

Submission by



to the
Ministry of Foreign Affairs and Trade

on the
Trade and Labour Framework

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TRADE AND LABOUR FRAMEWORK– SUBMISSION BY BUSINESSNZ & EXPORTNZ¹

INTRODUCTION

What should be our approach to a Trade and Labour Framework?

1. As a general rule, New Zealand should take an approach that is reflective of our capacity to influence outcomes on a global playing field. In short, we should not over commit lest we damage our capacity to realise the gains inherent in entering a bilateral or multilateral arrangement with other countries. In that regard, Business New Zealand and Export New Zealand (BusinessNZ & ExportNZ) supports an approach premised on recognition of the provisions of the ILO Declaration of Fundamental Rights and Principles at Work 1998, supplemented as appropriate by references to other multilateral declarations and commitments and recognising where appropriate the existence of issues of mutual concern.

What international instruments or principles should be reflected in a Trade and Labour Framework?

2. As pointed out in the discussion document, the 1998 ILO Declaration of Fundamental Principles and Rights at Work² is the commonly agreed multilateral “baseline” framework for fundamental labour principles. It underpins the approach to trade and labour policy by many countries, including New Zealand, as well as being a foundation for the development of domestic labour laws in countries that are ILO member states.
3. While there are a number of other relevant multilateral instruments which New Zealand supports and could potentially be referenced in a refreshed Framework, these are almost exclusively broader strategic statements and none are underpinned by ratifiable treaties that commit signatory states to adapting their domestic laws to comply.
4. For instance, the ILO Declaration on Social Justice for a Fair Globalisation (2008) outlines the objectives by which the ILO seeks to realise the concept of Decent Work (itself a broad statement of objectives under the four pillars of Decent Work Agenda)³. Similarly, the 2019 ILO Centenary Declaration for the Future of Work seeks to promote the ILO’s vision of a human-centred approach to the future of work by promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work.
5. These declarations set aspirational goals to be achieved within the context established by the Fundamental Rights and Principles at Work. Being directional, they are also dynamic, reflecting various stages of the global response to emerging issues. This creates challenges, particularly in relation to the extent they can be translated into clear guidance for negotiators.
6. BusinessNZ & ExportNZ accordingly recommends that references to these more aspirational statements should be such as to not inhibit recognition of later iterations of global responses to change.

What elements or principles in the existing, (2001) Trade and Labour Framework should be included in the redeveloped Trade and Labour Framework?

7. As stated in the discussion document, New Zealand’s aims, domestically and internationally,
 - a. are to develop sound, sustainable policies in trade and labour and ensure that these policies are mutually supportive. Central to our current approach to trade and labour is the
 - b. recognise that as tradable goods and services are a product of labour, labour conditions should be recognised in our trade relationships.
 - c. are underpinned by the view that trade agreements are not ends in themselves, but should aim to improve living standards, and promote decent work.

¹ Background information on BusinessNZ & ExportNZ is attached as Appendix One and Two.

² The 1998 Declaration was amended at the 2022 International Labour Conference to include an additional principle – “a safe and healthy working environment”.

³ Promoting jobs and Enterprise, Rights at Work, Social Protection, and Social Dialogue

8. Business NZ & ExportNZ supports these aims and accordingly supports application of the non-derogation principle which is aimed at preventing one country exercising an advantage over another, because one has lower labour costs overall. BusinessNZ & ExportNZ also supports application of the non-discrimination principle under which countries might be excluded from trading goods not produced in accordance with arbitrarily specified labour standards.

What new elements or principles should be included in a Trade and Labour Framework?

9. BusinessNZ & ExportNZ believes the Fundamental ILO Labour Conventions should remain at the heart of a refreshed Trade and Labour Framework. As posited by the discussion document, a refreshed Framework could maintain the current focus on the 1998 ILO Declaration. Care should be taken in analysing the implications of acknowledging the desirability of working towards ratification of the Fundamental Conventions. Many countries, including our current and potential trading partners, have not ratified all of the Fundamental Conventions. A requirement to work toward ratifying all of the fundamental Conventions could therefore have significant implications for New Zealand's legislative and policy settings. It is BusinessNZ & ExportNZ's view that free trade agreements should not unduly limit the rights of governments to regulate as they see fit, including on labour standards. Staying at the level of commitment to the Fundamental Principles is the option least likely to create such issues. Moreover, all New Zealand's trading partners and almost all other countries are members of the International Labour Organisation and, by virtue of that membership, are already obligated to recognise and respect the Declaration on Fundamental Principles and Rights at Work.
10. In terms of wider commitments, emerging labour market issues such as supply chain management, platform work and modern slavery are significant areas of focus in current international dialogue on trade and labour. Indeed, all have been the subject of intense recent debate among ILO members, particularly whether international labour standards ought to be introduced to govern them. As mentioned in the discussion paper modern slavery in supply chains is also an important issue in a domestic context, with a number of governments introducing legislation to address modern slavery often defined as including forced or compulsory labour, human trafficking, debt bondage, or other slavery and slavery like practices.
11. That said, all these issues and others like them are emergent and lacking a global consensus on a common approach. Care should therefore be taken before including references to such issues in free trade agreements lest the dynamic nature of the issues create inconsistencies and potential departures from the non-derogation and non-discrimination principles.
12. If mention of these sorts of issues is considered desirable, particularly if the prospective parties to a free trade agreement believe they are intrinsic to a successful conclusion of an agreement, they should be expressed in such a way that permits accommodation of developments in international labour standards governing them.

