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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the conclusion of the Free Trade Agreement between the European Union and New Zealand

Delegations will find attached document COM(2023) 87 final.

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2023/0038 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Free Trade Agreement between the European Union and New Zealand

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

New Zealand is the EU's 50th-largest trading partner for goods while the EU is New Zealand's third largest trading partner, accounting for 11.5% of total trade (following China and Australia). Bilateral trade in goods between the two partners equaled €7.8 billion in 2021, whereas trade in services accounted for €3.7 billion in 2020. New Zealand's exports to the EU are largely dominated by agricultural products, while the EU's exports to New Zealand are focused on manufactured goods. In 2020, the stock of EU's foreign direct investment in New Zealand amounted to €8.5 billion and the stock of New Zealand's investment in the EU was €4.8 billion.

The decision to start preparing for possible negotiations was taken on 29 October 2015 at a meeting between the Presidents of the European Council and the European Commission and the Prime Minister of New Zealand. Important consideration was given to the facts that New Zealand is among the world's fastest-growing developed economies and that it has concluded numerous preferential trade agreements with other partners. Therefore, EU businesses enjoyed less favorable conditions to access New Zealand's market. It was thus considered that a trade agreement with a like-minded partner like New Zealand would provide EU companies with a level playing field, help to deliver jobs, growth and investment, thereby benefitting EU businesses and citizens alike.

An extensive scoping exercise was concluded in the spring of 2017, demonstrating that negotiations could lead to a trade agreement in both sides' interest. The draft negotiating directives were presented to Member States in September 2017, together with an accompanying impact assessment[1].

On 22 May 2018, the Council of the European Union authorised the European Commission to open trade negotiations with New Zealand and adopted negotiating directives. The negotiations were supported by a Trade Sustainability Impact Assessment. The first round of negotiations for a Free Trade Agreement between the European Union and New Zealand ('FTA') was held in July 2018. Following a four-year negotiation process and 12 rounds of negotiations, the EU and New Zealand concluded the negotiations for an ambitious FTA on 30 June 2022.

While New Zealand is statistically a relatively small trading partner, the FTA is a welcome confirmation of our enhanced relationship with New Zealand and underlines the EU's ambition to deepen relations with the Indo-Pacific region in light of its 2021 Indo-Pacific Strategy.

From the broader geopolitical and geo-economic context, the timely conclusion of these negotiations with a like-minded partner like New Zealand also sends a strong signal of the joint commitment to a rules-based trading system.

The deal will remove all New Zealand tariffs on EU goods, support EU farmers, and protect workers and the environment through far-reaching, enforceable provisions on sustainable development. The FTA is the first one that the EU has concluded with "new generation"

[1] SWD/2017/0289 final

provisions on sustainable development, in line with the outcome of the EU's recent sustainable trade policy review communication ('The power of trade partnerships: together for green and just economic growth' of 22 June 2022[2]).

The legally reviewed texts of the FTA have been made public and can be found on the following link:

https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/new-zealand/eu-new-zealand-agreement/text-agreement_en

The Commission is putting forward the following proposals for Council decisions:

– Proposal for a Council Decision on the signing, on behalf of the European Union, of the Free Trade Agreement between the European Union and New Zealand;

– Proposal for a Council Decision on the conclusion of the Free Trade Agreement between the European Union and the New Zealand.

The attached proposal for a Council Decision constitutes the legal instrument for the conclusion of the Free Trade Agreement between the European Union and New Zealand.

- **Consistency with existing policy provisions in the policy area**

Prior to concluding the negotiations for an FTA, the EU and New Zealand had negotiated a comprehensive Partnership Agreement on Relations and Cooperation (PARC), which entered into force on 21 July 2022. The PARC provides the legal basis for the longstanding and strong partnership between the EU and New Zealand and deepens the cooperation between the two sides in many areas such as international peace and security, research and innovation, development, fisheries and maritime affairs, and cooperation on trade and economic matters.

Once the FTA enters into force, it will coexist with the PARC as a specific agreement and an integral part of the overall bilateral relations between the EU and New Zealand. The two agreements have no overlapping or conflicting provisions.

