



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

TRADE, ENVIRONMENT AND CLIMATE CHANGE *DISCUSSION PAPER*

2021





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Executive summary

A new approach to trade, environment and climate change

New Zealanders place a high value on protecting and enhancing our environment now, and for future generations. Globally, New Zealand is playing its part in efforts to combat climate change and support sustainable development action to address overfishing, conserve biodiversity and end fossil fuel subsidies.

Ambitious action on climate change and maintaining high standards for environment protection are both important in their own right and fully compatible with economic prosperity.

New Zealand's domestic economy is too small to provide an adequate market for what we are best at producing, so we have to sell our goods and services to the rest of the world in order to pay for the standard of living that we want. Trade is fundamental to our economy and livelihoods, with one in four New Zealanders' jobs reliant on exporting.

Trade and the increased economic activity that this delivers may put strain on the environment and the earth's resources, but not all trade is necessarily harmful to the environment. The impact on the environment will depend on the way trade and environment policies are designed and implemented.

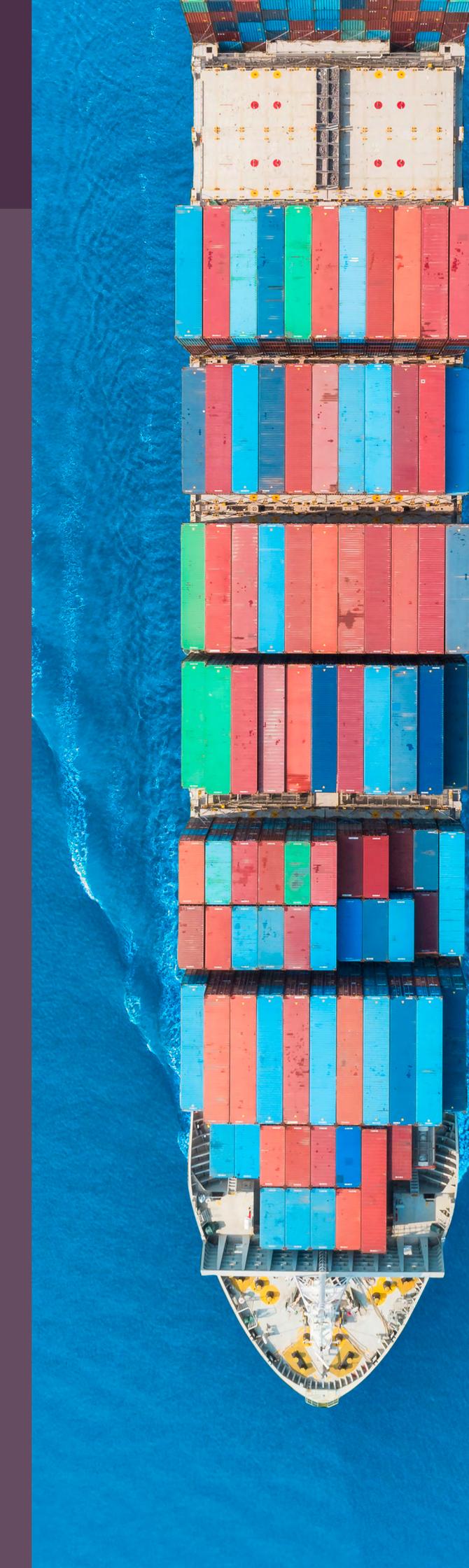
This is why the Government is consulting New Zealanders on a new trade and environment framework. The framework will replace the existing [2001 framework](#). It will be used by New Zealand's trade negotiators to shape and inform decisions about what to include in New Zealand's trade agreements.

Our aims, domestically and internationally, are to develop sound, sustainable policies in trade, climate change and environment management and to ensure that the policies are mutually supportive. When constructed with care, trade agreements can and do provide scope for action to be taken to mitigate any harm that comes from increased economic activity.

New Zealand also has defensive interests in this agenda. Given the importance of trade to economic development, it is vital that environmental policies and standards (including climate change policy) are not misused for protectionist reasons. Governments should design and implement environmental standards to meet their environmental objectives rather than discriminating between products on the basis of the country they come from.

Since 2001, New Zealand has had a Trade and Environment Framework to help guide our trade negotiators. As part of a broader Trade for All process to review New Zealand's trade policy settings to ensure that it delivers for all New Zealanders¹, the Trade for All Advisory Board recommended that the Government review this framework.

