

Submission to the Ministry of Foreign Affairs and Trade

Consultation on potential FTA with India

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

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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With over 340,000 union members, the NZCTU is one of the largest democratic organisations in New Zealand.

The NZCTU 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 (NZCTU), which represents approximately 60,000 Māori workers.

1. Introduction

- 1.1. The New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU) welcomes the opportunity to submit to the MFAT on a potential trade agreement with India.
- 1.2. The NZCTU recognises the importance of trade to New Zealand economy and society. As a small trading nation, it is wise for New Zealand to diversify its trade relationships and improve access to markets for goods and services produced in New Zealand.
- 1.3. New Zealand currently has a reasonably concentrated trade portfolio – both in terms of major trading partners and the goods we export. There is an increasing degree of risk attached to some of our most important trading partners, such as the United States and China, and our largest exports are commodities vulnerable to large swings in price and demand.
- 1.4. If well designed, trade agreements can be a useful tool in strengthening New Zealand's economic performance. However, if poorly designed, trade agreements can reduce the availability of good jobs in New Zealand, put undue constraints on the exercise of government sovereignty, and further embed our historic over-reliance on low-value-add primary exports.
- 1.5. It is therefore crucial that any future trade agreements deliver genuine opportunities for economic development in New Zealand, the creation of good jobs, and broadly rising living standards. A key area of focus here should be shifting from volume to value in our exports – i.e., moving our export portfolio up the value chain, rather than simply increasing the volume of low-value-add exports. FTAs are not the main tool for this job – industry policy is far more important. Nevertheless, policymakers should be cognisant of this issue when looking to negotiate FTAs.
- 1.6. It is equally crucial that trade relationships do not undermine or fail to adequately protect workers' fundamental rights, either in New Zealand or our trade partners.
- 1.7. The NZCTU's view is that preferential trade agreements should be negotiated with countries that have demonstrated adherence to international labour rights and standards.
- 1.8. Unfortunately, New Zealand has recently signed preferential trade agreements with the United Arab Emirates and the countries of the Gulf Cooperation Council, where there is widespread and shocking abuses of labour rights and standards. Neither of these agreements contain strong labour chapters, which means they will do nothing to lift

labour standards and outcomes for workers in these countries. It would be highly disappointing to see this repeated in a preferential trade agreement with India.

- 1.9. This submission therefore focuses on the labour provisions the NZCTU views as necessary in any preferential trade agreement with India.

2. General priorities

- 2.1. The NZCTU's believes New Zealand should seek trade relationships that contribute to sustainable, inclusive, and dynamic economic development. Specifically, trade agreements 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 – this requires a labour chapter with binding and enforceable commitments.
- Support New Zealand's ability to deliver a just transition for workers in response to trends such as climate change and technological innovation.
- Support economic dynamism, which should include supporting a shift away from over-reliance on low-value-add primary sector exports.
- Support social and economic equity.
- Support the development of environmentally sustainable economic practices and the domestic and global effort to decarbonise.
- 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.
- 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.
- Not unduly restrict the New Zealand government's ability to legislate and regulate in line with its democratic mandate.
- Not contain an Investor-State Dispute Settlement mechanism that would allow investors to challenge laws, regulations, and policies of local and central government.

- 2.2. New Zealand should not seek to negotiate or sign trade agreements that would undermine our ability to accomplish these goals.

- 2.3. Neither should New Zealand seek to negotiate or sign trade agreements with countries that routinely abuse workers' rights.

3. Labour provisions

- 3.1. Labour rights are unavailable to many workers in India. In the International Trade Union Confederation's Global Rights Index for 2024, India was among the 38 countries that received the second lowest rating, "no guarantee of rights" for workers. Although formal labour rights exist in India, in practice most workers – particularly those who work in the informal economy – have no effective access to these rights.¹
- 3.2. In addition, according to estimates by Walk Free, an international human rights organisation that monitors modern slavery, there are an estimated 11 million people living in conditions of modern slavery in India – both forced labourers and forced commercial sexual exploitation.²
- 3.3. As we have outlined in previous submissions, and noted above, the NZCTU's view is that potential partners for preferential trade agreements should demonstrate adherence to internationally recognised labour rights and standards *before* New Zealand enters trade negotiations with them. We would want to see labour rights improve significantly in India before New Zealand negotiates preferential market access with the Indian Government.
- 3.4. However, if the New Zealand Government intends to pursue a trade agreement with India, it is imperative that the agreement contains a strong and enforceable labour chapter that commits India to materially improving its labour protections.
- 3.5. In lieu of a strong and enforceable labour chapter, New Zealand would be sending a message to the world that it is prepared to ignore labour and human rights abuses if there are economic benefits to doing so. It would also increase the risk that New Zealand would import goods made in India in exploitative or even forced conditions. It also increases the risk that New Zealand manufacturers are put at an unfair commercial disadvantage.
- 3.6. The labour chapter should set out binding steps towards the realisation of the ILO's Decent Work Agenda, as expressed through the ILO fundamental conventions, the Declaration of Fundamental Principles and Rights at Work, and other relevant instruments. Specifically, it should cover the following:
 - A commitment that Parties to the Agreement will ratify all ILO fundamental conventions. New Zealand has yet to ratify conventions 87, 138, and 187, though is now compelled to do so under the NZ-EU FTA. India has yet to ratify the enabling conventions of 87 and 98 and the health and safety conventions of 155 and 187.
 - A commitment that Parties to the Agreement will provide high levels of workers' protection and shall strive to improve these protections.
 - A commitment that Parties to the Agreement will not derogate from the levels of protection afforded in their labour laws. Preferably, this provision would cover any

