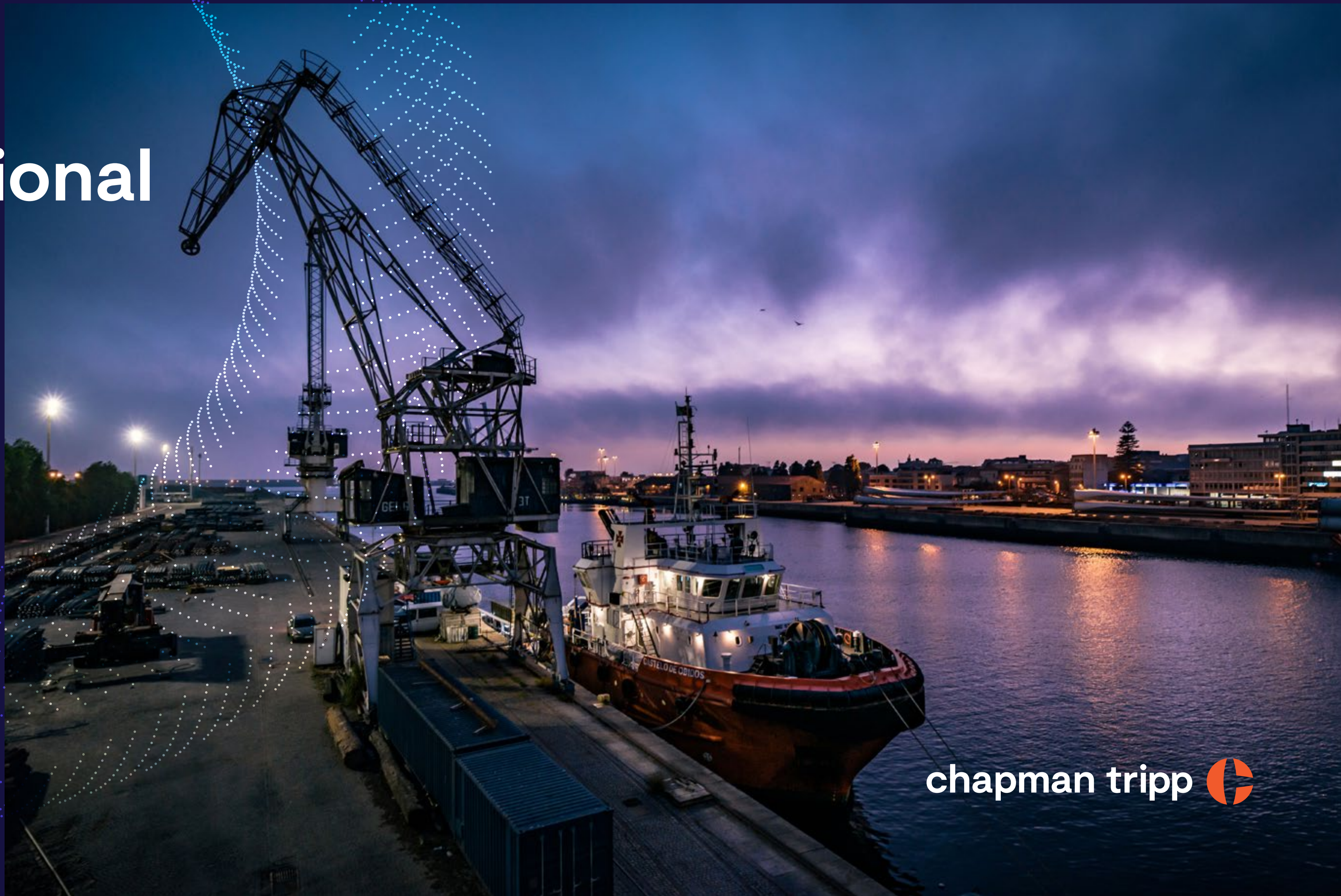
DECEMBER 2022

International Trade

Trends & insights



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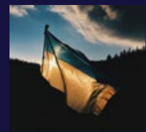
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Introduction

The global trading environment post-WWII has never been more difficult to navigate, and the currents which are driving this deterioration show no signs of abating. The world is increasingly divided along geopolitical lines, reflected in rising protectionism and in the "weaponisation" of trade.

Among the challenges this is creating for New Zealand businesses are: the implications of the Russia-Ukraine war, including the imposition of sanctions; ongoing supply chain disruption; and increasing pressure to diversify trade away from China.

And sitting over all of these tensions are:

- a sharpening need to reduce GHG emissions and demonstrate sustainable trade practices
- new mandatory climate risk disclosures for most listed issuers, and our largest banks, insurers and fund managers
- increasing awareness of ESG (environmental, social and governance) considerations and supply chain responsibilities, and
- shifting consumer preferences.

It was tempting to regard the protectionist instincts associated with the Trump Administration as a blip, even as we understood that the changes under a Biden Presidency would be more presentational than substantive. But two years and a global pandemic later, it is becoming increasingly clear that we are not looking at a series of ad hoc disturbances but at something much more fundamental.

Senior New Zealand trade official, Vangelis Vitalis, has characterised the collapse of the post-1945 consensus, which culminated in the establishment of the World Trade Organisation (WTO) in 1995, as the "end of the golden weather".

Rocky road ahead

The Prime Minister demonstrated in her address to the China New Zealand Business Summit in July 2022 the nuances engaged in navigating a position between our largest trading partner and our Western allies.

