deliver on the Wai 262 issues.

76. The definition of Mātauranga referred to earlier is limited to "traditional knowledge that relates to te Ao Māori", while taonga is "a highly valuable or prized object, element, natural resource or possession, and can be tangible or intangible". These terms appear only in the unenforceable Māori Trade and Economic Cooperation chapter, not where they could have an impact, notably in Chapter 18 Intellectual Property.

77. Because the Treaty of Waitangi Exception applies only to "more favourable treatment" it does not obviously cover decisions *not* to comply with IP obligations. The easiest solution would be to change the exception. The Crown chose instead to address that issue through an agreed interpretation in the NZ EU FTA. However, it applies only to one small part of the IP chapter.

INTELLECTUAL PROPERTY RIGHTS

78. In its report to MFAT concerning Maori interests in the NZ EU FTA prior to negotiations, BERL noted that "For Māori businesses, cultural elements, including visual devices, kupu and intellectual property (IP), are key parts of their unique advantage and these need to be more strongly protected and supported".[33] This would mean "seeking active cooperation through the right instrument in the EU-NZ FTA around traditional knowledge protection and addressing misappropriation, offensive and derogatory use [of IP] in the EU."[34]

79. Māori concerns over IP in this FTA extend far beyond addressing the interests of Māori businesses. They involve the rights, duties and responsibilities of all Māori.

80. The Crown promised to "seek to ensure that it preserves the ability to put in place protections necessary for Māori interests" and said the EU had agreed "that negotiations should explore issues related to genetic resources, traditional knowledge and folklore".[35] These were already referred to in the "Partnership Agreement", signed in 2016, as above.

81. Instead, the final FTA guarantees the EU stronger IP rights (IPRs), especially in copyright and geographical indications, while retaining problematic rules on patents, trademarks and designs. There are no effective protections for Te Tiriti rights from IPRs.

82. Despite the Crown's promise to seek protections, there is, for example, no protection in the IP chapter for the Haka Ka Mate or other taonga,[36] nor to prevent the trademarking of kupu Māori,

including Māori names. Copyright protections, once granted, are extended from author's life plus 50 years to author's life plus 70 years.

83. Article 18.62 has a weak reference to potential cooperation on traditional knowledge. The areas where the parties *may* cooperate on IP issues include "genetic resources, traditional knowledge and traditional cultural expressions". But this is discretionary and will require the EU to agree. There are no actual protections for genetic resources, traditional knowledge and traditional cultural expressions in the chapter.

PROTECTION OF PLANT VARIETIES

84. The Wai 262 inquiry recognised that implementing The International Union for the Protection of New Varieties of Plants (UPOV) 1991 was inconsistent with protecting mātauranga Māori. The TPPA/CPTPP included an Annex 18-A that provided policy space to adopt UPOV 1991 or a sui generis system that gives effect to UPOV 1991 while meeting the Crown's Tiriti obligations.[37] Problems with that Annex were the subject of Issue 3 in the Wai 2522 inquiry and the related Plant Variety Rights Act 2022 was criticised by Māori at the select committee.[38]

85. The NZ EU FTA similarly requires Aotearoa NZ to have a "system" in place to give effect to UPOV 1991. It deals with the Tiriti risk through Fn 1, which says "for greater certainty" the Treaty of Waitangi Exception "may include measures on matters covered in this subsection that NZ deems necessary to protect Māori rights, interests, duties and responsibilities in fulfilment of its obligations under Te Tiriti/The Treaty". Fn 2 says "system" may be a sui generis system.

86. This footnote seeks to remedy the gap in the Treaty Exception, although the policy space is still conditioned by the "chapeau". However, the footnote applies *only* to this obligation, not to the entire IP chapter. It might be argued that the footnote infuses the Treaty Exception's application to other IP rules, and the NZ EU FTA more generally. But the converse seems more likely.

GEOGRAPHICAL INDICATIONS

87. The EU insisted that a broad range of Geographical Indications (GIs) are protected in this FTA. Aotearoa NZ already protects certain GIs through a number of mechanisms, including the *Trade Marks Act 2002,* consumer protection laws, and the *Geographical Indications (Wines and Spirits) Registration Act 2006*, which had to be changed to register the EU GIs that the government has agreed to protect under the EU-NZ FTA,[39] and comes into force this year. The EU has a particular framework for recognising and protecting GIs that is different, in many ways, from how New Zealand currently protects them.[40]

88. The FTA has an annex listing protected GIs. The EU's list spans 97 pages and 1976 specific items of wine, cheese, and other foodstuffs. Aotearoa NZ has 1 page that lists 23 wine region names, none being Māori.

89. Following the release of the FTA text, MFAT said the outcomes on GIs "provides an opportunity for Māori food and beverage producers to develop and leverage their own GIs for quality New Zealand products for export to the EU". That glosses over the lop-sided initial list of GIs in the FTA and the likely difficulty of adding to them.

90. There is a process for Aotearoa NZ to seek to add up to 30 GIs to this list every three years (Article 18.33). The Trade Committee of both Parties has to agree. A proposed addition can be contested in the EU under an opposition procedure, for example, as not being a "geographical"

indication or as being a term in common usage. If the EU has not accepted Māori descriptors to date, it seems unlikely they will add them to the list in the future, except perhaps as a trade-off for something they want.

MĀNUKA

91. Mānuka is culturally important to Māori as a taonga and traditional medicine.

92. While the NZ EU FTA makes tariff cuts for Mānuka honey exports to the EU, there is no protection for the term itself, either as a trademark (something rejected by the UK's Intellectual Property Office[41]) or as a GI.

93. The only reference to the term "Mānuka" is in Article 20.1 of the Māori Trade and Economic Cooperation chapter, which defines Mānuka as "the Māori word used exclusively for the tree Leptospermum scoparium grown in Aotearoa NZ and products including honey and oil deriving from that tree."

94. That unenforceable chapter on cooperation provides very weak interpretive context for the rest of the Agreement. As intellectual property experts note, the "definition appears to allow 'Mānuka' to be recognised as something akin to a GI but that has been placed outside of the context of the GIs within the IP chapter" and "it is not readily apparent from the text how this definition will translate to recognition and protection within the European market".[42]

CULTURE

95. The EU has a quasi-constitutional obligation to have a "cultural exception" in its FTAs, but this is largely limited to carving out audio-visual from relevant chapters. The EU was also a major advocate of the 2005 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*[43] to which Aotearoa NZ is also a party.

96. Despite this, the EU appears to have opposed calls for the FTA to protect cultural taonga, including Haka Ka Mate – even the side-letter in the UK FTA recognised the kaitiaki responsibilities of Ngāti Toa Rangatira[44] – and to address the well-documented appropriation of mātauranga Māori under its intellectual property laws.[45]

97. There is one potential gain for Māori artists. The author of an original graphic art or sculpture work is entitled to a share of the price of resales after its first sale, but only where the sale is through art market professionals, such as salesrooms, art galleries and general dealers in works of art and that right is subject to limitations. Aotearoa NZ is behind many other countries that already provide this in their law. There is a similar obligation in the UK FTA (Article 17.6).

98. Aotearoa NZ must provide the procedure for securing the royalties in domestic law within 3 years of the FTA entering into force. The Resale Right for Visual Artists Bill was introduced to Parliament in late March 2023. The Government announced the royalty would be 5% of the resale price – minus administration fees for the services it provides - and apply for the copyright term of life of the artist plus 70 years.