¹ See <https://www.mfat.govt.nz/en/trade/nz-trade-policy/trade-for-all-agenda/> for more information.



The Board sought the development of a “new framework, based on the SDGs , that takes into account the urgency of climate change and the economic transformation it implies, and advances in knowledge since 2001, to create a stronger basis for evaluating the direct and indirect impacts of trade agreements on the environment.”



The Board sought the development of a “new framework, based on the SDGs², that takes into account the urgency of climate change and the economic transformation it implies, and advances in knowledge since 2001, to create a stronger basis for evaluating the direct and indirect impacts of trade agreements on the environment.”

The Board also recommended that clear direction should be given to New Zealand’s trade negotiators to open up and maintain regulatory space for the type of policy tools to support climate change policy and address environmental matters that may arise in the future.

We are seeking your views on a new framework. Some proposed principles underpinning the new framework are outlined below for your consideration, followed by some questions.

The principles are not intended to reflect all aspects of domestic climate change and environmental policy but focus only on those aspects that are trade-related.

All views will be considered as we work with other government agencies to develop a new framework.

Proposed Trade, Environment and Climate Change Framework Principles

The following principles are proposed to guide the Government’s engagement on trade, environment and climate change issues in trade negotiations, drawing on the 2001 Framework and subsequent developments. Twelve principles are proposed – two are unchanged from the 2001 Framework, five have been modified, one removed, and five new principles added.

1

Ensure the Government’s objectives for sustainable development are reflected in all of New Zealand’s international trade and environment negotiations.

It is proposed that this principle from the 2001 Framework is retained as is.

The commitment to sustainable development has been a hallmark of successive governments. All of New Zealand’s trade partners, and likely future partners, are signatories to UN Declarations that promote sustainable development³, and to WTO agreements that enshrine sustainable development and environmental protection as core goals.

This principle is flexible enough to encompass the Sustainable Development Goals (SDGs), which were developed after 2001. Of the seventeen SDGs, six relate to environmental outcomes and include trade as a means of implementing these outcomes i.e. SDG 2 (end hunger), SDG 7 (sustainable energy), SDG 12 (sustainable consumption and production), SDG 13 (climate change), SDG 14 (oceans, seas and marine fisheries), and SDG 15 (terrestrial ecosystems).

The principle gives a clear direction and allows for flexibility in the way it is expressed in specific situations.

2

Promote mutual supportiveness between multilateral environmental agreements (MEAs) and trade agreements, and encourage ongoing cooperation between the institutions which service them.

It is proposed to retain a modified version of this principle taken from the 2001 Framework. The 2001 version reads “Promote greater coherence between multilateral environment and trade agreements and greater cooperation between the institutions which service them”.

Coherence between multilateral environmental agreements (MEAs) – including in regard to climate change - and trade agreements is the subject of ongoing negotiations under the WTO Doha Development Agenda⁴. The principle remains useful, including to guide New Zealand’s engagement in negotiations beyond the WTO. For example, the principle should also cover open plurilateral initiatives such as the Agreement on Climate Change, Trade, and Sustainability (ACCTS), as well as free trade agreements (FTAs), all of which should promote mutual supportiveness of the trade and environment agendas. The reference to ‘mutual supportiveness’ reflects international terminology and New Zealand’s intent that trade policy, climate change policy, and environmental policy objectives should be aligned.

We propose an update to the wording to reflect increased practical cooperation between multilateral institutions’ secretariats since 2001.

² The UN 2030 Agenda for Sustainable Development (adopted in 2015) sets out 17 Sustainable Development Goals (SDGs). See <https://sdgs.un.org/goals>

³ UN Conference on Environment and Development 1992, World Summit on Sustainable Development 2002, UN Conference on Sustainable Development 2012.

⁴ See Doha Development Agenda paragraph 31(1) at https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

3

Ensure that multilateral and other trade-oriented institutions have due regard for internationally agreed rules and commitments for the protection of the environment and the need for action on climate change.

It is proposed to retain a modified version of this principle taken from the 2001 Framework. The 2001 version reads: “Ensure that the WTO shows proper respect for internationally agreed rules for the protection of the environment”.