She highlighted the positive developments of the last few years – the continuation of direct flights between the two countries and the growth of e-commerce during the Covid clampdown, and the entry into force this year of the upgraded New Zealand China Free Trade Agreement (FTA) and the Regional Comprehensive Economic Partnership (RCEP).

But she also spoke of the importance of New Zealand's independent foreign policy and said of our relationship with China that, while our differences need not define us, nor could we ignore them and that this would mean "continuing to speak out on some issues - sometimes with others and sometimes alone".

Opinion on how long New Zealand can continue to tread that fine line, however, is becoming fuzzier – especially since the 20th National Congress of the Chinese Communist Party in October where Xi Jinping cemented his dominance and called for a "dual circulation" strategy consisting of a more self-sufficient and state-controlled domestic economy, with foreign trade as "a useful adjunct".[1]

This prompted China expert Kevin Rudd to suggest that under President Xi, "politics continue to move to the Leninist left; the economy to the Marxist left; and Chinese foreign and security policy to a much more assertive nationalist right".[2]

Thus far, China has maintained its engagement with international trade treaties, applying to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), in contrast to the US which continues to stand firmly outside, and the Digital Economic Partnership Agreement (DEPA).

But the jostling for supremacy between the US and China, which was turbo-charged by the Trump Administration's "trade war", roils on and continues to have an economic dimension.

Viewed in this context, the near three hour meeting between Biden and Xi at the G20 summit in Bali on 15 November had some positive outcomes:

- a statement from Biden that, while the US would continue to "compete vigorously" with China, he was "not looking for conflict"
- a statement from Xi that building walls and barriers and severing supply chains ran counter to the principles of a market economy and undermined international trade rules, and
- agreement by Xi to restore high level engagement among officials on areas of potential cooperation, including climate change and maintaining global financial, health and food stability. China had cut off such contacts with the US in protest at Nancy Pelosi's Taiwan visit.

It is clear, however, that strategic competition between the US and China will continue. All of the Trump tariffs remain in place, along with some high-tech export restrictions and a ban on all products from the Xinjiang region under the US Uyghur Forced Labor Prevention Act, passed at the end of 2021.

And as China has sought to expand its influence globally, the US (and other Western governments) have become stronger in their reaction, promoting increased speculation among trade commentators about the decoupling of the US and Chinese economies.

A recent article in The Economist found little evidence of wholesale decoupling, and that China had in fact strengthened its lead as the world's largest producer of manufactured goods between 2019 and 2021.[3]

However it noted that the most politically sensitive sectors, and therefore those at most potential risk, were also the most lucrative, involving high-value technologies, from cloud computing to internet-enabled medical devices. This was especially so when national security concerns were involved – China, for example, has banned Teslas from many government and military sites while many Western governments have banned Huawei.

New Zealand cannot afford to ignore these developments or think that we will be isolated from their impact. In which case, it may be that the best response is to accept that the only certainty is uncertainty.

> "Politics continue to move to the Leninist left; the economy to the Marxist left; and Chinese foreign and security policy to a much more assertive nationalist right".[2]
>
> Kevin Rudd

1 "Special Report, The World China wants: 'The deglobalisation danger: A cause for concern'", The Economist, 15 October 2022.

2 Kevin Rudd on Xi Jinping, China's new 'chairman of everything', The Economist, 25 October 2022.

3 Special Report, The deglobalisation danger: Why America and Europe fret about China turning inwards", The Economist, 15 October 2022.

Sustainability reporting

Sustainability reporting involves the measurement and communication of corporate performance against environmental, social and corporate governance (ESG) factors.

Recent legislative and regulatory developments in Australasia are:

- publication of the Aotearoa New Zealand Climate Standards for climate-related disclosures
- New Zealand's proposed modern slavery and worker exploitation reporting and due diligence disclosure regime (consulted on in May 2022 but still to be introduced as legislation), and
- recent guidance from the Australian Securities and Investments Commission (ASIC) on how to avoid greenwashing claims..

These are consistent with trends in like-minded jurisdictions, in particular the UK and the EU.

Aotearoa New Zealand Climate Standards

The Aotearoa New Zealand Climate Standards underpin the Financial Sector (Climate-related Disclosure and Other Matters) Amendment Act 2021, which created the world's first mandatory climate related disclosures regime. Mandatory disclosures will be required by reporting entities for financial years beginning 1 January 2023.

The Standards capture all reporting entities under the Act – being all listed issuers, large banks, non-bank deposit takers, insurers and managers of investment schemes. It aligns for the most part with the International Sustainability Standards Board prototype Climate Standard and TCFD recommendations - except that they are guidance only, rather than mandatory.

Three related Climate Standards are engaged:

NZ CS 1	**Climate-related Disclosures**	The disclosure requirements relating to the four thematic sections of the TCFD and the assurance requirements.
NZ CS 2	**First-time adoption of Aotearoa New Zealand Climate Standards**	The exemptions that apply to ease the initial reporting journey, and
NZ CS 3	**General Requirements for Climate-related Disclosures**	The principles to follow when making disclosures in order to ensure that the overall objective of "fair presentation" is achieved.

Entities are expected to report about all parts of their "value chain", including joint ventures and subsidiaries, and across their Scope 1, 2 and 3 GHG emissions. If an entity excludes part of its value chain from reporting, it must disclose why it has done so.

The Australian financial, commercial and prudential regulators (ASIC, ACCC, and APRA) have all released recent recommendations and guidance on voluntary climate-related disclosures, and the Australian Accounting Standards Board (AASB) is consulting on the ISSB draft prototype.