PART 4: MĀTAURANGA MĀORI: DATA SOVEREIGNTY & DIGITAL TRADE

99. "Digital trade" is a catch-all for policy and regulation of every aspect of the digital ecosystem, including but not limited to data, digital infrastructure (telecommunications, digital facilities and infrastructure), software and algorithms, digitally-enabled transactions (e.g. e-commerce, mobile and web services apps), communications (e.g. email, social media), online banking and purchases, and cybersecurity.

100. During the scoping session for the NZ EU FTA, both Parties said they would examine the range of areas in which trade commitments can enhance and support the digital economy, while respecting important public policy considerations and recognising that new "trade disciplines" might be needed to address specific challenges arising in the digital economy.

101. The most obvious focus is Chapter 12 titled Digital Trade. However, other chapters of the NZ EU FTA also impact on Māori rights and responsibilities over data and the digital ecosystem.

WAI 2522 REPORT ON DIGITAL TRADE

102. The Waitangi Tribunal found in the Wai 2522 claim that the equivalent "electronic commerce" chapter in the TPPA/CPTPP breached the Crown's obligations of active protection of mātauranga Māori, a taonga "at the heart of Māori identity", and could chill the adoption of domestic measures to recognise Māori data sovereignty and Māori digital governance. They said:

> It is not an interest or consideration readily amenable to some form of balancing exercise when set against other trade objectives or the interests of other citizens and sectors. The Tribunal also finds that it is not an issue that the Crown should decide unilaterally. The appropriate level of protection of mātauranga Māori in international trade agreements, and in the governance of the digital domain more generally, is first and foremost a matter for dialogue between te Tiriti/the Treaty partners.[46]

103. That finding came in the late stages of the NZ EU FTA negotiations. Nevertheless, MFAT took the Tribunal's report seriously and sought advice from Ngā Toki Whakarururanga and others on draft texts to put to the EU. MFAT says the final text of the FTA includes "new cross-cutting language that is aligned with the Te Tiriti o Waitangi exception, which makes it clear that Aotearoa NZ has reserved the right to adopt or maintain measures to protect Māori rights, interests and duties, and responsibilities".

104. That comment is largely true for Chapter 12, but less so for other chapters that also impact on Māori in the digital domain.

PROTECTIONS FOR MĀTAURANGA MĀORI

105. The scope provision of Chapter 12 says the chapter does not apply to existing or new measures that Aotearoa NZ adopts which it deems are necessary to protect or promote Māori rights, interests, duties and responsibilities (including mātauranga) in respect of matters covered in

that chapter, including to fulfil Te Tiriti obligations (Article 12.1.2(c)). What those Te Tiriti obligations are is not open to dispute.

106. This is a major achievement arising from Māori pressure on the Crown during and following the Wai 2522 finding. It operates to *carve out* all such measures from the chapter, as distinct from an *exception* that has to be established as a defence in a dispute. There are still elements that can be challenged: the carveout is subject to a similar "chapeau" as the Treaty Exception, which says these measures must not be used as a means of arbitrary or unjustified discrimination or disguised restriction on trade "enabled electronically", something that Māori data and digital measures might be said to do.

107. Aotearoa NZ has tabled a more comprehensive protection than this in the plurilateral e-commerce negotiations at the WTO, which does not include the chapeau. That shows the Crown recognises there are risks arising from the "chapeau" that should be removed.

108. The Chapter 12 carveout is reinforced by Article 12.3 Right to Regulate, which says "legitimate policy objectives" explicitly include "the promotion and protection of the rights, interests, duties and responsibilities of Māori". This provides interpretive context where the phrase "legitimate policy objectives" occurs in the digital trade chapter.

109. The main place where that occurs is the right to take the data collected in Aotearoa NZ out of the country. The NZ EU FTA promises not to restrict data flows across the border that are related to the business that collected it (including by big tech firms like Google or Meta). That includes not requiring them to store the data on local servers or to hold the data in Aotearoa and would prevent the government from imposing conditions on allowing the data out of the country, such as keeping a copy in Aotearoa NZ, or prohibiting the data being stored or processed in the EU.

110. However, that "legitimate public policy exception" is more limited than other agreements. It is directly linked to the General Exception, whose elements the Waitangi Tribunal found were not clearly applicable to the kinds of Māori rights protected in Te Tiriti. Hopefully the effect will be minimal because of the Tiriti carveout from the chapter.

111. Another CPTPP provision that the Wai 2522 report found had breached Te Tiriti obligations was the rule against the required disclosure of source code, which would make monitoring of it almost impossible. The NZ EU FTA allows governments to require disclosure of source code to determine its compliance with laws, including anti-discrimination and preventing bias (however, confidentiality requirements mean those with the technical skills to identify issues may not have access to them). That wording is slightly broader than the TPPA/CPTPP and for Māori should be read alongside the carveout to provide protection.

REVIEW OF THE DATA RULE

112. There is an additional provision for a review of the data rule in three years after the FTA comes into force, and earlier if requested. This review indicates that the data provision was fought over very hard, with the EU wanting to maximise the rights of digital companies.

113. The review explicitly refers to the Crown's ability to meet its obligations to Māori under Te Tiriti. This wording is similar to the NZ UK FTA, which did not have the overall carveout in the digital trade chapter.

114. What happens with the review will depend on how far the domestic recognition of Māori data sovereignty/digital governance has got by that time and whether any resulting Te Tiriti-compliant regime requires further changes to the FTA's data rule.

RISKS IN OTHER CHAPTERS

115. Overall, this chapter is a significant advance in providing active protection for mātauranga Māori. However, the protections only apply to the Digital Trade chapter.

116. There are problematic digital rules in Chapter 10 on Investment Liberalisation and Trade in Services that do not have the same protection.

117. Chapter 10 says the government cannot require an EU provider of services from across the border to have a local presence in Aotearoa NZ (Article 10.15), which would make it more easily subject to our laws. That raises major problems of accountability and enforcement. The Waitangi Tribunal acknowledged these concerns in the Wai 2522 report.[47]

118. The Crown has reserved the right to deviate from that rule, but the wording is limited to only some kinds of digital services.

PART 5: PAKIHI MĀORI (Māori Businesses, Exporters, MSMEs & Producers)

MARKET ACCESS

119. The EU is the fourth largest trading partner of Aotearoa NZ, and two-way trade in goods and services is estimated around NZD$17.5 billion annually.[48] Our annual goods exports to the EU are worth NZ$5.5 billion and services exports are worth NZ$4.9 billion.[49]

120. On entry into force, 94% of all tariffs will be eliminated on goods exported from Aotearoa NZ to the EU, with the biggest cuts for kiwifruit, seafood, wine, onions, apples, mānuka honey and manufactured goods. MFAT says the prioritisation of some key sectors was the result of Māori advocacy.

121. In 2020, research commissioned by Te Puni Kokiri identified more than 10,000 Māori businesses, which was eight times more than previously reported.[50] It also found that Māori owned businesses employ 43% Māori on average, three times the rate for non-Māori businesses.