The 2001 principle was drafted primarily with the WTO in mind, reflecting the more active state of the Doha Development Agenda (DDA) negotiations at that time. While there are still negotiations underway at the WTO to which the principle remains relevant, it needs to be broadened to also guide our bilateral, regional and plurilateral initiatives and engagement with trade-related organisations such as APEC and the OECD.

The “internationally agreed rules for environmental protection” are references to obligations under multilateral environmental agreements (MEAs), such as the Convention on Biological Diversity (CBD), the Basel Convention, the Stockholm Convention, the Montreal Protocol, and the United Nations Framework Convention on Climate Change (UNFCCC). It is important that the principle continues to encourage high levels of ambition in regards to how such rules are implemented. This will ensure that where negotiations integrate trade, climate change and environmental objectives (for example negotiations on fisheries subsidies) New Zealand advocates to ensure the outcome achieves the economic, climate and environmental aims.

4

Ensure the government’s ability to regulate as it sees fit for the protection of New Zealand’s environment, including action on climate change, is not compromised.

This principle from the 2001 Framework has been updated to include a reference to climate change.

The government’s ability to regulate at its discretion for the protection of the environment is a particular aspect of the broader principle of sovereignty i.e. the recognition that sovereign countries have the right to adopt their own laws and regulations. However, the ability of the New Zealand Government, and the governments of our trade partner countries, to regulate for environmental protection and action on climate change is not completely unfettered. For example, the right

to regulate is constrained to the extent that any such laws and regulations are covered by international treaties to which New Zealand is a party.

The Trade For All Advisory Board report draws attention to the need to maintain policy space for the types of actions that will be needed to support climate change policy and address environmental matters that may arise in the future. The principle underpins this interest and allows for flexibility in the way it is expressed in specific situations. New Zealand’s existing trade agreements retain policy space for the government to regulate for the protection of plant and animal life or health and the conservation of exhaustible natural resources in certain circumstances, and this will continue to be carefully guarded, especially if environmental issues become more prominent and more pressing for example climate change, loss of biodiversity, or pollution. On this basis, it is proposed that the principle is reformulated to emphasise that the scope of regulatory action includes climate change.

5

Respect the right of other governments to determine their own domestic regulations where these impact only on the environment in their own jurisdictions and do not result in breaches of international rules and commitments.

It is proposed to retain this principle from the 2001 Framework, unchanged.

In practice, this principle has not been applied through specific provisions in New Zealand’s trade agreements, but informs New Zealand’s negotiating approach. This principle continues to be a useful complement to the right to regulate principle discussed above.

6

Seek to ensure that regulatory measures that aim to enhance environmental performance and address climate change are designed to achieve the environmental objective that is being promoted, are non-discriminatory, and do not constitute unnecessary barriers to trade. Encourage private standards that aim to enhance environmental performance and address climate change also be designed in the same manner.

This principle combines and amends two principles from the 2001 Framework that read: “Seek standards that focus on the environmental objective which is being promoted, rather

than seek to prescribe unnecessarily the method by which the objective should be reached” and “Oppose the use of environment standards as a form of economic protectionism from lower priced international competition.”

This principle addresses concerns about measures and standards that ostensibly aim to protect the environment, but are actually a means to protect domestic production over imported products. Standards encompass a range of measures such as requirements for certification, licensing, reporting requirements, environmental footprinting, and assurance schemes and can be promulgated by governments and by the private sector.

In the case of governments, multilateral trade rules prohibit them from regulating products on the basis of the country they come from. However concerns have been raised that domestic markets can be protected through the ‘back door’ using measures that focus on the ways in which products are manufactured or processed and the ways natural resources are extracted or harvested (termed “processes and production methods” or PPMs), rather than the environmental outcome sought.

While governments have the right to regulate for environmental reasons, they should not do so in ways that constitute disguised protectionism.

Private standards developed by non-government entities, although voluntary, can also act as barriers to trade. A well-known example is ‘food-miles’, which focuses on the distance a product has travelled rather than its carbon emissions content. Private entities are not subject to WTO rules, but governments can encourage private operators to adopt standards that are based on scientific and technical information, utilise internationally accepted guidelines and best practice, promote competition and innovation, and do not treat a product less favourably on the basis of national origin.

7

Seek to ensure that parties do not weaken, waive or fail to enforce their environmental and climate change laws and regulations in order to encourage trade or investment.

This is a proposed new principle that did not feature in the 2001 Framework, but which has been a longstanding feature of New Zealand’s FTA practice.