¹ https://www.ituc-csi.org/IMG/pdf/2024_ituc_global_rights_index_en.pdf?31226/ce28bb2139c2fe0d4e5f0a36d726ac7334d1c2d9be8b29dd88b4d2b9d89f5654

² <https://www.walkfree.org/global-slavery-index/country-studies/india/>

derogation, regardless of regulatory intent. At minimum, it should cover derogation with the intent of encouraging trade or investment.

- Clear dispute settlement mechanisms through which breaches of labour obligations can be addressed. At minimum, we recommend replicating the dispute settlement mechanisms established in the NZ–EU FTA. Article 26.13 of that Agreement sets out clear compliance measures that Parties who have been complained against must adhere to.
- A commitment that Parties to the Agreement will work to eliminate modern slavery. This would be consistent with New Zealand’s obligation as a Member of the ILO to work to end modern slavery in the next decade. This is all the more important given the high incidence of modern slavery in India, and the risk that goods imported from India would have been made using forced labour.
- A provision banning the importation of goods that are found to be produced in whole or in part by forced labour. This should be supported by an enforceable enterprise-specific dispute process, which could be modelled, for example, on the USMCA Rapid Response Mechanism. The RRM enables stakeholders to file complaints relating to violations of the rights to freedom of association and collective bargaining at the level of individual firms and provides for rapid enforcement of these rights at the level of the firm. Unions in the United States have used it to successfully address labour rights abuses.
- A commitment that Parties to the Agreement will recognise the specific vulnerability of migrant workers to exploitation and will implement their labour laws accordingly. Specific obligations should be placed on Parties to ensure that migrant workers are provided with accurate information about labour rights in their place of employment, are provided access to trade union representation, and have protection from unscrupulous agents who may seek to extort money from them.
- A commitment to furthering gender equality in trade and employment. The NZ–EU FTA and NZ–UK FTA can both be drawn upon as models here.
- A commitment that Parties will assist one another with capacity building on labour rights and protections. Health and safety policy could be a focus of capacity building activities. For example, asbestos products are still widely used in India, with disastrous consequences for workers’ health. New Zealand is well positioned to support India to develop its capacity to eliminate asbestos use and institute safe management practices for legacy asbestos.
- Establish Domestic Advisory Groups, such as those provided for under Article 24.6 of the NZ–EU FTA. These groups should help to ensure that social partners are actively involved in supporting the full implementation of labour provisions.

4. Consultation and analysis

- 4.1. One of the NZCTU's long-standing concerns about New Zealand's approach to free trade agreements has been the secrecy of negotiations. The text of a FTA is generally not made available for public comment until it has been signed. This makes genuine public consultation difficult.
- 4.2. We recommend that, prior to the pursuit of negotiations the government should produce an initial assessment of potential costs and benefits of a preferential trade agreement (including analysis of labour rights and standards and potential employment outcomes). This would support informed public consultation.
- 4.3. We further recommend that social partners and other significant stakeholders are provided with regular briefings through the course of negotiations, including access to draft text. The NZCTU recognises and appreciates that we were provided these opportunities in the recent negotiations with the UAE.
- 4.4. Finally, we recommend that the final text of an Agreement is made publicly available for comment prior to signing. The text should be accompanied by independently conducted analysis that, where possible, covers the following issues:
 - The expected employment impacts of the Agreement.
 - The expected household income impacts of the Agreement, and their distribution.
 - The expected outcomes of the Agreement regarding labour rights and standards.
 - The expected impact of the Agreement for Māori.
 - The regional and sectoral impacts of the Agreement.
 - The regulatory impact of the Agreement.
 - A consideration of the opportunity costs that the Agreement may impose – for example, on potential economic development paths.
 - The potential impact of the Agreement on environmental sustainability and greenhouse-gas emissions.
 - The policy levers or investments required to unlock the growth and development potential that the Agreement may offer. This includes considerations such as the infrastructure and skills that may need to be developed to take advantage of market access.

5. Conclusion

- 5.1. The NZCTU thanks the MFAT for the opportunity to make a submission on this issue.
- 5.2. We reiterate our view that preferential trade agreements should be negotiated with countries that have demonstrated adherence to international labour rights and standards.
- 5.3. However, if the New Zealand Government does decide to negotiate a trade agreement with India, it is critical that it contains a strong and enforceable labour chapter that will support the realisation of decent work in both countries.

For further information, please contact

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