

Submission to the Ministry of Foreign Affairs and Trade on the:

General Review of the CPTPP

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

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This submission is made on behalf of the 31 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 340,000 union members, the CTU is one of the largest democratic organisations in New Zealand.

The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (CTU), which represents approximately 60,000 Māori workers.

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1. Summary of recommendations

Regarding New Zealand's priorities in the General Review of the CPTPP, the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU):

- 1.1. **Recommends** that New Zealand's engagement focuses on how to improve the CPTPP so that it is consistent with the Crown's obligations under Te Tiriti o Waitangi, supports sustainable social and economic development in New Zealand, and improves the quality, security, and level of employment in New Zealand.
- 1.2. **Recommends** that New Zealand advocates measures to improve the CPTPP Labour Chapter, which is weak and mostly unenforceable. The Trade and Sustainable Development Chapter of the NZ-EU FTA has set a new standard for labour standards in trade agreements and provides an appropriate model for the CPTPP Labour Chapter to aspire to.
- 1.3. **Recommends** that the ILO fundamental conventions augment the Declaration on Fundamental Principles and Rights at Work as the basis for the discussion of minimum labour rights and standards that CPTPP Parties must adhere to.
- 1.4. **Recommends** that Article 19.4 (Non-Derogation) is strengthened to prohibit Parties more effectively from weakening labour protections.
- 1.5. **Recommends** that Article 19.5 (Enforcement of Labour Laws) is strengthened by removing reference to "trade or investment" and to a "sustained or recurring course of action or inaction".
- 1.6. **Recommends** that the General Review seeks to improve the enforceability of the Labour Chapter by adopting the dispute settlement mechanisms and the Domestic Advisory Groups established in the NZ-EU FTA.
- 1.7. **Recommends** that Article 19.6 (Forced or Compulsory Labour) is upgraded to address the problem of modern slavery and its prevalence in supply chains.
- 1.8. **Recommends** that the Labour Chapter is upgraded to include an Article on migrant labour protections that obliges Parties to implement their labour laws and regulations in a way that accounts for the specific vulnerabilities of migrant workers.
- 1.9. **Recommends** that the Labour Chapter is upgraded to include an Article on trade and gender equality, modelled on the relevant provisions in the NZ-EU FTA and NZ-UK FTA.
- 1.10. **Recommends** that the General Review examines, to the extent possible, what impact (if any) the Labour Chapter has had on labour rights and standards in CPTPP countries.

- 1.11. **Notes** its ongoing opposition to the inclusion of Investor–State Dispute Settlement (ISDS) mechanisms in trade agreements. ISDS should not be considered as part of the General Review, or any trade agreement that New Zealand is party to.
- 1.12. **Notes** that caution is required with respect to the provision in the Terms of Reference that the General Review could “Explore ways to further address the challenges posed by market-distorting practices”. Some market-distorting practices – for example, Pharmac – are essential to New Zealand’s national security and the wellbeing of its people.

2. Introduction

- 2.1. The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) welcomes the opportunity to submit on the General Review of the CPTPP.
- 2.2. This submission identifies aspects of the CPTPP that the General Review should consider strengthening, focusing primarily on how the Labour Chapter can be strengthened to ensure that it can legitimately be called a “leading trade agreement”. We view this as an essential part of upgrading and enhancing the Agreement and ensuring that it remains relevant to the issues confronting the Parties.

3. General principles for updating the CPTPP

- 3.1. At a high level, we recommend that New Zealand’s input to the General Review focuses on how the CPTPP can be improved so that is consistent with the following objectives. The CPTPP should:
 - Be consistent with the Crown’s obligations under Te Tiriti o Waitangi.
 - Improve the quality, security, and level of employment in New Zealand.
 - Advance core ILO labour rights and standards among Parties to the Agreement, which requires a Labour Chapter with binding and enforceable commitments.
 - Support New Zealand’s ability to deliver a just transition for workers in response to global trends such as climate change and technological innovation.
 - Support economic dynamism, which should include helping to shift New Zealand away from its over-reliance on low-value-added primary sector exports.
 - Support social and economic equity in New Zealand.