- **Consistency with other Union policies**

The FTA is fully consistent with Union policies and will not require the EU to amend its rules, regulations or standards in any regulated area. Furthermore, like all other trade agreements the Commission has negotiated, the FTA fully safeguards public services and ensures that governments' right to regulate in the public interest is fully preserved and constitutes a basic underlying principle to them.

Furthermore, the provisions of the FTA fully reflect the outcome of the EU's recent sustainable trade policy review communication ('The power of trade partnerships: together for green and just economic growth' of 22 June 2022).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

In accordance with Opinion 2/15 on the EU-Singapore FTA of the Court of Justice of 16 May 2017, all the areas covered by the FTA would fall within the exclusive competence of the EU

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0409&qid=1656586727707

and, more particularly, within the scope of Articles 91, 100(2) and 207 TFEU. The Court drew the EU exclusive competence from the scope of the Common Commercial Policy under Article 207(1) TFEU and from Article 3(2) TFEU (based on the affectation of existing common rules contained in secondary legislation).

As a result, the FTA is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6) TFEU, following the European Parliament's consent. The Council Decision on conclusion will also provide for empowerments for the European Commission based on Article 218(7) TFEU to approve on the Union's behalf modifications to the FTA given that the FTA provides for expedited and/or simplified procedures to approve such modifications.

- **Subsidiarity (for non-exclusive competence)**

The FTA as presented to the Council does not cover any matters that fall outside the EU's exclusive competence.

- **Proportionality**

Trade agreements are the appropriate means to govern market access and the related areas of comprehensive economic relations with a third country outside the EU. No alternative exists to render such commitments and liberalisation efforts legally binding.

This initiative pursues directly the Union's objective in external action and contributes to the political priority of 'EU as a stronger global actor'. It is in line with the EU Global Strategy's orientations to engage with others and revamp its external partnerships in a responsible way, in order to attain the EU's external priorities. It contributes to the EU's trade and development objectives.

- **Choice of the instrument**

This proposal is in accordance with Article 218(6) TFEU, which envisages the adoption by the Council of decisions on the conclusion of international agreements. No other legal instrument exists that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

According to the impact assessment, as a result of the FTA, bilateral trade is expected to increase by up to 30% and can save up to 140 million euros a year in duties for EU companies exporting to New Zealand under the terms of the FTA, from the first year of application. EU investments may potentially increase by 80% into New Zealand.

However, the quantitative elements may be considered to underestimate the real economic impact of this FTA, given that the standard modelling configuration does not fit the small size of New Zealand. The numbers cannot take into account the foreseeable benefits linked to the strengthening of the protection and enforcement of intellectual property rights, the important provisions on digital trade or services or the political importance of this FTA. The EU-New Zealand FTA is the most modern EU trade deal. It is particularly important in the broader context, setting standards for future deals and at the same time supporting the EU's ongoing

efforts to further strengthen its economic relationship in the Indo-Pacific region. These elements are not possible to model but could be expected to be of significant importance and foster deeper economic engagement.

- **Stakeholder consultations**

Before the start of the negotiations, an Impact Assessment (IA) of the FTA between the EU and New Zealand[3] was conducted by the Commission, supported by an online public consultation and an independent study carried out by an external contractor. The study confirmed that the FTA between the EU and New Zealand could provide important benefits beyond improved market access, emphasizing the importance of comprehensive economic relations in the wider region.

In parallel to the negotiations, a Trade Sustainability Impact Assessment (TSIA) of the FTA between the EU and New Zealand[4] was conducted by an external contractor to study the potential economic, social, human rights and environmental impacts stemming from the provisions in the FTA or being a consequence of removing or reducing barriers to bilateral trade and investment between the EU and New Zealand.

In the framework of both the IA the TSIA, the respective contractors consulted internal and external experts and carried out consultations with stakeholders both in the EU and New Zealand through online surveys, requests for position papers, interviews and meetings.