This principle is usually referred to as ‘non-derogation’ and constitutes a two-fold obligation not to weaken (derogate from) or fail to enforce (waive) environmental laws and reg-

ulations in order to secure a trade or investment advantage. The obligation aims to preserve a ‘level playing field’ where countries compete on the basis of legitimate comparative advantage. Weakening or failing to enforce environmental or climate change laws could help reduce costs for domestic producers and enable them to compete in export markets or with imported products, but at the cost of lower environmental or greenhouse gas emissions performance.

8

Advocate that trade and environment chapters in FTAs are enforceable.

This is a proposed new principle that did not feature in the 2001 Framework.

Trade and Environment chapters (or sometimes titled Trade and Sustainable Development Chapter), and the trade and climate change provisions we seek to include in these, are an integral part of New Zealand’s FTA practice. Excluding these chapters from dispute settlement may imply that the issues are less significant or peripheral to the agreement.

There is no reason why a Trade and Environment chapter should not be subject to the same disciplines that apply to other chapters such as trade in goods and services or investment. New Zealand’s own practice has evolved over time. We have consistently sought enforceable treaty level outcomes on trade and environment wherever possible. This has proved challenging given that most of our negotiating partners have been unwilling to negotiate these issues in form and substance. As a consequence, the first Trade and Environment chapter in a New Zealand FTA that is subject to binding dispute settlement was in the Comprehensive and Progressive Trans Pacific Partnership (CPTPP) Agreement.

For these reasons, a new principle is proposed to guide negotiators to advocate for trade and environment chapters in FTAs to be enforceable.

9

Promote the elimination of environmentally harmful subsidies and other payments that contribute to adverse effects on the environment and on sustainable development.

It is proposed to retain this principle from the 2001 Framework, and to reformulate it. The 2001 version reads: “*Work to eliminate export subsidies and other payments which encourage increased production.*”



Export subsidies have long been considered harmful due to their trade distortionary effect, as well as their tendency to encourage increased production, which can be harmful to the environment. The WTO Agreement on Subsidies and Countervailing Measures (ASCM) prohibits export subsidies, and New Zealand finally achieved a longstanding goal for a parallel prohibition for agricultural products in the WTO Ministerial Decision on Export Competition⁵ adopted in December 2015. Under this Decision, developed countries agreed to immediately remove export subsidies, except for a handful of agriculture products, and developing countries to do so by 2018, with a longer time-frame in some limited cases.

Given this welcome progress in regards to export subsidies specifically, it is proposed to broaden this principle to apply to environmentally harmful subsidies more generally. It is well known that many subsidies directly or indirectly contribute to the depletion of natural capital that is one of the 'pillars' of sustainable development. Examples include fossil fuel subsidies and fisheries subsidies.

Subsidies can also affect trade, investment and operational decisions, introduce distortions into the marketplace, and impair trade and long-term competitiveness. There is no agreed figure for the scale and amount of environmentally harmful subsidies, but by some accounts is considered to range anywhere from USD 500 billion to USD 2000 billion a year.

For these reasons, it is proposed to expand the scope of the principle to address environmentally harmful subsidies and other payments that contribute to environmental degradation.

10 Promote the use of trade policy and other policy tools to support emissions reductions and the transition to a low emissions economy.

This is a proposed new principle that did not feature in the 2001 Framework. It reflects SDG 13 targets and Paris Agreement commitments to integrate climate change measures into national policies strategies and planning.

Measures taken under the trade and climate agendas can have an effect on each other. For example, the OECD has shown that as environmental regulation to address climate change becomes progressively more stringent, firms respond by innovating to develop new products and processes to meet policy objectives, especially in economies where climate and other economic and environmental policies are aligned.

Trade agreements can also support efforts to combat climate change. Examples include the removal of tariff and non-tariff barriers on environmental goods and services

to increase their uptake and investment, phasing out or imposing limits on fossil fuel subsidies, promoting 'green' public procurement, and facilitating cooperation among the Parties on the development of international carbon markets with environmental integrity.

Without specifying the exact obligations to promote (which may evolve over time), this new principle aims to guide negotiators to consider concrete ways that trade policy tools can help achieve the transition to a low emissions economy.

11 Promote trade measures that combat illegal, unreported and unregulated (IUU) fishing.

This is a proposed new principle that did not feature in the 2001 Framework. The principle reflects the aims of SDG 14 to address illegal, unreported and unregulated (IUU) fishing. New Zealand first included substantive provisions on IUU fishing in the CPTPP Trade and Environment chapter.