122. On this basis, MFAT projects that the NZ EU FTA will provide significant benefits for Māori exporters.[51] Similarly, some Māori entities have commended the FTA as a milestone that they believe will provide "substantial benefits to Māori".[52]

123. That view needs to be reassessed in light of the following factors:

    a. MFAT puts gains to Aotearoa NZ from the FTA for all exports at NZ$1.4 billion to GDP in 15 years' time.[53] Even taken at face value, the country's GDP in 2021 was $250 billion, so the FTA would be an underwhelming drop in the bucket.

    b. Tariff cuts are not targeted to Māori exporters. As BERL noted in its report to MFAT, the cuts benefit both Māori and non-Māori exporting businesses that operate in these sectors.[54] Gains to Māori businesses will only accrue in sectors where Māori are already strong and are currently, or have potential to, export.

    c. Benefits cannot be assumed to flow to those sectors as a result of the tariff cuts. For example, seafood exports from Aotearoa NZ achieve revenues of over $1.5 billion annually.[55] Māori hold one third of the total fishing quota by volume and 47% by value.[56] So fisheries are important to both the Māori economy and the national economy. But assumptions that lower tariffs for fish products will result in increased exports fail to recognise the limits on fisheries quota, the depletion of fish stocks, the impacts of climate change on catch, as well as the need for greater conservation.

124. BERL's report also cautions that there is unlikely to be a growth in exports from Aotearoa NZ and we are likely to see trade diversions instead as exporters move exports from lower revenue generating countries to the EU.[57] Using the fisheries example again, hoki is one of Aotearoa NZ's main fish exports to the EU. The amount able to be caught each year is capped by our fishery

management system. To increase the volume of hoki exports to the EU, product will need to be diverted from another market.[58]

125. The tariff cuts also need to be high enough to incentivise exporters to expand their operations substantially. BERL observed that exports to the EU might increase once the FTA is in force, but *substantial* overall increases in export volumes for any of Aotearoa NZ's main exports to the EU are unlikely.[59]

126. During the scoping phase, both Parties agreed that all goods products would be part of the negotiation, but there were early signals that there would be sensitivities around some agricultural goods, which played out in the meat and dairy sectors.[60] Māori businesses export about 5.6% of the country's total exports, valued at $3.4 billion, with meat and dairy exports accounting for more than one-third of that. [61] Although there is some increase in dairy and meat quotas under the FTA, they do not create meaningful commercial opportunities for the country's exporters in those sectors.[62]

127. A major trade off for tariff cuts is that Aotearoa NZ producers will lose the right to describe their wine, spirits and food products by using the extensive list of GIs annexed to the Agreement,[63] either immediately or over a 5 year to 9 year period (for Feta cheese and Port wine). The costs of this to producers, and specifically to Māori producers, appears not to have been quantified. Te reo Maori names for products exported to the EU, including mānuka products, do not have equivalent protection and there is no guarantee the EU will ever agree to it.

128. There are also distributional issues. Even if Māori fisheries exporters did benefit, tariff cuts would not benefit small coastal Māori fishers who have minimal if any quotas and do not export, but wish to sell their by-catch. Their Te Tiriti right to catch fish and sell surplus was a major motivation for the initial litigation and Waitangi Tribunal claim in the 1980s which challenged the quota management system. They gain nothing from this FTA.

129. Data recently developed by MFAT on the impact of the TPPA/CPTPP, which has not yet been released publicly, show that Māori businesses and exporters, including SMEs, have not benefitted significantly from that Agreement. While Māori-led export firms experienced similar average tariff reductions to other firms as a result of CPTPP, Māori-led export firms exported to CPTPP partners at a similar rate to their exports to non-CPTPP partners. The data shows that:

> [t]he number of Māori-led goods export firms exporting to CPTPP partners fell to 75 in the year to March 2020, down from 102 the previous year. The number export[ing] to non-CPTPP partners only followed a similar pattern, dipping to 33 in 2020. Directionally, these two declines in firm numbers were similar to the general firm population, but larger in relative magnitude.

130. As detailed in Part 6, the same analysis shows number of Māori employed by goods exporting firms grew marginally for larger firms exporting to CPTPP parties, but Māori employment in SME exporters fell, as did employment in all firms exporting only to non-CPTPP countries.

SERVICES AND INVESTMENT

131. Chapter 10 of the NZ EU FTA covers both the liberalisation of investment and cross-border trade in services.

132. For the purposes of FTAs, services range from entertainment, healthcare, education and tourism to retail and online digital services, banks and insurers, and professions. They also include services used in goods production and investment, such as forestry, water extraction, mining and agriculture.

133. Services "trade" under the FTA involves a consumer from the EU buying a service from a supplier who is from Aotearoa NZ or vice versa. That might involve providing the service by Internet across the border, to a visitor from one country to the other country, or someone travelling to deliver the service and returning home.

134. The NZ EU FTA aims to remove or reduce regulations that services exporters say get in the way of them "trading", such as laws or policies that give preferences to local competitors, that ban or limit a service (like advertising alcohol), or that make it burdensome for the foreign supplier to get licenses or accreditation.

135. Māori businesses are increasingly moving into services industries. Statistics New Zealand reports that in 2021, the number of Māori businesses in the financial and insurance services industry rose by 33% and Māori businesses in the health care and social assistance industry rose by 18%. According to research by TPK, professional services is among the top 3 sectors for Māori owned businesses alongside the construction, and agriculture, fishing, and forestry sectors. But these will not all be "exporters" (i.e. selling those services to EU consumers) and it is hard to see what changes the EU has made to its rules to make it easier for Māori who are exporters to do business with the EU.

136. The main services that Aotearoa NZ "exports" to the EU are personal, business and educational travel ("traded" by EU people coming to Aotearoa) and transportation. The EU imposes very few, if any, restrictions on its consumers coming here for those kinds of travel or for tourism. There will be more limits on professional or audio-visual services that Aotearoa NZ firms supply to the EU, because the EU is very protective of its own suppliers of these services.

137. The EU's focus in this FTA was on removing or reducing restrictions on their suppliers of delivery, finance, telecoms and maritime transport services into Aotearoa NZ. These are contained in specific sections of the Chapter designed to benefit EU banks, insurers, courier services, telcos, shipping lines. The impacts on Māori are hard to identify.

138. A particular concern is the possible social impact on Māori communities of a new rule in chapter 10 that applies to "universal service" requirements that ensure nation-wide affordable access to postal or telecoms services (Article 12.41- 43 and 12.58)

139. The rules on investment are similar to services. For example, they target "discrimination" through vetting of foreign investments and investors, which could include controversial areas for Māori like mining, waste disposal, and extraction and bottling of water for export. They also prevent the government requiring EU investors to achieve a certain level of local content, for example by processing resources within the country (Article 10.9).

140. Foreign investors do not have specific obligations, just encouragement to adopt good business practices. "Responsible business conduct" (Article 19.12) merely requires the EU and Aotearoa NZ to promote relevant international instruments that set guidelines for multinational companies that they have already signed. It also promotes "corporate social responsibility" by providing policy frameworks that encourage businesses to voluntarily adopt relevant practices.

141. In some agreements the foreign investor has special protections which it can enforce directly against the government, known as "investor-state dispute settlement" (ISDS). Following intense pressure over the TPPA, including from the Wai 2522 claim, the Labour/NZ First government promised in 2017 not to include ISDS in future FTAs. We are very pleased there are no special protections for EU investors and no ISDS in this FTA.

142. The EU says investment flows into Aotearoa NZ could increase by 80%,[64] but we have been unable to find out how they calculate that. Even if that was accurate, there is nothing to show how this would benefit Māori. We have been unable to find figures on Māori investment in the EU, but it is likely to be very limited. The EU does not appear to have relaxed its investment regime in this FTA.

143. Both Parties have promised to pass on to each other's investors any advantages they give to other countries' investors in future FTAs (known as most-favoured-nation treatment).