On 12 December, the Australian Government began consultations on the design and implementation of mandatory climate reporting in Australia, aligned to international standards (similar to New Zealand). The expectation is that mandatory reporting will apply to large entities and be phased in over time, with first reporting in 2024 - 2025. It will be part of a broader sustainable finance framework.

Submissions are due by 17 February 2023.

Modern slavery and worker exploitation proposal

In May 2022 the Ministry of Business, Innovation & Employment (MBIE) consulted on a potential policy approach to guard against modern slavery and worker exploitation. The consultation document suggests the New Zealand framework will be more far-reaching than existing legislation in the UK and Australia.

Modern slavery encompasses forced labour, forced marriage, human trafficking, debt bondage, servitude, deceptive recruiting and child labour across an entity's international and domestic operations and supply chains. Worker exploitation covers "non-minor" breaches of New Zealand minimum employment standards and would apply only within New Zealand.

While both the UK and Australian regimes are limited to businesses above a specified revenue threshold and are not mandatory in their application, the New Zealand regime would apply to all businesses without exception and would impose an additional due diligence obligation. The extension to worker exploitation would also enlarge the scheme beyond its UK and Australian counterparts.

Reporting responsibilities will be graduated according to annual revenue – below $20m, between $20m and $50m, and $50m plus.

Responsibility	Application
Entity to take **reasonable and proportionate** action if aware of: • modern slavery in its operations and supply chains at home or abroad • worker exploitation in its NZ operations	All entities
Entity to **undertake due diligence** to prevent, mitigate and remedy modern slavery and worker exploitation where it is the parent or holding company or has significant contractual control	All entities
Entity to **publicly disclose**, against mandatory criteria, the steps it is taking to address: • modern slavery in its operations and supply chains at home and abroad • worker exploitation in its NZ operations	Annual revenues above $20m
Entity to **undertake due diligence** to prevent, mitigate and remedy: • modern slavery in its international operations and supply chains • worker exploitation in its NZ operations and supply chains	Annual revenues above $50m

Disclosure requirements for the annual modern slavery statement will likely include a detailed description of the entity's operations and supply chains and

- any risks of modern slavery and worker exploitation identified within them
- actions being taken to identify those risks (including due diligence and remediation)
- how those measures are being monitored and evaluated for effectiveness, and
- the process of consultation undertaken with subsidiaries.

Penalties could apply for failing to prepare an annual disclosure statement or providing misleading/inaccurate information.

A bill is yet to be introduced.

Greenwashing

Greenwashing risk is now front and centre at home and overseas. Regulators and consumers are increasingly sceptical of ‘carbon neutral’ or ‘net zero’ claims that are not sufficiently substantiated, and we expect increasing prosecutions.

ASIC released **guidance** in June 2022 on greenwashing that covers:

- what greenwashing is and why it is a concern
- the current regulatory setting for communications about sustainability-related products, and
- questions for promoters to consider when offering or promoting sustainability-related products.

A sustainability-related product is a financial product where the issuer has incorporated sustainability-related considerations – such as ESG matters – into its investment strategies and decision making.

In October 2022, ASIC released the determination in its first action for greenwashing against listed energy company Tlou Energy Limited. Tlou paid fines in relation to claims in two ASX announcements that:

- electricity produced by Tlou would be carbon neutral
- Tlou had environmental approval and the capability to generate certain quantities of electricity from solar power
- Tlou’s gas-to-power project would be ‘low emissions’, and
- Tlou was equally concerned with producing ‘clean energy’ through the use of renewable sources as it was with developing its gas-to-power project

ASIC highlighted its concern that Tlou either did not have a reasonable basis to make the representations, or that the representations were factually incorrect.

In New Zealand the Financial Markets Authority put fund managers on notice in June this year that it wants greater clarity and disclosure around ESG claims so that investors are able to make informed decisions.

Meanwhile in October 2022, the UK Advertising Standards Authority (ASA), in the first greenwashing decision against a bank, banned two HSBC advertisements promoting the company’s climate change credentials on the basis that they were misleading as they omitted to mention HSBC’s continued investment in fossil fuel projects and links to deforestation.

The UK Financial Conduct Authority (FCA) has also recently announced that it will be developing a voluntary Code Conduct for ESG data and ratings providers; services that are often crucial for companies reporting on climate matters and for consumers interested in the integrity of the products they buy.

This increasing focus on greenwashing in New Zealand, Australia and the UK is also strongly evident in the EU, particularly since the introduction of the EU’s sustainability taxonomy, which entered into force in July 2020.

EU proposed Directive on Corporate Sustainability Due Diligence

The EU's proposed Due Diligence Directive will require reporting entities to identify, prevent, mitigate and remediate the adverse effects of their activities on human rights and the environment in Europe and beyond.

Such impacts would include child labour, exploitation of workers, pollution and biodiversity loss arising out of their own operations, the operations of their subsidiaries, and the business relationships established within their value chains.

In addition, certain large companies would be required to have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5°C in line with the Paris Agreement.

In scope would be:

- all EU limited liability companies with more than 500 employees on average and a net worldwide turnover in excess of EUR 150m in the last financial year
- other EU limited liability companies with more than 250 employees and a net worldwide turnover in excess of EUR 40m in the last financial year, so long as at least 50% of this net turnover was generated in one or more of the textile, primary industry and minerals/metals sectors, and
- non-EU companies that generated a net turnover in the EU in the preceding financial year of more than EUR 150m, or between EUR 40-150m where at least 50% of their global turnover was generated in one or more of the textile, primary industry, and minerals/metals sectors.