IUU fishing is one of the most serious threats to the sustainability of world fisheries. It concerns all aspects and stages of the capture and utilisation of fish, and it may sometimes be associated with organized crime. IUU fishing undermines national and regional efforts to conserve and manage fish stocks and inhibits progress towards achieving the goals of long-term sustainability. If IUU fishers target vulnerable stocks that are subject to management controls, efforts to rebuild those stocks to healthy levels will be undermined, threatening marine biodiversity, food security for communities who rely on fisheries resources, and the livelihoods of those involved in the sector.

IUU fishing also has significant trade dimensions and can distort markets for legally harvested fish. Trade agreements and international fishery rules can include trade-related provisions that seek to address IUU fishing, for example through eliminating subsidies that contribute to IUU fishing, preventing provision of related services (e.g. access to port facilities, insurance and finance), as well as promoting transparency. The OECD, amongst others, has identified such trade related policies as effective in addressing IUU fishing but more could be done to encourage their uptake and enforcement.

This principle aims to guide negotiators to advocate for trade-related provisions in FTAs and at the WTO to combat IUU fishing and support efforts through UNCLOS, Regional Fisheries Management Organisations (RFMOs), and other international organisations.

⁵ WTO Document (WT/MIN(15)/45).

12

Seek opportunities to contribute to environmental, climate change and sustainability objectives throughout FTAs.

This is a proposed new principle that did not feature in the 2001 Framework.

Many trade agreements contain chapters and articles that are specific to environmental matters. But environmental objectives can be incorporated in other chapters and articles to promote a more integrated approach to address environmental and climate change concerns. Trade agreements that take a more environmentally sustainable approach can contribute to their public acceptability and to overarching environmental goals.

Looking beyond the confines of environmental, climate change and sustainable development issues, the OECD identified twelve potential areas for 'greening' of trade agreements including: market access, investment, subsidies, government procurement, services, standards (including TBT and SPS), intellectual property rights, cooperation and capacity building, environmental assessment, dispute settlement, export restrictions, and regulatory coherence.

This principle aims to open up the space for negotiators to explore mainstreamed opportunities to address environmental issues that involve a trade dimension through chapters in trade agreements other than those focused primarily on environment or sustainability.

Share your views

These questions are intended as a starting point for discussion on a proposed new framework – we welcome any other comments or points you wish to raise.

1

The Trade for All Advisory Board (TFAAB) Report recommends that the Government should direct MFAT and MfE to lead work on a new whole-of-government framework for trade and environment, but does not indicate what form this should or might take.

The Framework for Integrating Trade and Environment Standards into Trade Agreements (2001) has nine principles. A principles-based approach allows flexibility by articulating a desired outcome or focus for action without stipulating the means by which these should be achieved. Principles allow negotiators to exercise discretion in finding mutually acceptable ways to achieve the outcome, although such discretion can sometimes lead to suboptimal outcomes.

An alternative approach could be more prescriptive in terms of specific required outcomes. A prescriptive approach can offer clarity in respect of the outcome and the means to achieve it, but takes less account of negotiating partners' differing circumstances (e.g. regulatory regimes, governance arrangements) and can sometimes be seen as a 'take it or leave it' approach.

- **Should the new framework remain principles-based or should guidance for negotiators be more prescriptive?**

2

The TFAAB Report gives emphasis to climate change but also notes the need for guidance on other environmental matters including those that might arise in the future. New principles are proposed that aim to address current and emerging trade and environment issues, although there is often considerable uncertainty about the way these will evolve and the policy challenges that will accompany them.

The principles in the 2001 Framework have proved to be durable and of continuing relevance, although the rapid evolution of policy issues they address and the wider scope and increased ambition of New Zealand's trade and environment interests has exposed the silence of the Framework on some matters. The proposed new principles aim to respond to both the broader policy landscape on trade, climate change and environment, and to increased public concern over specific issues, and, as far as possible, to allow for anticipatory action.

- **Do the new principles properly articulate current and emerging policy challenges? Should any of the proposed principles be reformulated? If so, how?**
- **The new principles are not exhaustive – are there other issues that should be addressed? Are there additional principles that should be included?**



3

The TFAAB report notes that ‘A new framework, based on the SDGs, should take into account the urgency of climate change and the economic transformation it implies ...’.