- Not undermine the public provision of public goods and services, and not enable private profits to be earned from the provision of public goods and services.
 - Not restrict in any way the use of government procurement.
 - Support the development of environmentally sustainable economic practices and the domestic and global effort to decarbonise.
 - Address, where relevant, emergent issues of concern such as supply chain security and resilience and modern slavery in supply chains.
 - Not restrict New Zealand's ability to regulate cross-border data flows, data storage practices, and data ownership practices.
 - Not restrict New Zealand's ability to regulate new and evolving technologies, such as, but not limited to, artificial intelligence technologies.
 - Not unduly restrict the New Zealand government's ability to legislate and regulate in line with its democratic mandate.
- 3.2. Improvements to the Agreement should be considered in instances where the current form of the CPTPP is inconsistent with the realisation of the above objectives or is not sufficiently ambitious.

4. Improvements to the CPTPP Labour Chapter

- 4.1. The CPTPP Labour Chapter is relatively weak. The provisions relating to minimum labour rights and standards are non-binding; the minimum standards that are covered are a limited subset of the most important minimum standards; the chapter is largely unenforceable in practice; and civil society actors such as trade unions have little scope to ensure the obligations are met.
- 4.2. The recently signed NZ–EU FTA has set a new standard for labour chapters in trade agreements New Zealand is party to. While we do not yet have any experience of its performance in practice, on paper it has binding and enforceable standards, which are supported by the establishment of Domestic Advisory Groups in which social partners are represented.
- 4.3. Our view is that the Trade and Sustainable Development Chapter of the NZ–EU FTA provides an appropriate model for the CPTPP Labour Chapter to aspire to. Aspects of the NZ–UK FTA Labour Chapter also represent a step forward and provides resources for improving the CPTPP Labour Chapter. This is reflected in our recommendations below.

Labour rights and standards (Article 19.3)

4.4. We recommend that the ILO fundamental conventions augment the Declaration on Fundamental Principles and Rights at Work (DFPRW) as the basis for the minimum labour rights and standards that CPTPP Parties must adhere to. While the DFPRW remains an important contextual document, the fundamental conventions cover a more comprehensive set of labour standards and rights and are legally binding if ratified. They therefore provide a stronger anchor for the Labour Chapter.

4.5. We recommend that the Labour Chapter would be strengthened by the inclusion of a provision that Parties to the Agreement must work towards ratifying all ILO fundamental conventions. The strongest language for such a provision is provided by Stoll et al. in their Model Labour Chapter for EU Trade Agreements:

Each Party, to the extent it has not yet done so, shall ratify, without undue delay, the fundamental ILO conventions and their protocols.¹

Weaker, though still robust, language is provided in Article 19.3(5) of the NZ–EU FTA:

Each Party shall make continued and sustained efforts to ratify the fundamental conventions if they have not yet done so.

4.6. While we acknowledge this would be challenging for many other Parties to the Agreement, it would be a significant step forward in making the Labour Chapter a meaningful component of the CPTPP. (We note that Article 23.5(4) of the NZ–UK FTA provides a weaker, and less desirable alternative, which would nevertheless still represent an improvement upon the CPTPP text.)

4.7. At an absolute minimum, Article 19.3(1) of the CPTPP should be updated to include the fifth principle of the DRPRW, which was added in 2022: “a safe and healthy working environment”.

4.8. Article 19.3(2) of the CPTPP is also weak. It makes no reference to internationally recognised “acceptable conditions” of work. Instead, it simply provides that Parties to the Agreement must adopt and maintain laws and regulations that govern acceptable conditions of work, leaving the definition of “acceptable” up to the discretion of individual Parties. The absence of any internationally recognised standards here makes Article 19.3(2) effectively meaningless.