The Commission estimates the Directive will cover only about 4,000 foreign companies, but this would include New Zealand companies that meet those thresholds. Given the expected negotiations, sensitivities and resultant delay, the proposed Directive is not expected to be adopted before 2023, and it is unlikely that it will have effect before 2025.

Separately, the European Council formally adopted the new **Corporate Sustainability Reporting Directive** on 28 November 2022, following adoption by the European Parliament on 10 November. The Directive will come into force 20 days after its publication in the EU Official Journal.

Companies in scope will be required to provide information to assist public understanding of how the business impacts environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters, and how those matters impact the undertaking.

The reporting rules will apply to all large and all listed companies, including their subsidiaries, to some listed small and medium-sized enterprises (SMEs) (although not until 2028) and to non-European companies (including New Zealand companies) with a net turnover in the EU of EUR 150m and with at least one subsidiary or branch in the EU.

The threshold for non-European companies under both the proposed Directive and the Reporting Directive is high but, given that the EU often leads the way in these matters, it is likely that these types of initiatives will become more and more common in other jurisdictions.

Under the EU's proposed Due Diligence Directive, large companies will need to have a plan to ensure that their business strategy is

1.5°C

in line with the Paris Agreement

Sanctions

The Russian invasion of Ukraine unleashed an unprecedented tide of sanctions from the UK, the EU, the US, Canada, Australia, Singapore, New Zealand and others.

These were aimed at forcing a liquidity and balance-of-payments crisis that would inhibit Russia's ability to continue the war and, over the longer term, reduce Russia's capacity to produce military and other technological equipment to prosecute future wars.

Expectations were that the sanctions would precipitate a 15%[4] fall in Russia's GDP this year but The Economist reported in September that the impact would be much smaller, at around 6% of GDP[5]. The fact is that, beyond the "Western Alliance", most countries (more than 100 representing 40% of world GDP) are not only continuing to trade with Russia but are taking advantage of discounted prices. And while loss of access to Western technology will inflict damage on the Russian economy, that effect will not be immediate.

4 Institute of International Finance estimate, reported by Reuters, 11 March 2022

5 International Monetary Fund estimate, reported by The Economist, 5 September 2022.

Autonomous sanctions

In contrast to its Five Eyes counterparts, New Zealand did not have an autonomous sanctions regime that would have enabled it to impose unilateral sanctions as a matter of independent foreign policy.

Instead it had to pass special legislation in the form of the Russia Sanctions Act 2022. The Government has sought advice on introducing a full autonomous sanctions regime, but has not provided any more detail at this stage.

Russia Sanctions Act and Regulations

The Russia Sanctions Act was passed under urgency on 11 March 2022, followed by the first Russia Sanctions Regulations on 18 March 2022. The Regulations have been amended at least 15 times this year – most recently on 14 December to impose sanctions against three Iranian individuals and one entity for supplying drones to Russia for use in Ukraine.

The prohibitions fall into seven categories:

01

"Designated" individuals are **not permitted to travel to, enter, or remain** in New Zealand unless they are a New Zealand citizen or the holder of a residence class visa. The sanctioned list now numbers over 1,000 individuals and entities of strategic importance to the Russian Government.

02

Restricted **ships and aircraft** (owned or controlled by the Russian or Belarussian Governments or militaries, or owned, controlled or registered by sanctioned individuals) are prohibited from entering New Zealand ports.

03

Asset freezes prohibit New Zealand persons from dealing with assets and related securities owned or controlled by a sanctioned individual (e.g. selling shares in sanctioned Russian energy companies).

04

New Zealand persons must not deal with **services** provided by any sanctioned individual (e.g. banking services from sanctioned Russian banks), or with any services that are provided to, or for the benefit of, sanctioned individuals.

05

New Zealanders and New Zealand-based businesses are prohibited from dealing with a **security** of a sanctioned person if doing so would result in the sanctioned person acquiring the security, owning or controlling the security, or would otherwise be for the benefit of a sanctioned person.

06

Exports of a large range of goods to Russia and Belarus are prohibited.

07

Imports of various items from Russia are banned, including gold, luxury goods, oil, gas and coal. All other Russia-originating goods are subject to a 35% tariff.

The New Zealand Ministry of Foreign Affairs and Trade (MFAT) maintains a sanctions register **here**. Importantly, associates of sanctioned persons are also caught by the regime, including entities owned or controlled by sanctioned entities (the threshold for the definition of ownership and control of an entity is 50%).

Various exceptions apply, including in relation to bank accounts, payments due, rental properties, property sales, household necessities, and legal services.

Humanitarian organisations are exempted from any of the sanctions imposed by the Regulations so long as they are carrying out humanitarian activities.

More generally, any person can apply to MFAT, on the basis of humanitarian need or for any other reason, to request an exemption from a sanction for a particular specified situation, in relation to particular persons, assets, or services; and particular events or dealings in relation to those persons, assets, or services. MFAT provides an application form for people seeking to apply for an exemption from a sanction.

Impacts of overseas sanctions

New Zealand businesses are affected by the sanctions imposed by other countries in a variety of ways. Impacts most commonly arise where a business is either buying or selling goods, directly or through an intermediary, from or to a country or entity that is sanctioned under foreign law.

The US imposes both primary and secondary sanctions. Primary sanctions may apply to non-US persons or situations where there is a "US nexus". A US nexus may arise where:

- a non-US company engages in a transaction using USD (because dollars are generally cleared thorough a US financial system)
- foreign branches of US banks are used to send/receive payments
- US origin goods are sold by a non-US entity to a sanctioned country or entity, or
- US technology is deployed.