Prior to and during the negotiations, the EU Member States were regularly informed and consulted orally and in writing on the different aspects of the negotiation via the Council's Trade Policy Committee. The European Parliament was also regularly informed and consulted via its Committee on International Trade (INTA), and notably its Australia-New Zealand Monitoring Group. The texts progressively resulting from the negotiations were circulated throughout the process to both institutions.

The Commission also provided the possibility for civil society organisations to have their voice heard and ask questions, including through dedicated civil society dialogues, both during the IA and the TSIA and the actual negotiations.

Furthermore, during the negotiations the Commission on its website has published and regularly updated reports of the negotiating rounds, the text proposals, press releases, facts sheets and background information materials.

- **Collection and use of expertise**

The independent study underpinning the IA of the FTA was carried out by the external contractor "LSE Enterprise Ltd".

The TSIA of the FTA was carried out by the external contractor "BKP Economic Advisors".

- **Impact assessment**

The IA carried out before the start of the negotiations concluded that the FTA between the EU and New Zealand could provide important benefits beyond improved market access, emphasizing the importance of comprehensive economic relations in the wider region.

The TSIA, conducted in support of the FTA negotiations, confirmed that the agreement would have overall positive macro-economic effects for both the EU and for New Zealand.

[3] https://policy.trade.ec.europa.eu/analysis-and-assessment/impact-assessments_en

[4] https://policy.trade.ec.europa.eu/analysis-and-assessment/sustainability-impact-assessments_en

- **Regulatory fitness and simplification**

The FTA is not subject to REFIT procedures. It nevertheless contains a number of provisions that will simplify trade and the related procedures, reduce export related costs and will therefore enable more SMEs to do business in both markets. A dedicated chapter for SMEs addresses in particular enhanced information exchange and cooperation with New Zealand on SME-related issues. Tariff elimination, simplified and digitised customs procedures and more compatible technical requirements will lower export related costs and allow SMEs with lower trade volumes to compete with larger companies. This also enhances SMEs' ability to participate in supply chains, digital trade and public procurement and to provide services on the New Zealand market. The FTA also promotes transparency and the use of international standards to facilitate market access and lower costs of compliance.

- **Fundamental rights**

The proposal does not affect the protection of fundamental rights in the Union.

4. BUDGETARY IMPLICATIONS

The FTA will have a financial impact on the EU's budget on the side of the revenues. It is estimated that foregone duties could reach an amount of around € 150 million a year upon full implementation of the FTA. The estimate is based on average imports projected for 2030 in the absence of an FTA and represents the annual loss in revenues resulting from the full elimination of EU tariffs and quotas on imports originating in New Zealand.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The FTA includes institutional provisions that lay down the structure for the implementing bodies to continuously monitor the implementation, operation and impact of the FTA.

The institutional chapter of the FTA establishes a Trade Committee that has as its main task to supervise and facilitate the implementation and application of the FTA. The Trade Committee will be in charge of supervising the work of all specialised committees and working groups established under the FTA.

The FTA establishes Domestic Advisory Groups comprising of a balanced representation of independent civil society organisations including non-governmental organisations, business and employers' organisations as well as trade unions active on economic, sustainable development, social, human rights, environmental and other matters, and, in the case of New Zealand, Māori representatives. The Domestic Advisory Groups may submit views and recommendations concerning the functioning and implementation of the FTA and shall meet once a year.

As emphasised in the "Trade for All" Communication, the Commission is dedicating increasing resources to the effective implementation and enforcement of trade and investment agreements. In October 2022, the Commission published its third annual Implementation and Enforcement Report. The main purpose of the report is to convey an objective picture on the implementation of EU FTAs, highlighting the progress made and the shortcomings that need to be addressed. The objective is for the report to serve as the basis for open debate and engagement with Member States, the European Parliament and the civil society at large on the functioning of the FTAs and their implementation. As an annual exercise, the publication of the report will allow regular monitoring of developments, registering also how identified

priority issues have been addressed. The report will cover the EU-New Zealand FTA as of its entry into force.