PROTECTIONS FOR SERVICES AND INVESTMENT REGULATION

144. There are some important protections from some services and investment rules for the "right to regulate". These are listed as reservations, formally called "non-conforming measures" or NCMs. A strong reservation has been included for water, including drinking water. There is also an absolute right to control the activities of foreign fishing. As discussed above, there is a reservation for Te Tiriti-related digital measures, but it is limited to "trade enabled by electronic means" and may not cover the digital infrastructure and data services themselves. There is also a limited reservation for measures accepted as "necessary" to support creative arts of national value.[65] Wording of reservations for waste water, waste management, health, housing etc in terms of "social services" may also be problematic.

145. The reservations for vetting foreign investments are tied to the existing investment regime, which applies to fisheries quotas, some categories of land, a handful of companies in which the government has a stake, and companies or assets over NZ$200 million.

146. There is currently no requirement for a Tiriti o Waitangi assessment as part of the criteria for vetting of foreign investments. The FTA would only allow one to be adopted as a new criteria for the limited categories of investments that are currently vetted.

147. The Treaty of Waitangi Exception has limited application to the services and investment chapter, except where the measure being objected to involves preferential treatment of Māori.

PUBLIC PROCUREMENT

148. Public procurement by central and local government has become an increasingly important vehicle for Māori economic development and tackling economic inequality through creating employment, including at a living wage, supporting small and medium-sized enterprises and enabling start-ups.

149. Maori-owned businesses disproportionately employ Māori; whilst only 6% of businesses in Tāmaki Makaurau Auckland are Maori-owned, they employ 14% of all working Māori in the city.

150. Following the success of The Southern Initiative's[66] work and leadership on supplier diversity and social procurement at local government level, the government introduced a progressive

procurement policy in 2020 to increase supplier diversity, starting with Māori businesses, for the estimated $51.5 billion spent on government procurement every year.[67]

151. In the 2021/22 financial year, "Māori businesses made up 6% (more than 3,200 contracts) of the total of government procurement contracts…worth a total value of about $930 million". As a result, the government lifted its Māori procurement target from 5% to 8% in March 2023.

152. Chapter 14 on Public Procurement aims to remove preferences for local businesses tendering for projects or offsets in contracts that require use of domestic content or domestic suppliers to encourage local development. This covers the entities listed in Annexes and contracts at specified value thresholds.

153. In this chapter the Parties "affirm their rights and obligations" under the World Trade Organization's Government Procurement Agreement.[68] Aotearoa NZ joined that agreement in 2015 and included almost identical wording to the Treaty of Waitangi Exception to allow preferences to Māori. As with that Exception, they can still be challenged as being "a means of arbitrary or unjustified discrimination" or a "disguised restriction on trade in goods and services".

154. This WTO wording has the same effect as the application of the Treaty Exception in the NZ EU FTA. Together they would provide a strong degree of protection for preferences specifically for Māori in procurement contracts. However, this would not protect broader social procurement programmes that combine Māori and Pasifika outcomes or within other groups such as women or disabled peoples, or as defined by other socio-economic criteria.

155. The NZ EU FTA allows a procuring entity (a local or central government entity that is covered in annexes to the chapter) to "take into account labour, environmental and social conditions related to the object of the procurement", but its approach has to be non-discriminatory. That would not help preferences needed to support social procurement.

PART 6: KAIMAHI AND WĀHINE MĀORI

IMPACTS ON JOBS AND WAGES

156. The limited commercial gains from the NZ EU FTA mean there will be few new jobs in Aotearoa NZ and kaimahi Māori may not get any that are created.

157. It is significant that the data from MFAT's soon-to-be released assessment of the impact on Māori jobs and workers in the CPTPP shows no tangible positive benefit from that agreement. The number of Māori employed by goods exporting firms who exported to CPTPP countries increased marginally by 2% in the year ended 2020 over the previous 2 years. Māori employment in larger firms rose by 4% but that was partly offset by a 6% fall in employment by SMEs. Employment of Māori in firms that only exported to non-CPTPP countries fell by 6%, some of which will reflect those firms shifting their exports to CPTPP countries (trade diversion). Total Māori export employment fell by 1% compared to the previous 2 years.

158. Those statistics are even more concerning when we see that employment of Pākehā by goods export firms fell by 1% in aggregate but increased by 2% in firms exporting to CPTPP countries. Pasifika employment followed a similar pattern.

159. An additional concern is that Māori median wages are higher in firms that export goods to CPTPP countries, but the "ethnic" and gender pay gaps are large in big exporting firms and slightly larger in firms exporting to CPTPP countries.

UNIONISATION AND LABOUR STANDARDS

160. Neither Party is required to do more than it does now to protect the rights of workers, including kaimahi Māori.

161. The labour provisions mostly commit the Parties to implementing their existing obligations to the "principles" of the fundamental rights at work that are derived from core international Labour Organisation (ILO) Conventions (Article 19.3). As noted earlier, there is no reference to ILO Convention 169 Indigenous and Tribal Peoples.

162. Aotearoa NZ is only required to implement the Conventions it has ratified and have entered into force, which do not include those on freedom of association and the minimum age. Parties must make "continued and sustained efforts" to ratify the fundamental ILO Conventions if they have not yet done so; a footnote says the EU's Member States have all done so. This provides some added leverage on the government to do so, but it does not force it to act.

163. Stronger cooperation on "trade-related aspects of labour measures" may cover "vulnerable groups" (Article 19.3.11(c)), although it does not explicitly mention Indigenous Peoples.

WĀHINE MĀORI

164. The Parties promise in the Trade and Gender Equality provision (Article 19.4) of Chapter 19 Sustainable Development to "work together on trade-related aspects of gender equality policies and measures". That includes facilitating cooperation between "relevant stakeholders" including wāhine Māori in Aotearoa NZ, who are defined as Indigenous women of New Zealand.

It is unclear what "facilitate cooperation" involves, and there is no commitment of resources to support it.

165. Overall, the chapter aims to "mainstream" women into the western international trade model. There is no recognition that this system itself poses structural and systemic barriers to a gender-inclusive economy and women's empowerment.

166. Wāhine Māori, who are historically food producers, healers, educators, kaitiaki of Te Taiao, are in turn mainstreamed into an a-cultural idea of gender. There is no recognition that the colonising economic model itself poses structural and systemic barriers to "gender inclusivity" for Māori women and their economic empowerment.

167. That silence is reinforced by the invisibility of Indigenous women from within the EU's territory. Chapter 19 refers only to wāhine Māori. "Cooperation" may end up being engagements or activities between wāhine Māori and EU women generally, with no guaranteed participation of Sámi women, which is where the potential benefits of that engagement most obviously lie.

168. Further, the chapter's idea of "gender equality" does not explicitly acknowledge gender non-binary, gender fluid or trans women, and presumably refers to women who identify with their birth-assigned gender. Gender fluidity and intersectionality has existed within Indigenous communities since before colonisation, and is an integral aspect for understanding the diverse barriers that impact on women differently.

169. The Sustainable Development chapter is enforceable, but for wāhine Māori there is nothing substantive to enforce. Even the Parties' commitment to implement their existing international obligations effectively does not refer to the UNDRIP.

170. All the "inclusivity" categories are clustered under a Committee on Trade and Sustainable Development that is to receive views from the public, which it may (or may not) pass on to the Domestic Advisory Group, which is also comprised of a multiplicity of "stakeholders".

171. There is no real empowerment of wāhine Māori even in this low-level sub-committee and absolutely no recognition of their rangatiratanga or mana. We see this kind of assimilation as tokenism of the worst kind, and are concerned that is now becoming common in the trade sphere under the guise of "inclusivity".