Secondary sanctions explicitly apply to non-US persons and entities who lack a US nexus. They are a way of deterring non-US persons from engaging in dealings that are deemed to be contrary to US national security and foreign policy interests.

WTO 12th Ministerial Conference – ‘MC12’

Wrenching an agreement out of MC12, held in Geneva in June, had been framed as “make or break” for the WTO which, although in its 27th year, had yet to conclude a multilateral trade round.

So it would have been with a collective sigh of relief that, after extended meetings that went into the wee small hours, a deal was finally reached.

Yes, it was relatively modest. But as the *Financial Times* observed: “Its main achievement is actually to show that the institution’s negotiating function is just about intact. Given the disruption from Covid and the political divisiveness of the Ukraine war, this is not trivial.”

We report the key outcomes.

01 Reducing fishing subsidies

The issue – Negotiations have been underway for more than 20 years to agree on rules to reduce fishing subsidies, estimated at $35bn globally. They contribute to overcapacity, overfishing, and to illegal, unreported fishing. The UN reports an increase from 10% in 1974 to 34.2% in 2017 in the number of fish stocks being fished at biologically unsustainable levels.

The outcome – Agreement was reached on specific categories of subsidies in relation to illegal and unreported fishing, the exploitation of overfished stocks, and activities on the unregulated "high seas". The general assessment is that it is far from a comprehensive solution to global fishing overcapacity, but it is – after 20 years – a start.

02 Vaccine equity

The issue – India and South Africa initiated a proposal for a waiver from the WTO's intellectual property rules to allow governments to issue compulsory licences to make Covid-19 vaccines and medications domestically. The US was an early supporter of the proposal but opponents included Switzerland and the UK.

The outcome – A clarification was made to existing flexibilities under the TRIPS Agreement to override patents without the consent of the patent owner in a health emergency – in this case, for the swift manufacture and export of Covid vaccines. This was well short of what was sought but was not insignificant.

03 Preventing customs duties on electronic transactions

The issue – The renewal of a 25-year moratorium on imposing customs duties on electronic transactions, such as messaging apps, video calls and data flows. An Australian Services Roundtable member had told the media that if arrangement was not renewed, "the WTO will have lost the plot". However, India, South Africa, Sri Lanka, Pakistan and Indonesia were opposed, saying the ban was cheating developing countries out of billions of dollars of revenues each year.

The outcome – Agreement was reached to maintain the moratorium until the next Ministerial Conference, when it will be discussed again.

04 World Food Programme Food Purchases Exemption from Export Restrictions

The issue – The World Food Programme has had difficulty procuring humanitarian aid due to the restrictions on food exports imposed by several countries in response to the Covid-19 pandemic and following Russia's invasion of Ukraine.

The outcome – Members agreed not to impose export prohibitions or restrictions on foodstuffs purchased for non-commercial humanitarian purposes by the World Food Programme.

05 WTO reform

The issue – Since 2019, the US has been refusing to agree to new appointments of 'judges' to the Appellate Body, rendering the WTO's dispute settlement appeals system inoperable.

The outcome – Members committed to discussions "with a view to having a fully- and well-functioning dispute system" by 2024.

06 Agricultural domestic support

The issue – Governments worldwide pay out $540bn a year in support to farmers, covering up to 15% of total agricultural production value. This distorts trade and pushes up prices.

The outcome – No deal. The talks were set aside until at least the next Ministerial, scheduled for December 2023.

07 Emergency Response to Food Insecurity

The issue – The ongoing risk to world food security from rising prices on both food products and production inputs, supply disruptions and trade restrictions.

The outcome – Members committed to avoiding unjustified restrictions on food and to being more transparent on any restrictions that are imposed.

WTO – What next?

The WTO will need to continue to prove its relevance in a changing world but this seems to be fully understood.

The Director-General, Ngozi Okonjo-Iweala, said in April:

"... it is in the world's best interest to strengthen multilateralism. But I will also insist that multilateralism cannot be the multilateralism of old. It must be reimagined and made fit for purpose to serve 21st century challenges".

74 Members of the WTO have agreed to Trade and Environmental Sustainability Structured Discussions (TESSD) to precede the next Ministerial Conference in 2023. Topics to be discussed include: greening aid for trade, conservation of natural resources, deforestation and desertification, and natural disasters. And, in May this year, the US proposed a roundtable to discuss the attributes of what may be considered "clean" and "climate aligned" technologies, goods and services; circular economy and climate change; and pursuit of resilient supply chains in the face of climate change.

Further, there are now a significant number of joint statement initiatives (JSIs), underway among like-minded WTO Members. These include discussions on e-commerce, investment facilitation, micro, SMEs, trade and gender, plastics pollution and environmentally sustainable plastics trade, and fossil fuel subsidies. For New Zealand, it is vital that the unfinished topics from MC12 are also addressed, notably agriculture and dispute settlement.

FTA developments

2022 has been a significant year for New Zealand on the FTA front.

NZ-UK FTA

The NZ-UK FTA was signed in London on 28 February. It is an extremely high quality deal from a market access perspective and will eliminate tariffs on all goods traded between the two parties.

The Agreement contains a number of developments in terms of New Zealand's FTA practice.