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

It is estimated that as a result of the FTA, bilateral trade is expected to increase by up to 30% and can save up to € 140 million a year in duties for EU companies exporting to New Zealand under the terms of the FTA, from the first year of application. For example, New Zealand will remove high duties on industrial products, such as cars and motor vehicle parts (current tariffs up to 10%); machinery (current tariffs up to 5%); chemicals (current tariffs up to 5%); clothing (current tariffs 10%); pharmaceuticals (current tariffs up to 5%); shoes (current tariffs up to 10%) and textiles (current tariffs up to 10%).

European farmers and food businesses will benefit from new business opportunities in New Zealand, as the FTA removes all tariffs at entry into force on EU agri-food exports, including key EU export products, such as swine meat (current tariffs 5 %); wine and sparkling wine (current tariff at 5%); chocolate, sugar confectionary and biscuits (current tariff at 5%); pet food (current tariffs at 5%). Furthermore, the FTA will protect the geographical indications for the full list of close to 2000 EU wines and spirits as well as 163 other food products, such as Feta, Parmigiano Reggiano, Lubecker Marzipan and Elia Kalamatas olives.

At the same time, the FTA takes EU agricultural sensitivities fully into account. The EU will not fully liberalise its markets for highly sensitive products, such as beef, butter or milk powder. These products imported from New Zealand will only have a limited and controlled access to the EU market through carefully calibrated tariff quotas that take into account concerns of European farmers and consumer preferences. It was ensured that these quotas would mitigate possible market pressure.

The FTA sets high sustainability and quality standards for the imported food products. Farmers on both sides will be on a level-playing field regarding production and sustainability criteria. The FTA contains dedicated text on Sustainable Food Systems (for the first time in the EU's trade agreements) and Animal Welfare, paving the way for further bilateral and multilateral cooperation on topics such as animal welfare, food, pesticides and fertilisers. The provisions of the FTA will protect EU farmers against unfair competition.

The FTA will improve access for EU companies to New Zealand's government procurement contracts.

Concerning trade and sustainable development, this is the EU's first trade agreement to reflect the outcome of the EU's recent sustainable trade policy review communication, with sanctionable commitments to the Paris Climate Agreement as well as the core ILO labour standards. Furthermore, the FTA is the first trade agreement with dedicated trade and gender equality provisions under the Trade and Sustainable Development chapter and with dedicated provisions on trade and fossil fuel subsidies reform and an FTA which liberalises green goods and services at entry into force. The FTA provides for new commitments on the circular economy, deforestation, carbon pricing, and protection of marine environment.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1), Article 100(2), and Article 207(4), first subparagraph, in conjunction with Article 218(6), point (a)(v) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[1],

Whereas:

(1) In accordance with Council Decision No [XX][2], the Free Trade Agreement between the European Union and New Zealand ('the Agreement') was signed on [XX XXX 2023], subject to its conclusion at a later date.

(2) Pursuant to Article 218(7) of the Treaty on the Functioning of the European Union, it is appropriate to authorise the Commission to approve on the Union's behalf the position to be taken on certain modifications to the Agreement that are to be adopted by a simplified procedure pursuant to Articles 14.4, 18.33 and 24.3(h) and (i) of the Agreement.

(3) The Agreement should be approved on behalf of the Union.

(4) The Agreement, in accordance with its Article 27.6, does not, within the Union, confer rights or impose obligations on persons, other than those created between the Parties under public international law,

HAS ADOPTED THIS DECISION:

Article 1

The Free Trade Agreement between the European Union and New Zealand ('the Agreement') is hereby approved on behalf of the Union.

The text of the Agreement is attached to this Decision.

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1 OJ C , , p. .

2 [Reference to be inserted]

Article 2

For the purposes of Articles 14.4 and 24.3(h) of the Agreement, the modifications or rectifications as regards Annex 14 to the Agreement shall be approved by the Commission on behalf of the Union.

Article 3

For the purposes of Articles 18.33 and 24.3(i) of the Agreement, the amendment of Annex 18-A and Annex 18-B of the Agreement shall be approved by the Commission on behalf of the Union.

Article 4

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the notification provided for in Article 27.2 of the Agreement, in order to express the consent of the Union to be bound by the Agreement.

Article 5

This Decision shall enter into force on the day of its adoption[3].

Done at Brussels,

For the Council
The President

[3] The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.