PART 7: TE TAIAO

UNSOUND FOUNDATIONS

173. Taiao Ora describes *Te Taiao* as:

> the natural world that contains and surrounds us — the land, water, climate and living beings. It refers to the interconnection of people and nature. Ko au Te Taiao, ko Te Taiao ko au (I am nature, and nature is me). It's an eternal relationship of respect, reciprocity, and interdependence.[69]

174. Many FTA chapters impact on Te Taiao including, but not limited to, those on investment, services, goods, intellectual property, and technical barriers to trade, but they have no effective protections for the exercise of rangatiratanga and kaitiakitanga.

175. The most significant is Chapter 19 Trade and Sustainable Development. The chapter recognises Māori knowledge and practices are important to conservation and biodiversity. But it is merely "aspirational", with its articles mainly "recalling", "recognising", "affirming" existing international agreements and obligations at the UN and ILO, and promising to implement and not renege on them. It rarely commits to even look at ways to extend those obligations.

176. MFAT views Chapter 19 as embodying strong new commitments on climate action, including the Paris Agreement, and on labour rights and gender equality including making these commitments legally binding and enforceable in the FTA.

177. But, Indigenous values are largely invisible. Rather than embracing an Indigenous-led approach to the environment, sustainability and the climate crisis and rethinking the trade paradigm, the chapter promotes the existing commodity-based and market-driven model of trade as a means to pursue a range of environmental objectives. There is no recognition that this model itself is a major contributor to social inequality, precarious labour, environmental degradation, the collapse of biodiversity, and the climate crisis.

178. The chapter provides no effective protections for Te Tiriti and Te Taiao. Nor is there any role for Māori in its governance. The Committee on Trade and Sustainable Development to oversee this chapter (Article 19.15) is comprised solely of officials. It must "give due consideration" to communications and opinions from the public" on matters in the chapter and *may* pass those views to the parties' "Domestic Advisory Groups", which are purely advisory.

TRULY SUSTAINABLE FOOD SYSTEMS

179. MFAT considers that Chapter 7 Sustainable Food Systems reflects the value that Aotearoa NZ places on traditional knowledge and approaches, and the vital role that Indigenous Peoples can play in achieving sustainable food systems globally.

180. A truly effective Tiriti-compliant approach to pure, safe and sustainable food systems would:

- recognise and protect Indigenous food production practices and the certification of compliance, and kaitiakitanga over plants and seeds

- ensure that Parties retain their domestic policy space through a comprehensive carve-out that protects the exercise of those rights, interests, duties and responsibilities
- enable food to be produced for domestic use and export based on Indigenous values and practices, so as to support healthy and secure food for all
- support increased resilience of Indigenous food systems and reduce dependence on imports in the agrifood sector, including fertilizers and chemical inputs
- go beyond a precautionary principle to recognise knowledge, standards and risk assessments based on Indigenous Peoples' worldviews.

181. It would also recognise the Parties' commitments in the UNDRIP and counter the risks of infringing Indigenous Peoples' rights to development, to preserve and protect species, to the use and dispersal of species, and to the cultural and spiritual concepts associated with them.

182. In particular, recognition of sustainable food systems in Aotearoa would validate and safeguard Hua Parakore as a tikanga-based regime that empowers Māori to exercise food sovereignty by setting the terms for and certifying safe foods: [70]

> Hua Parakore is a kaupapa Māori system for Kai Atua - Pure Foods. It can also be activated by Māori for Māori as a food sovereignty and food security system. It supports local māra kai initiatives and agriculture and horticulture that is free from all pesticides, fertilisers and GMO. It is the world's first Indigenous verification system for Kai Atua. There are Hua Parakore verified producers both on farms, marae and with Māori food outlets across Aotearoa. Hua Parakore is also available to other Indigenous producers around the world and as such there are Indigenous producers that are Hua Parakore verified such as MA'O Farms in Hawaii.

183. Chapter 7 Sustainable Food Systems fails to protect that system and ensure the policy space is retained for Aotearoa NZ to implement the outcomes of Te Pae Tawhiti, a process established to advance the protections found wanting in the Waitangi Tribunal Wai 262 report *Ko Aotearoa Tēnei.* Those measures are unlikely to fall within the scope of the Treaty of Waitangi Exception.

184. Instead, there are measures across the NZ EU FTA that positively deny rangatiratanga and kaitiakitanga over traditional knowledge and the natural domain, including intellectual property, and apply western concepts of science, risk and proportionality that override Indigenous food systems, as in Chapter 9 Technical Barriers to Trade.

185. Chapter 7 itself is another cooperation chapter. There is a list of "indicative" topics, including organics and regenerative agriculture, environmental and climate impacts of food production, and "Indigenous knowledge, participation and leadership in food systems, in line with the parties' respective circumstances". However, cooperation on any of these is discretionary and relies on the common interest of both Parties, which seems unlikely given the EU's attitude to date. Indeed, Article 7.5 makes it clear that nothing in the chapter requires either Party to change their current practices.

186. Implementation rests with officials in a Committee on Sustainable Food Systems. The Parties may agree to create expert level working groups, which could include Māori experts, but the EU's attitude toward Indigenous Peoples' involvement in this FTA and its activities suggests that is unlikely.

187. Again, there is no empowerment of Māori or other Indigenous Peoples in relation to this chapter, there is no right of input or representation on the Committee on Sustainable Food

Systems, and no realistic prospect that Indigenous approaches to sustainable food systems and control over their certification will be validated and implemented under this FTA.

TRADE AND CLIMATE CHANGE

188. An inescapable question in light of this year's catastrophic floods and Cyclone Gabrielle is whether the NZ EU FTA will genuinely confront climate change that is now devastating Aotearoa, with Māori communities bearing the brunt of a crisis created by the actions and failures of others.

189. The principal means for advancing climate action under the FTA is through classic trade liberalisation measures to remove tariffs on "green goods" and restrictions on foreign providers of "environmental services" (which each Party could do unilaterally) and to promote emissions trading and integrity in international carbon markets. Plus "cooperation".

190. The commitment in Article 19.7 to work to "reform and progressively reduce" fossil fuel subsidies is conditioned by "national circumstances" with full account of the "specific needs of populations affected".

191. In the Trade and Climate Change provision (Article 19.6) the EU and Aotearoa NZ promise to implement their *existing* commitments under the UNFCCC and Paris Agreement effectively (Article 19.6).

192. Theoretically, this makes each party's Nationally Determined Contributions enforceable by the other. That could call the NZ government to account for failure to even meet those targets. The Climate Commission recently warned that Aotearoa NZ is at risk of not meeting its international obligations[71] and that it cannot achieve the emissions targets by relying on planting trees.[72]

193. It seems unimaginable that the EU would take action against the NZ government under this FTA to require more effective action to meet its obligations. But even if it did, that would not strengthen those commitments or require a more effective approach that does not rely on market instruments and offshore carbon credits.

TRADE AND BIOLOGICAL DIVERSITY

194. Article 19.8 Trade and Biological Diversity is another example of rhetoric without substance. The EU and Aotearoa NZ "recognise the importance of respecting, protecting, preserving and maintaining knowledge, innovations and practices of Indigenous Peoples and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity, and the role of international trade in supporting this". But there is no requirement for their trade, investment and intellectual property laws and practices to reflect that.

195. In a separate clause, the EU and Aotearoa NZ promise to "work together" to "strengthen their cooperation" on a range of possible areas that may (or may not) include "access to genetic resources, and fair and equitable sharing of benefits from their utilisation consistent with the objectives" of the Convention on Biological Diversity. There is nothing in the intellectual property or investment chapters that would give effect to, or in some cases even permit, that.