- An animal welfare Chapter which commits both signatories to use best endeavours to maintain the high standards each affords to the welfare of farmed animals and to cooperate on issues of animal welfare.
- An environment Chapter, which is enforceable through the FTA's dispute settlement mechanism, and that is more ambitious than any previous agreements. It includes commitments to prohibit certain subsidies in order to combat overfishing, and to take steps to eliminate environmentally harmful fossil fuel subsidies. There is also a provision on sustainable agriculture.
- The labour Chapter, also enforceable through the dispute settlement mechanism, which includes new provisions on workplace equality and on addressing modern slavery.
- A Chapter dedicated to gender equality, including a commitment to take steps towards increasing women's participation in trade and investment.
- A Chapter on Māori economic development which acknowledges that Te Tiriti o Waitangi is a foundation document of constitutional importance to New Zealand and which seeks to ensure that the trade and investment opportunities created by the FTA are accessible to Māori-owned businesses.

NZ-EU FTA

The reception in New Zealand to the announcement of this agreement on 30 June 2022 was driven by the meat and dairy sectors, so was fairly muted. But our negotiators were never going to get much movement on these products as they are subject to strong domestic protection in the EU, and New Zealand is too small to offer anything substantial in return for improved access.

FTAs are often as much about geopolitics as they are about trade, and the EU's decision to negotiate new FTAs with New Zealand and Australia was part of a broader strategy for cooperation in the Indo-Pacific. As emphasized by the EU's Joint Communication:

> "It is essential for the EU to reinforce cooperation with Indo-Pacific partners, including in bilateral, regional and multilateral contexts, and to promote the rules based international order and access to open markets and ensure a stable trading environment."

> "This will entail a further deepening and diversification of trade and investment ties and collaboration to help accelerate the green and digital transitions. This engagement should contribute to strengthening Europe's strategic reach and security and to securing the resilience of its supply chains".[6]

6 European Commission, Joint Communication to the European Parliament and the Council, "The EU strategy for cooperation in the Indo-Pacific", 19.9.2021.

Innovative provisions aside from the usual fare include:

- **Climate change:** a provision that makes each Party's commitments under the Paris Agreement enforceable through the FTA's dispute settlement mechanism
- **Environmental goods:** agreement to remove customs duties on a list of environmentally beneficial goods
- **Fossil fuel reform:** a commitment to strengthen cooperation on reform policies and measures, particularly in the WTO
- **Fisheries subsidies:** a joint commitment to refrain from providing harmful fisheries subsidies (a first for the EU in a bilateral FTA)
- **Gender:** an obligation to implement relevant international UN agreements
- **Sustainable food systems:** establishment of a platform for cooperation on issues spanning the food system to improve food security and nutrition for future generations
- **Animal welfare:** affirmation of the high priority both Parties afford the welfare of farmed animals, and recognition that, despite differences in farming practices, each Party's laws and regulations provide comparable animal welfare outcomes
- **Inclusion:** establishment of a Civil Society Forum, and a requirement for the Parties to each designate a Domestic Advisory Group to provide views on the Agreement's implementation.
- a **Māori Trade and Economic Cooperation** Chapter which identifies a number of areas to enhance the ability for Māori to access the benefits from the FTA, develop business links between Māori and EU enterprises, and to strengthen science, research, and innovation connections. The Chapter acknowledges Te Tiriti as a foundational document of constitutional importance to Aotearoa New Zealand, and references Te Ao Māori, Mātauranga Māori, Tikanga Māori, Kaupapa Māori, Tāonga and Wāhine Māori to achieve wellbeing.

Indo-Pacific Economic Framework for Prosperity (IPEF)

This is a US-led initiative, launched in September 2022, and involving 13 other countries at this stage: New Zealand, Australia, Brunei Darrusalam, Fiji, Japan, India, Indonesia, Republic of Korea, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam.

The US has made it clear that IPEF will not be a "traditional" trade agreement, in that it will not reduce tariffs. This has provoked questions among prospective partners as to what the benefits will actually be. Trade agreements are increasingly about more than "trade", but ultimately, trade still matters.

IPEF will include commitments under the heading of four "pillars":

- Trade
- Supply chain resilience
- Clean energy and decarbonisation ("clean economy"), and
- Tax and anti-corruption ("fair economy").

According to materials released by the White House, the US vision for the trade pillar covers: labour; environment; digital economy; trade facilitation; agriculture; competition policy; transparency and good regulatory practices; inclusivity; and technical assistance and economic cooperation.

The US has placed considerable emphasis on the idea that trade is not just about promoting economic growth and that it must also contribute to addressing the climate crisis and creating a more sustainable global economy.

The US has stated that "beyond traditional environment and climate issues, we intend to use the IPEF to pursue a variety of commitments on agriculture issues in service of ensuring a sustainable global agriculture system that protects the planet, helps our people have continued secure access to food, and enables our farmers to succeed".[7]

The concept of a supply chain resilience pillar is based on the importance of supply chains to the global trading system and the corresponding need to respond to the vulnerabilities exposed by the Covid-19 pandemic and geopolitical tensions.

The decarbonisation and infrastructure pillar connects with the need to ensure that trade is sustainable and will seek "concrete, high-ambition targets that will accelerate efforts to tackle the climate crisis, including in the areas of renewable energy, carbon removal, energy efficiency standards, and new measures to combat methane emissions".[8]

The first round of in-person negotiations are being held 10-15 December 2022. No timeframe has been set for subsequent negotiations but a consensus may be building for conclusion by November 2023, when the US will host the Asia Pacific Economic Cooperation (APEC) Leaders' Week.

7 Office of the United States Trade Representative, "The Indo-Pacific Economic Framework for Prosperity: Biden-Harris Administration's Negotiating Goals for the Connected Economy (Trade) Pillar", 23 September 2022.

8 White House Fact Sheet, "In Asia, President Biden and a Dozen Indo-Pacific Partners Launch the Indo-Pacific Economic Framework", 23 May 2022.