Of the 17 SDGs, one (Goal 13) directly addresses climate change (‘Take urgent action to combat climate change and its impacts’). Four other SDGs relate to either the causes of climate change or its effects (Goal 7 – sustainable energy, Goal 12 – sustainable consumption and production, Goal 9 – resilient infrastructure, and Goal 11 – sustainable cities and human settlements). Goals 7, 12 and 13 relate to trade and hence are relevant to a new Framework, whereas Goals 9 and 11 relate more to adaptation, with no unambiguous trade link.

The Paris Agreement plays a critical role in addressing climate change – it recognises the need ‘.. for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge, and emphasises the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty.

- Do the new principles capture the trade-related aspects of the transition to a low carbon economy? Do the new principles contribute to the aims of the Paris Agreement? Should any of these principles be reformulated to better reflect these aims?
- Are there other issues that should be addressed? Are there additional principles that should be included to reflect either the SDG or climate change agendas?

4

The TFAAB report also notes that ‘A new framework ... should take into account ... advances in knowledge since 2001’.

In proposing new principles for the revised Framework the paper attempts to incorporate new knowledge in the area of trade and environment. Is this adequate? Are there any further areas of knowledge that should inform the analysis of existing principles or the development of new principles?

As background, the OECD has noted several areas in which the international trade and environment agenda is changing, including:

- the expansion of global value chains (GVC)s, services and digitalisation are multiplying interactions between trade and environmental outcomes
- ensuring that trade remains a strong driver of environmental industries and innovation, with international green investment and services playing a greater role

- a wider definition of resource use to include land use, ecosystems and biodiversity could transform traditional approaches to sustainable development and trade

- green growth policies require circular economy paradigms founded on a new understanding of the resource basis of the global economy and improved knowledge of the factors that drive resource use and trade.

- Which particular areas of knowledge and what advances in such knowledge are most relevant to the new framework?

5

The TFAAB report proposes that ‘Clear direction should be given to New Zealand’s trade negotiators to open up and maintain regulatory space for the type of policy tools to support climate change policy and address environmental matters that may arise in the future.’

The question of regulatory (or policy) space arises in the context of the tension between international economic integration and the autonomy available to countries to pursue policies that support their development. The concept of regulatory / policy space has three elements: (i) the policy instruments that can (or cannot) be used; (ii) the policy goals (such as sustainable development) that the instruments aim to achieve; and (iii) the context of an interconnected global economy.

Control over policy space is exercised through the authority of policy makers to decide which policy instruments to use (de jure sovereignty), and the ability of policy makers to achieve specific policy targets through the use of particular instruments (de facto sovereignty).

Policy space is affected by economic integration (including through trade agreements) through several forces that pull in different directions. For example, the government’s ability to regulate is affected by legal commitments to international rules and practices, including GATT / WTO rules and rules under multilateral environmental agreements (constraints on de jure policy sovereignty).

At the same time, integration enlarges policy space in terms of de facto control because multilateral rules and disciplines enable a coordinated response to cross-border issues (such as climate change) and constrain economically powerful countries from adopting discriminatory policies. In addition, integration into larger markets can increase the impact of policies that depend on economies of scale or the disciplines of international competition.

There is no quantifiable single balance between multilateral disciplines and national policy autonomy that suits all countries or applies across all aspects of economic activity and each country has to find the right balance between maintaining flexibility in national policy making and reducing it through multilateral disciplines and collective governance

- **Do you think the proposed principles provide the right balance between trade policy objectives and environmental policy objectives?**

Making a submission

We welcome your views and ideas on the proposed Principles for the new Trade, Environment and Climate Change Framework.

Please email your submission to TradeForAll@mfat.govt.nz

The closing date for submissions is **12 noon on Friday 21 May**

You are also welcome to contact us directly (using the email address above) if you would like to set up a meeting to discuss the Principles. We will be available to meet between Tuesday 27 April and Thursday 20 May. Meetings can be in person or interactively using Zoom or by phone.

Please note that comments may be published in full or in part by the Ministry of Foreign Affairs and Trade.

Names and email addresses will not be made public.

All views will be considered as we work with other government agencies to develop a new framework.





MFAT

MINISTRY OF FOREIGN AFFAIRS AND TRADE

New Zealand Government