CONSERVATION AND SUSTAINABLE MANAGEMENT OF FORESTS

196. Article 19.9 Trade and Forests refers to the "environmental functions" and economic and social opportunities of forestry and says trade can help pursue them. The focus is on illegal logging and promoting trade in sustainably managed products. It recognises that deforestation contributes to climate change and loss of biodiversity, but the Parties will merely exchange knowledge and experience about how to encourage consumption of, and trade in, products from deforestation-free supply chains.

197. Māori positions on the best approach to forestry in the climate context vary. There is strong support from some for Aotearoa NZ to move from fast-growth plantation forests to native forests as carbon storage. However, there is nothing here that would support that transition. Nor is there any support to impose requirements on foresters to prevent or take responsibility for the environmental harms, and economic and social costs, of their logging practices, such as slash. [73]

SUSTAINABLE MANAGEMENT OF FISHERIES

198. Article 19.10 covers Trade and Sustainable Management of Fisheries and Agriculture and "recognises" the importance of preserving and sustainably managing marine biology and ecosystems. It ignores the role that Māori values and practices, and Māori communities, can play in genuine sustainability of the fisheries.

199. The provision focuses on illegal, unreported and unregulated fishing. That side-lines the major problem in Aotearoa NZ that individual transferrable quotas and underlying Quota Management System (QMS) provide significant incentives for unreported catch and dumping of by-catch. Nothing in this chapter would require Aotearoa NZ to revisit that regime.

200. As noted earlier, this approach ignores the Te Tiriti rights of local Māori communities who are committed to genuinely sustainable use of the resource to supplement their incomes by selling their surplus catch.

EMPOWERMENT?

201. As we noted for wāhine Māori, all the "inclusivity" categories are clustered under the Committee on Trade and Sustainable Development, which is to receive views from the public, which it may (or may not) pass on to the Domestic Advisory Group, also comprised of a multiplicity of "stakeholders".

202. Article 19.14 requires "interested persons and stakeholders" to have reasonable time to comment on environment or labour-related measures that may affect trade or investment, or trade and investment measures that may affect the environment or labour. In theory, all "stakeholders" can do so.

203. In practice, corporate lobbyists will have more resources, knowledge, and influence on matters like climate, environment, fisheries, and forestry. There is no equivalent ability to ensure the protection and promotion of Indigenous rights, interests, duties and responsibilities.

CONCLUSION

205. We acknowledge that the Crown has sought to improve its processes and to strengthen Tiriti protections in this FTA, where the EU would agree. Overall, however, the NZ EU FTA does not advance the range of rights, interests, duties, and responsibilities of Māori in a Te Tiriti compliant manner and offers minimal, if any, concrete economic benefits to Māori businesses and workers.

206. The main aspects of this FTA that effectively improve on earlier agreements, such as the TPPA/CPTPP, are:

    (a) A MoU that provided for co-design of text, with resourcing, albeit only for the unenforceable proposed Political Declaration on Indigenous Trade.

    (b) Major improvements in digital trade protections through an (albeit imperfect) carveout for all Māori digital measures, and provision for further review to assess compliance with Te Tiriti and the Wai 2522 report, again with no guaranteed results.

    (c) No ISDS, which in other Agreements allows investors of the other party to directly enforce special protections against Aotearoa NZ if the government adopts new laws and decisions that adversely affect their profits or value of their assets, irrespective of the reason.

207. Many other aspects of this FTA remain deficient when assessed against the four articles of Te Tiriti o Waitangi, notably:

    (a) No rangatiratanga in negotiations, governance or reviews, even on matters that directly and significantly affect Māori.

    (b) No Indigenous to Indigenous relationships, with complete denial of the mana of Indigenous Peoples in the EU territory, such as Sámi.

    (c) No change to the inadequate Treaty of Waitangi Exception, with reliance on patching up identified risk areas across the text, to the extent the EU would agree.

    (d) An Indigenous cooperation chapter that is discretionary, excludes Sámi, ignores topics of significant Māori concern, is unresourced and unenforceable, and which lowers the bar even on the NZ UK FTA.

    (e) Intellectual property rights that are in places worse than previous agreements and are incompatible with Wai 262 and potentially recommendations from Te Pae Tawhiti.

    (f) Restrictions on future Tiriti-based regulation of services and foreign investment from the EU.

    (g) No Māori geographical indications, with mānuka recognised only in the unenforceable Māori trade cooperation chapter, while many foods produced by Māori will need to be renamed to comply with the EU's GIs.

    (h) Minimal tangible gains for Māori exporters and no realistic gains for non-exporting Pakihi

    (i) No realistic gains for Kaimahi or Wāhine Māori

    (j) A chapter on SMEs that is weak and unenforceable.

WHAT NEXT

208. The NZ EU FTA negotiations concluded in June 2022. After legal scrubbing and translation are complete it will be signed later this year. The FTA text, and MFAT's accompanying National Interest Analysis, will be tabled in Parliament for consideration by the select committee, followed by any legislative changes that are needed to bring Aotearoa NZ laws into line with the obligations in the FTA. That legislation was also go before a select committee. Once that is passed, the Agreement will be ratified. Nothing in this Te Tiriti assessment will stop that.

209. The public will be able make submissions on the Agreement, and on the implementing legislation, but those submissions will not enable any changes to the FTA itself.

210. This Tiriti assessment aims to empower Māori to challenge that "done deal" at every opportunity, including Māori (and Pākehā) MPs and Cabinet Ministers and during the election.

211. It also helps to identify what needs to happen to develop a genuinely Tiriti-compliant trade policy and approach to negotiations of any future agreements and the revision of existing FTAs.

212. Our review acknowledges that the Crown took some small steps to improve its process and listen to proposals from Māori concerning the Agreement, but the analysis shows the Crown has still not met its obligations under Te Tiriti o Waitangi.

213. To bring the Crown into compliance, it needs to:

    (a) **honour** what our ancestors envisaged in 1835 and 1840

    (b) **deliver** co-governance that ensures that independent and accountable Māori are at the table with real power

    (c) **prepare,** through that joint process, a gold standard Tiriti-based template for trade agreements that is truly transformative of the status quo and upholds the mana of the Rangatira o Ngā Hapu o Aotearoa and of Kāwanatanga

    (d) **develop and negotiate**, with Māori, effective and enduring protections in all future FTAs, and reviews of existing Agreements, that will recognise, affirm and give effect to Māori rights, interests, duties, and responsibilities under Te Tiriti o Waitangi

    (e) **require that** other state parties, as a pre-requisite to negotiations, commit to an open and accountable process that ensures that Māori, and others in Aotearoa, can participate fully and effectively in the development of such agreements

    (f) **lay down and apply** a tika and pono foundation for future relations between Indigenous Peoples of states that are party to its international agreements (including but not limited to FTAs) and with those states themselves.

As a first step, the Crown should co-sponsor with Nga Toki Whakarururanga the development of an effective Tiriti-based mechanism that brings together the existing Māori entities that are actively engaged in the trade-related space for the purpose of building cooperation and cohesion to represent the interests of ngā Māori katoa, and that will provide for shared decision-making with the Crown, equitable access to resources, and Māori authority over Māori people and Māori Kaupapa.

[1] The Mediation Agreement is also available on Ngā Toki Whakarururanga's website at. It is also published as Appendix II of the Waitangi Tribunal Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, 2021, published in 2023. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_195473606/Report%20on%20the%20CPTPP%20W.pdf

[2] For a detailed discussion see Amokura Kawharu, "The Treaty of Waitangi Exception in New Zealand's Trade Agreements" in John Borrows and Risa Schwartz eds., *Indigenous Peoples and International Trade,* Cambridge University Press, 2020, 274-294.