4.9. We recommend that Article 19.3(2) is upgraded to use stronger language, modelled on the following text:

¹ [P-T. Stoll et al.](#), *Model Chapter for European Union Trade Agreements*, Friedrich Ebert Stiftung, 2020, p. 17.

Each Party shall ensure that its domestic labour policies and laws provide for and encourage high levels of workers' protection and shall strive to continue to improve those policies and laws and their underlying levels of protection.²

- 4.10. We also recommend that the General Review examines how Article 19.3(2) can be strengthened through reference to ILO minimum standards in areas such as minimum wages, hours of work, health and safety, protection from discrimination at work, redundancy protection, and social security.

Non-derogation (Article 19.4)

- 4.11. The non-derogation provisions of the CPTPP Labour Chapter are weak. Parties are only prohibited from weakening or reducing labour rights and standards if this derogation would be inconsistent with a right set out in Article 19.3(1). This means Parties can weaken or reduce labour rights and standards in areas such as the minimum wage, occupational health and safety, and hours of work (with the exception of special trade and customs areas).
- 4.12. Additionally, as in other trade agreements, derogation is only prohibited if it is being done with the specific regulatory intent of encouraging trade or investment – i.e., gaining a comparative advantage by reducing the cost of labour. This enables Parties to reduce their labour standards and protections by claiming other regulatory intentions, even if the real intention is to encourage trade or investment.
- 4.13. We therefore recommend that the General Review considers strengthening Article 19.4 along the lines of the Model Labour Chapter developed by Stoll et al:

1. The Parties shall not encourage trade or investment by weakening or reducing the levels of protection afforded in their labour law and standards.

2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards to encourage trade or the establishment, acquisition, expansion or retention of an investment. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour law and standards that implement its obligations under this Chapter.

3. A Party shall not fail to effectively enforce its labour law and standards, including those that implement obligations under this Chapter.

² [Stoll et al.](#), *Model Chapter for European Union Trade Agreements*, p. 14. See also: [NZ-EU FTA](#), Article 19.2(3); [NZ-UK FTA](#), Article 23.4(2).

4. For greater certainty, this Article applies to the entirety of each Party's territorial or other jurisdiction, including, in particular, any regional divisions and zones with special status, such as export processing zones.³

Enforcement of labour laws (Article 19.5) and dispute resolution

4.14. Article 19.5 (Enforcement of Labour Laws) is also weak. Article 19.5(1) provides only that “No Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment”. This implicitly allows Parties to the Agreement to neglect to effectively enforce their labour laws so long as this cannot be proven to affect trade or investment. Further conditionality is provided by the requirement that this must be a “sustained or recurring course of action or inaction”.

4.15. As with other trade agreements, this conditionality makes the provisions of the CPTPP Labour Chapter difficult to enforce in practice.

4.16. Additionally, social partners are unable to raise complaints regarding a breach of the Agreement in their own country and have to rely on other Parties to the Agreement doing so.

4.17. We therefore recommend that the General Review considers upgrading this Article by removing both the reference to “trade or investment” and to a “sustained or recurring course of action or inaction”. We suggest the following language would be stronger:

A Party shall not fail to effectively enforce its labour law and standards, including those that implement obligations under this Chapter.⁴

4.18. More broadly, our view is that enforceability requires clear mechanisms through which social partners can identify and report breaches, participate in proceedings, and receive sufficient and timely information on progress in their investigation. Evidentiary standards for proving that a breach has been made must be feasible to meet. And an adequately resourced monitoring mechanism capable of regularly reviewing and monitoring compliance with labour commitments is required.

4.19. To this end, we recommend that the General Review seeks to improve the enforceability of the Labour Chapter by adopting the dispute settlement mechanisms established in the NZ–EU FTA. For example, Article 26.13 of the NZ–EU FTA sets out clear compliance measures that Parties who have been complained against must adhere to. Additionally, the Domestic Advisory Groups provided for under Article 24.6 of the NZ–EU FTA, while

³ [Stoll et al.](#), *Model Chapter for European Union Trade Agreements*, p. 15.