ASEAN-Australia-New Zealand FTA upgrade

Announced on 13 November 2022 and expected to come into force in 2023, the upgraded ASEAN-Australia-New Zealand FTA doesn't break any new ground in terms of market access but it does introduce a framework for cooperation on sustainable trade issues, including the environment, labour standards and women's economic empowerment.

Indigenous Peoples Economic and Trade Cooperation Agreement (IPETCA)

The IPETCA, concluded in December 2021, is dedicated to promoting greater Indigenous trade and economic linkages and ensuring an international focus on Indigenous economic and trade matters. It is open to any APEC economy to join.

The IPETCA establishes a joint decision-making body, the Partnership Council, comprising both economy representatives and Indigenous Peoples. Key elements of the IPETCA are that it:

- reaffirms the existing rights of Indigenous Peoples
- contains a definition of "Indigenous trade and investment" that was developed by Indigenous Peoples, including Māori
- enables economies to work with Indigenous Peoples to further develop and expand international Indigenous trade and requires economies to promote policies that increase Indigenous Peoples' participation in trade and investment
- enables economies to consider a range of activities and sectors for direct cooperation, as well as underlying principles that should underpin cooperation, and
- contains specific understandings on Responsible Business Conduct and the protection of Indigenous Traditional Knowledge.

Enforcing trade obligations

Legal claim against Canada

On 7 November 2022, New Zealand formally requested the establishment of a panel under the CPTPP to hear its dispute in relation to Canada's administration of its dairy tariff rate quotas (TRQs).

Under CPTPP, Canada agreed to establish TRQs for 16 different product lines. TRQs are a means of providing market access where a country does not want to reduce or eliminate tariffs. TRQs involve a commitment to allow imports of a set amount of product each year at a reduced tariff rate. Any imports over the agreed limit will attract a higher tariff rate. In the case of dairy products going into Canada, these out-of-quota tariffs rates are so high as to be prohibitive for trade.

A number of Canada's dairy TRQs are of commercial interest to New Zealand exporters, but the fill rates have been extremely low. This is due to a range of factors, including the manner in which Canada administers the quotas. New Zealand argues that Canada's administration is inconsistent with its obligations under the CPTPP, which include an obligation to ensure that TRQ procedures are fair and equitable, and are administered in a manner that allows importers the opportunity to use the quotas fully.

A particular issue is that, in defiance of the CPTPP rules, Canada is explicitly setting aside 80-85% of most of its TRQs for its own dairy processors (thereby effectively denying New Zealand exporters access as, unlike distributors and retailers, processors have little commercial incentive to import).

The US succeeded in a similar case against Canada late last year under the US–Mexico–Canada FTA but is not satisfied with the way Canada is complying with the ruling so is now taking further action.

2023 and beyond

From the creation of Closer Economic Relations (CER) in 1983, New Zealand's trade policy has been remarkably settled and straightforward – push for high ambition outcomes in the multilateral sphere and, if that cannot be achieved, forge as many FTAs, covering as much of the world, as possible.

But the conclusion of negotiations this year with the EU may not only mark the close of that chapter but have it end not with a bang but with a whimper.

In contrast to the high quality agreement struck with the UK, the EU FTA is weak on trade access. And New Zealand's long held ambitions to establish FTAs with the US and India continue to be politely rebuffed.

Indeed, an MFAT official has acknowledged publicly that concluding an FTA with India is "not a realistic prospect". This does not mean, however, that there is no way forward – either in relation to India, where New Zealand is now exploring alternative mechanisms to deepen the economic relationship, or more widely.

While the IPEF doesn't contemplate any traditional market access expansion, it does provide an opportunity for New Zealand (and other countries) to reengage with the US and for the development of innovative commitments on critical issues such as trade and sustainability, non-tariff measures, and supply chains.

For so long as New Zealand relies on export income to support its population and standard of living, New Zealand governments will prioritise market access, and there are a number of opportunities available.