[3] The Ngā Toki Whakarururanga kaupapa is informed by the kaupapa in the Mediation Agreement with the New Zealand Crown that recognises shared authority between Maori and the Crown in the international domain informed by tino rangatiratanga and kāwanatanga that has endured since the 1835 *He Whakaputanga o Nga Rangatira o Nga Hapu o Niu Tireni* (1835) and *Te Tiriti o Waitangi* (1840). https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_178856069/CPTTP%20W.pdf

[4] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-FTA-Scoping-Summary-and-Q-A-May-2017.pdf

[5] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Maori-interests-in-the-EU-FTA.pdf

[6] For a detailed discussion see Amokura Kawharu, "The Treaty of Waitangi Exception in New Zealand's Trade Agreements" in John Borrows and Risa Schwartz eds., *Indigenous Peoples and International Trade,* Cambridge University Press, 2020, 274-294.

[7] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-FTA-Scoping-Summary-and-Q-A-May-2017.pdf

[8] Concerns about these ongoing negotiations were raised during the Waitangi Tribunal inquiry into the Trans-Pacific Partnership Agreement (Wai 2522). and prior to the Mediation Agreement to establish Ngā Toki Whakarururanga in October 2020.

[9] In addition to Nga Toki Whakarururanga the Crown engaged with National Iwi Chairs Forum, Federation of Māori Authorities, and Te Taumata on various aspects of the FTA text.

[10] https://sametinget.no/about-the-sami-parliament/. We also acknowledged the Inuit of Greenland. Cognisant that Greenland is not part of the EU having withdrawn from the EC in 1985, and it being self-governing, but mindful it does fall within the realm of Denmark who is an EU member. We are also aware of the reports that the EU intends to establish an office in Nuuk to forge a stronger EU presence across the Arctic, where Indigenous Peoples have an active and visible presence see also https://www.highnorthnews.com/en/eu-strengthens-its-presence-greenland

[11] UNGA, (2014) *Outcome Document of the World Conference on Indigenous Peoples.* https://documents-dds-ny.un.org/doc/UNDOC/LTD/N14/534/91/PDF/N1453491.pdf

[12] Wuidar, Mathias. (2022). "The Indigenous World 2022: European Union Engagement with Indigenous Issues" on IWGIA: https://www.iwgia.org/en/european-union-engagement-with-indigenous-issues/4698-iw-2022-european-union-engagement-with-indigenous-issues.html.

[13] The ILO Convention 169 refers to the Indigenous and Tribal Peoples Convention 1989 that provides for non-discrimination between indigenous and tribal peoples and other citizens; the protection of the human rights of such peoples (Article 3); special measures in response to their cultural and economic needs (Article 4); recognition of their cultural traditions (Article 5); their right to consultation and participation in the legislative process governing laws that affect their cultural heritage (Article 6); and their right to decide the priorities which influence those laws (Article 7). The four EU members: Denmark (1996), The Netherlands (1998), Spain (2007) and Luxembourg (2018) cited in Wuidar, Mathias. (2022). "The Indigenous World 2022: European Union Engagement with Indigenous Issues" on IWGIA: https://www.iwgia.org/en/european-union-engagement-with-indigenous-issues/4698-iw-2022-european-union-engagement-with-indigenous-issues.html

[14] European Parliament. "Resolution of 19 May 2021 on the effects of climate change on human rights and the role of environmental defenders on this matter". Brussels, 19 May 2021. https://www.europarl.europa.eu/doceo/document/TA-9-2021-0245_EN.html; European Parliament. "Resolution of 6 October 2021 on the role of development policy in the response to biodiversity loss in developing countries, in the context of the achievement of the 2030 Agenda". Brussels, 6October2021. https://www.europarl.europa.eu/doceo/document/TA-9-2021-0404_EN.html; European Parliament. "Resolution of 7 October 2021 on the Arctic: opportunities, concerns and security challenges". Brussels, 7 October 2021. https://www.europarl.europa.eu/doceo/document/TA-9-2021-0413_EN.html; European Parliament. "Resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability". Brussels, 10 March 2021. https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html; European Commission. "Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010". Brussels, 17 November 2021. https://ec.europa.eu/environment/forests/pdf/COM_2021_706_1_EN_Proposal%20for%20Regulation%20on%20Deforestation.pdf.

[15] The EEAS is the European Union's diplomatic service. https://www.eeas.europa.eu/eeas/about-european-external-action-service_en

[16] EEAS. (2018). "Among the poorest in the world and richest culturally – EU protects rights of Indigenous Peoples". https://www.eeas.europa.eu/node/49097_en

[17] Both sides agreed to include a provision ensuring the New Zealand government will be able to fulfil its obligations under the Treaty of Waitangi. https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-FTA-Scoping-Summary-and-Q-A-May-2017.pdf

[18] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Maori-interests-in-the-EU-FTA.pdf

[19] Wai 2522 Report on the CPTPP, 132-142

[20] "1. Nothing in this Agreement shall preclude a Party/Member from adopting or maintaining measures it deems necessary to protect or promote rights, interests, duties, and responsibilities of indigenous peoples in its territory, including in fulfilment of its obligations under its legal, constitutional or Treaty arrangements with those indigenous peoples. 2. The Parties/Members agree that the interpretation of a Party's/Member's legal, constitutional or Treaty arrangements with indigenous people in its territory, including as to the nature of its rights and obligations under it, shall not be subject to the dispute settlement provisions in this agreement." See the full text in WTO, Discussion Paper on Digital Inclusion Language for Consideration by JSI Participants. Communication from New Zealand, INF/ECOM/70, 25 November 2022. https://www.mfat.govt.nz/assets/Trade-agreements/WTO-e-commerce-negotiations/Joint-Statement-Initiative-on-E-commerce-discussion-paper-on-Digital-Inclusion.pdf

[21] For the text see: https://www.eeas.europa.eu/sites/default/files/eu_new_zealand_partnership_agreement_on_relations_and_cooperation.pdf

[22] Jason Mika, "Te Tiriti o Waitangi Audit of APEC 2021", Te Rangitūkupu, 2022, 4

[23] Establishment of Ngā Toki Whakarururanga https://static1.squarespace.com/static/62d0af606076367ebf83b878/t/643cc44bb9811a40e3fb4ed7/1681704041675/Establishment+ppt.pdf, slide 10

[24] Jason Mika, "Te Tiriti o Waitangi Audit of APEC 2021", Te Rangitūkupu, 2022, 4. https://static1.squarespace.com/static/62d0af606076367ebf83b878/t/63eee6814a85ee78712587a8/1676601037992/Apec+Report+Final.pdf

[25] Article 9, Indigenous Peoples Economic and Trade Cooperation Arrangement https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Indigenous-Peoples-Economic-and-Trade-Cooperation-Arrangement-IPETCA-FINAL-VERSION.pdf

[26] See: Ngāi Tahu kaumatua Edward Ellison: "[the] history of the name Aotearoa…originally referred solely to the North Island …a more commonly used title in the south was Aotearoa me Te Waipounamu, which encompassed both major land masses" https://www.nzherald.co.nz/nz/aotearoa-new-zealand-name-change-debate-ngai-tahu-leader-says-dont-rush-name-change/JNK43LP63NSNP3LJ6TENMFRPPY/

[27] MFAT, https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Maori-interests-in-the-EU-FTA.pdf

[28] https://www.treaties.mfat.govt.nz/search/details/t/3654/c_1

[29] https://www.eeas.europa.eu/sites/default/files/eu_new_zealand_partnership_agreement_on_relations_and_cooperation.pdf

[30] https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Indigenous-Peoples-Economic-and-Trade-Cooperation-Arrangement-IPETCA-FINAL-VERSION.pdf

[31] Waitangi Tribunal. Ko Aotearoa Tēnei. A report into Claims Exploring New Zealand Law and Policy affecting Māori Culture and Identity, volumes 1 and 2, 2011.