What should New Zealand's approach to the enforceability of labour commitments be in a Trade and Labour Framework?

13. Any agreement has the potential to generate disputes over the meaning or application of its provisions. A mature relationship between the parties to the agreement can overcome many obstacles, indeed this has been the approach adopted by New Zealand in the past. But even mature relationships are not always enough. Australia's position on importing New Zealand apples is an example.
14. It is partly for this reason that New Zealand has gravitated to seeking inclusion of formal dispute resolution procedures in free trade agreements. This is the case with the CPTPP and NZ-UK FTA labour chapters. However, this does not mean that formal procedures should be the only option as they can of themselves introduce undesirable tensions in a hitherto cooperative relationship.
15. With that in mind, BusinessNZ & ExportNZ support the approach set out in the current Trade and Labour Framework that: *"...dialogue and consensus will be preferred to penalties or sanctions as a way of making progress on labour standards issues. The Government's aim will be to focus discussion of labour issues and provide a forum for action and progress to be made, by consensus and not coercion, in a bilateral context."*

Objectives of trade and labour policy

- 16.** BusinessNZ & ExportNZ agree with the view in the discussion document that economic and trade partnership agreements are not ends in themselves. The end game is the betterment of societal and economic outcomes for all parties. This view is all the more important when the parties to a free trade agreement are at different levels of development and sophistication.
- 17.** Thus, agreements need to be negotiated in a way that makes them not just acceptable to developing countries, but also a contributor to accelerated and sustainable growth and prosperity. BusinessNZ & ExportNZ agree with the view in the discussion documents that *"developing countries should not be denied legitimate comparative advantage of lower labour costs but this advantage should not be secured by deliberately neglecting fundamental labour principles"*.
- 18.** Free trade agreements are not the only mechanism via which New Zealand can contribute to improving conditions of work and human rights. The Government and its social partners can and should take a consistent approach that will reflect its objective of promoting decent work in the global economy. While bilateral contexts provide a more direct opportunity for dialogue and to co-operate on specific initiatives to improve employment outcome, setting and monitoring labour standards needs a more global perspective. The rules-based framework provided by the ILO labour standards is the context in which developments at multilateral or bilateral initiatives should be taken. Certainly, any initiatives should avoid anything which could undermine the status of the ILO. BusinessNZ & ExportNZ support the view that the ILO's Fundamental Principles and Rights of Work provide an appropriate basis for the discussion of labour standards within the framework of trade agreements.
- 19.** Consistent with the approach taken in the ILO, each country should be free to implement those fundamental principles according to its own laws and practices provided that the outcomes are generally consistent with and do not undermine the interpretative views of the supervisory bodies of the ILO on the core principles, the promotion of decent work, and the promotion and protection of universal human rights standards⁴.

ENDS

⁴ The Committee of Experts on the Application of Conventions and Recommendations, the International Labour Conference Committee on Application of Standards and the Committee on Freedom of Association.

ANNEX 2. ABOUT BUSINESS NEW ZEALAND (BusinessNZ)

The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Business South](#).
- [BusinessNZ](#) policy and advocacy services.
- [Major Companies Group](#) of New Zealand's largest businesses.
- [Gold Group](#) of medium-sized businesses.
- [Affiliated Industries Group](#) of national industry associations.
- [ExportNZ](#) representing New Zealand exporting enterprises.
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises.
- [Sustainable Business Council](#) of enterprises leading sustainable business practice.
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use.
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods.

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and Business at OECD ([BIAC](#)).

BusinessNZ Network



ANNEX 1. ABOUT EXPORT NEW ZEALAND (ExportNZ)

ExportNZ is a national industry association representing a diverse range of exporters throughout New Zealand. ExportNZ is a division of BusinessNZ, New Zealand's peak business advocacy body.

We are a membership organisation and have approximately 2,000 export members. We also have four regional partners: Employers Manufacturers Association (Upper North Island), Business Central (Lower North Island), Canterbury Employers Chamber of Commerce (Upper South Island) and Business South (Lower South Island).