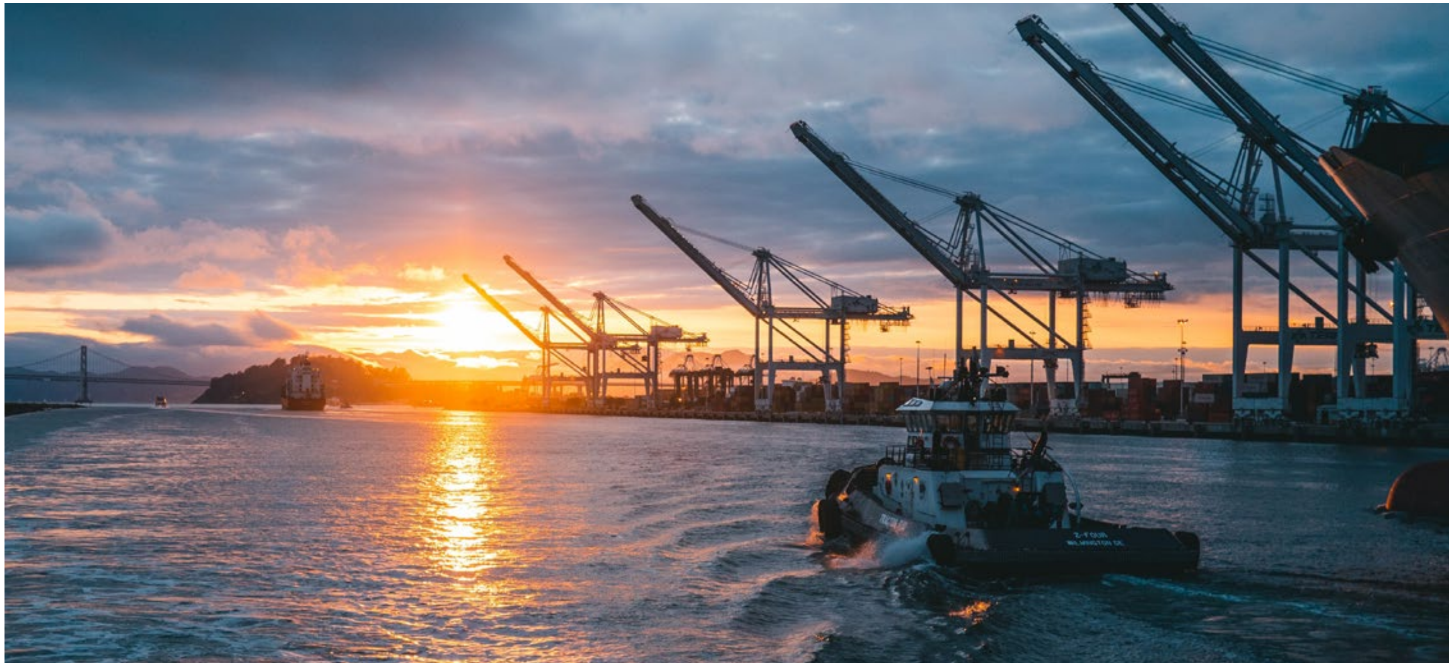
The CPTPP is in the process of being enlarged through the UK's application for accession and there is a waiting list of aspirant economies including China, Taiwan, Ecuador, Costa Rica and Uruguay. New Zealand will be chairing the CPTPP Joint Commission in 2023, likely to be a demanding role in light of the geopolitics involved.

Enforcement of market access rights under existing FTAs will also be critical.

Over 80% of New Zealand exports are subject to non-tariff measures (e.g. health and safety or technical requirements). Some of these, such as labelling to address public safety concerns about the integrity and provenance of a product, are helpful. But others can be vexatious, creating unnecessary compliance costs for business, and even impeding trade.

New Zealand will continue to pursue these matters through the platforms provided by our FTAs and through the WTO. We will also continue to work with likeminded jurisdictions at a multilateral level towards WTO reform, particularly with respect to dispute settlement and the elimination of fishing and fossil fuel subsidies.

Another area of focus is digital trade. New Zealand is a foundation member of the Digital Economic Partnership Agreement (DEPA) which Canada is negotiating to join and China has applied to join. There is also significant international effort going toward the creation of a supportive international environment which will allow the free flow of data across borders while maintaining the sovereign right to protect privacy and other public interests.



New Zealand has embraced a forward-looking agenda in its recent FTAs that encompasses the social dimensions of trade and seeks to further the inclusiveness of trade. These themes also infuse the IPETCA, referenced earlier in this publication. Then there is the Agreement on Climate Change, Trade and Sustainability (an initiative commenced in 2019 in which New Zealand is engaged alongside Costa Rica, Fiji, Iceland, Norway and Switzerland).

So the game may have changed, but New Zealand is still on the court and is still lobbing shots over the net.

Some of the initiatives may seem aspirational. But aspiration is important, and can play a normative role in setting expectations for how trade and investment ought to be managed.

For business, the message implicit in the content of this publication is that the global trading environment will be less settled, with increasing pressure on performance.

Some trends are clear – a strengthening focus on climate change and environmental, economic and social sustainability. But the geopolitical outlook is now much less predictable and much more worrying.

In these circumstances, it is important to stay up to date with global developments and to stay ahead of consumer expectations.

Key contacts

Chapman Tripp collaborates regularly with Tracey Epps
on international trade advisory matters

Nicola Swan
Partner
Wellington

T: +64 4 498 6389 M: +64 27 308 6000
E: nicola.swan@chapmantripp.com

Tracey Epps
International Lawyer
& Trade Policy Consultant

M: +64 21 228 4459
E: tracey@traceyeppsconsulting.nz
W: traceyepps.co.nz

Matt Yarnell
Managing Partner
Wellington

T: +64 4 498 6325 M: +64 27 441 6365
E: matt.yarnell@chapmantripp.com

Kate Wilson Butler
Director – Climate, Sustainability & ESG
Wellington

T: +64 4 460 6907 M: +64 21 632 050
E: kate.wilsonbutler@chapmantripp.com

Chapman Tripp is a dynamic and innovative commercial law firm at the leading edge of legal practice. With offices in Auckland, Wellington and Christchurch, the firm supports clients to succeed across industry, commerce and government. Chapman Tripp is known as the 'go to' for complex, business-critical strategic mandates across the full spectrum of corporate and commercial law. Chapman Tripp's expertise covers mergers and acquisitions, capital markets, banking and finance, restructuring and insolvency, Māori business, litigation and dispute resolution, employment, health and safety, government and public law, privacy and data protection, intellectual property, media and telecommunications, real estate and construction, energy, environmental and natural resources, and tax.

AUCKLAND

Level 34, PwC Tower
15 Customs Street West
PO Box 2206, Auckland 1140
New Zealand

T: +64 9 357 9000

WELLINGTON

Level 6
20 Customhouse Quay
PO Box 993, Wellington 6140
New Zealand

T: +64 4 499 5999

CHRISTCHURCH

Level 5
60 Cashel Street
PO Box 2510, Christchurch 8140
New Zealand

T: +64 3 353 4130

chapmantripp.com