[32] https://www.tpk.govt.nz/en/a-matou-whakaarotau/te-ao-maori/wai-262-te-pae-tawhiti

[33] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/BERL-report.pdf

[34] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/BERL-report.pdf

[35] https://www.mfa t.govt.nz/assets/Trade-agreements/EU-NZ-FTA/Maori-interests-in-the-EU-FTA.pdf

[36] There is a reservation (non-conforming measure) in the services chapter for "measures necessary to support creative arts of national value" with a footnote that says "ngā toi Māori (Māori arts), the performing arts – including theatre, dance, and music, haka (traditional Māori posture dance), waiata (song or chant) – visual arts and craft – such as painting, sculpture, whakairo (carving), raranga (weaving), and tā moko (traditional Māori tattoo) – literature". But that does not affect the IP chapter.

[37] Waitangi Tribunal, The Report on the Crown's Review of the Plant Variety Rights Regime (Wai 2522), 2020. https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_167062478/Plant%20Variety%20Rights%20Regime%20W.pdf

[38] Māori submitters said that new Act was not Tiriti compliant, and the 3-year timeframe to implement the law was exceeded. See Report of the Economic Development, Science and Innovation Committee on the Plant Variet Rights Bill, November 2021

[39] https://www.mbie.govt.nz/have-your-say/eu-nz-free-trade-agreement-review-of-geographical-indications-law/

[40] https://agriculture.ec.europa.eu/farming/geographical-indications-and-quality-schemes/geographical-indications-and-quality-schemes-explained_en

[41] https://www.rnz.co.nz/news/country/458117/manuka-honey-trademark-bid-uk-ruling-insulting-to-maori-and-our-culture-says-trust

[42] https://www.ajpark.com/insights/what-new-zealands-free-trade-agreement-with-the-eu-means-for-intellectual-property/

[43] https://en.unesco.org/creativity/convention

[44] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1057036/uk-new-zealand-free-trade-agreement-new-zealand-side-letter-regarding-haka-ka-mate.pdf

[45] See https://www.nzonscreen.com/title/guarding-the-family-silver-2005

[46] https://waitangitribunal.govt.nz/news/tribunal-releases-report-on-electronic-commerce-chapter-in-cptpp/

[47] Waitangi Tribunal, CPTPP Report, 2021, Wai 2522,102-104

[48] https://www.ajpark.com/insights/what-new-zealands-free-trade-agreement-with-the-eu-means-for-intellectual-property/

[49] MFAT https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Highlights-v2.pdf

[50] https://www.tpk.govt.nz/en/mo-te-puni-kokiri/our-stories-and-media/thousands-of-maori-businesses-revealed-through-res

[51] https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-concluded-but-not-in-force/new-zealand-european-union-free-trade-agreement/maori-interests/

[52] Te Taumata: https://tetaumata.com/maori-to-benefit-substantially-from-nz-eu-fta/ ; Poutama Trust https://poutama.co.nz/maori-to-benefit-substantially-from-nz-eu-fta/ ; National Maori Authority - https://www.scoop.co.nz/stories/BU2207/S00001/maori-authority-welcomes-eu-free-trade-agreement-calls-it-a-massive-opportunity-for-maori-and-nz-in-the-billions.htm;

[53] MFAT https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/NZ-EU-FTA-Highlights-v2.pdf

[54] BERL Report https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/BERL-report.pdf

[55] https://www.statista.com/statistics/1101037/new-zealand-export-revenue-from-seafood/#:~:text=Seafood%20export%20revenue%20in%20New%20Zealand%20FY%202017%2D2024&text=In%20the%202022%20financial%20year,1.9%20billion%20New%20Zealand%20dollars. See also: MPI https://www.mpi.govt.nz/export/food/seafood/ noting seafood exports are worth more than $1.5billion annually NZ.

[56] https://www.waikato.ac.nz/news-opinion/media/2022/maori-hold-a-third-of-nzs-fishing-interests-but-as-the-ocean-warms-and-fish-migrate-these-rights-dont-move-with-them

[57] https://berl.co.nz/economic-insights/nz-eu-free-trade-agreement

[58] https://berl.co.nz/economic-insights/nz-eu-free-trade-agreement

[59] https://berl.co.nz/economic-insights/nz-eu-free-trade-agreement

[60] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-FTA-Scoping-Summary-and-Q-A-May-2017.pdf

[61] https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/BERL-report.pdf

[62] Fonterra has noted "[t]he outcomes for dairy are…very disappointing and reflect the degree of protectionism which continues to afflict dairy trade globally and particularly amongst the EU dairy industry" and that while the FTA "provides some small pockets of access for certain products over time…overall commercial opportunities for products such as butter, cheese, milk powder and key proteins are constrained relative to the size of the EU market by a combination of small permanent quotas, in-quota tariff rates, and quota administration requirements: https://www.fonterra.com/nz/en/our-stories/media/fonterra-acknowledges-the-outcome-of-the-nz-eu-fta.html; Similarly, at a Regional Hui on Trade hosted by Te Taumata in Waikato, Miraka's Chief Executive, Karl Gradon criticised the NZ EU FTA given the gains for Māori in dairy were inconsequential amounting to a teaspoon of their milk powder being exported to the EU under the dairy quota provisions; Also New Zealand's red meat sector has expressed its disappointment with the agreement because it only provides for "a small quota [of] New Zealand beef into the European Union -- 10,000 tonnes into a market that consumes 6.5 million tonnes of beef annually" https://beeflambnz.com/news-views/eu-nz-free-trade-agreement-outcome-disappointing-new-zealand%E2%80%99s-red-meat-sector

[63] https://berl.co.nz/economic-insights/nz-eu-free-trade-agreement

[64] https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement_en

[65] See above, fn 37.

[66] https://www.tsi.nz/

[67] https://www.beehive.govt.nz/release/government-target-increased-keep-powering-m%C4%81ori-economy

[68] https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=NewZealand&AnnexNo=7&ContentCulture=en

[69] https://www.taiaoora.nz/te-taiao

[70] https://www.tewakakaiora.co.nz/join-hua-parakore/

[71] https://www.newsroom.co.nz/decisions-have-consequences-climate-commission-scolds-govt?utm_source=Newsroom&utm_campaign=d9fe352812-Daily_Briefing+14.04.2023&utm_medium=email&utm_term=0_71de5c4b35-d9fe352812-97875039

[72] https://www.climatecommission.govt.nz/our-work/advice-to-government-topic/advice-for-preparation-of-emissions-reduction-plans/2023-draft-advice-to-inform-the-strategic-direction-of-the-governments-second-emissions-reduction-plan-april-2023/

[73] https://www.newsroom.co.nz/forestry-industry-shows-its-cards-at-slash-inquiry?utm_source=Newsroom&utm_campaign=d9fe352812-Daily_Briefing+14.04.2023&utm_medium=email&utm_term=0_71de5c4b35-d9fe352812-97875039