⁴ [Stoll et al.](#), *Model Chapter for European Union Trade Agreements*, p. 15.

yet to be tested in practice, should help to ensure that social partners are actively involved in monitoring compliance.

Forced or compulsory labour (Article 19.6)

4.20. Article 19.6 of the CPTPP, which deals with forced or compulsory labour, is weak. It provides only that each Party to the CPTPP “recognises the goal of eliminating all forms of forced or compulsory labour”, and that each Party “discourage, through initiatives it considers appropriate” the importation of goods that may have been produced in whole or part by forced labour. The conditionality of “initiatives it considers appropriate” is particularly problematic, as it does not oblige Parties to take effective measures to discourage, let alone eliminate, forced or compulsory labour.

4.21. We recommend Article 19.6 is upgraded to reflect the increasingly widespread awareness of the problem of modern slavery and its prevalence in supply chains. The ILO estimates that, in 2021, approximately 27.6 million people were forced to work against their will, with the Asia-Pacific region accounting for more than half of this number.⁵ The ILO is committed to ending modern slavery in the next decade, and New Zealand has also previously recognised that addressing modern slavery is a priority.⁶ The CPTPP General Review provides New Zealand with an opportunity to make progress on this issue.

4.22. The CTU’s preferred option would be to update the language used in Article 19.6 in line with the recommendations of Stoll et al. This would involve replacing the current text with the following paragraph, or similar language:

Each Party shall uphold and implement in their laws and practices:

(a) the effective suppression of forced or compulsory labour, in all its forms, including with regard to trafficking in persons;

(b) the prevention of the use of forced or compulsory labour;

(c) the provision to victims of protection and access to appropriate and effective remedies.⁷

4.23. We recommend including an additional provision relating to the banning of goods imports when they are produced in whole or in part by forced or compulsory labour. This would provide the CPTPP with some teeth to encourage Parties to actively eliminate forced or compulsory labour in their territory. The International Trade Union Confederation (ITUC) provided appropriate wording for this provision in its model labour chapter for the then Trans-Pacific Partnership Agreement:

⁵ [ILO](#), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, 2022.

⁶ [TFAAB](#), *Report of the TFAAB*, 2019, p. 57.

⁷ [Stoll et al.](#), *Model Chapter for European Union Trade Agreements*, p. 19.

No good may be imported into a Party from another Party or exported to a Party from another Party, if that good was produced, in whole or in part, by forced or compulsory labour or child labour in its worst forms, as defined by the International Labour Organization. Each Party shall establish procedures necessary to ensure that such prohibited goods will be seized at its border by customs and border authorities and to impose appropriate fines and sanctions to those responsible for the export or import of those goods.⁸

- 4.24. This provision should be supplemented by a facility-specific rapid response mechanism, such as that provided for in the United States–Mexico–Canada Agreement, or, to a much lesser extent, in the IPEF Supply Chains Agreement. The USMCA RRM enables stakeholders to file complaints relating to violations of the rights to freedom of association and collective bargaining, and which provides for rapid enforcement of these rights at the level of the firm.

Migrant workers

- 4.25. Except for the non-binding Article 19.10, which provides for potential areas of cooperation, the CPTPP Labour Chapter has no provisions relating to migrant workers. This is a significant shortcoming, given the large migrant workforces that are employed across the Trans-Pacific region and the specific vulnerabilities of migrant workers.
- 4.26. It is well recognised that migrant workers are particularly vulnerable to exploitation, and there is ongoing evidence of severe migrant labour exploitation in New Zealand, particularly through the RSE scheme and the AEWV system. This exploitation includes theft of wages and benefits, subjection to exorbitant fees and debt, contract substitution, excessive hours of work, and health and safety violations. As the CTU has outlined elsewhere, this is widespread across many sectors of the New Zealand economy, especially the agriculture, construction, hospitality, tourism, and care sectors.⁹
- 4.27. The CPTPP General Review should consider how strong migrant labour protections can be incorporated into the Labour Chapter. This could be done through the inclusion of a new Article that recognises the need for Parties to the Agreement to recognise that migrant workers are particularly vulnerable to exploitation and that Parties to the Agreement must implement their labour laws with this in mind.
- 4.28. Consideration should also be given to the inclusion of specific obligations on Parties to the Agreement to ensure that migrant workers are provided with accurate information about labour rights and standards in their place of employment; are proactively informed

⁸ [ITUC](#), *The Trans-Pacific Partnership Agreement: Model Labour & Dispute Resolution Chapter*, 2014.

⁹ [NZCTU](#), “Submission to the Education and Workforce Committee on the Worker Protection (Migrant and Other Employees) Bill”, 2022.

of their rights; have access to representation; and have protection from unscrupulous agents who may seek to extort money from them.

Trade and gender equality

- 4.29. Aside from a solitary mention of the “employment interests of women” in Article 19.10, the Labour Chapter currently lacks reference to advancing gender equality and women’s economic empowerment.
- 4.30. We recommend that the General Review considers the inclusion of a trade and gender equality Article modelled on Article 19.4 (Trade and Gender Equality) of the NZ–EU FTA and Article 23.8 (Non-Discrimination and Gender Equality in the Workplace) of the NZ–UK FTA.

Analysis of the efficacy of the Labour Chapter

- 4.31. We recommend that the Review also examines, to the extent possible, what impact (if any) the Labour Chapter has had on labour rights and standards in CPTPP countries – i.e., is there any quantitative or qualitative evidence that the provisions contained in the Labour Chapter have improved labour rights and standards in a measurable way in any of the countries Party to the Agreement?
- 4.32. We note that the CPTPP Labour Council report from 2023 was low quality. No barriers to implementation of the Labour Chapter were identified. This seems implausible, given the poor labour rights and standards of some CPTPP countries, including, in some areas, New Zealand. On the other hand, if it is indeed the case that no barriers to implementation exist, then this would appear to indicate that the Labour Chapter is so weak as to be essentially meaningless.

5. Other recommendations

Investor–State Dispute Settlement

- 5.1. The General Review must not reopen consideration of the Investor–State Dispute Settlement (ISDS) mechanism.
- 5.2. In the original Trans-Pacific Partnership Agreement, the ISDS mechanism would have allowed individual investors to challenge laws, regulations, and policies of local and central government where these laws, regulations, and policies were perceived to threaten the investor’s interests. This would likely have constrained the government’s ability to act in the interests of New Zealand’s people in cases when these interests were in conflict with those of investors.

5.3. The CTU remains firmly of the view that ISDS mechanisms are contrary to New Zealand's national interests and the wellbeing of our people and must remain off the table.

Market-distorting practices

5.4. The Terms of Reference note that the General Review could "Explore ways to further address the challenges posed by market-distorting practices".

5.5. The CTU supports measures that address economically and socially harmful market distortions. An example of such a problem is the supermarket duopoly in the New Zealand, which contributes to high food prices for consumers.

5.6. However, in some instances, market-distorting practices are necessary to protect vital national interests and the wellbeing of the New Zealand people. Perhaps the most important example of a beneficial market-distorting practice in New Zealand is Pharmac, which protects New Zealanders' access to medicine.

5.7. There is a risk that other Parties to the CPTPP will use this provision in the Terms of Reference to challenge practices such as Pharmac. Any modifications to the CPTPP that undermine the state's ability to implement and administer market-distorting practices that are necessary to protect our national interests and/or the wellbeing of New Zealanders must be firmly rejected.

6. Conclusion

6.1. The CTU affirms the importance of updating the CPTPP so that it supports sustainable and inclusive trade and economic development.

6.2. To this end, there are plenty of improvements to be made to the Labour Chapter if the CPTPP is to become a truly comprehensive and progressive agreement. The CTU believes that New Zealand is well-placed to lead this work.

6.3. The CTU thanks MFAT for the opportunity to submit on this work. We look forward to further engaging with MFAT as the General Review progresses.

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