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**Negotiating Environmental Issues in Free Trade Agreements**

**The Case of New Zealand**

*External and Internal Influences and the Impact of Sustainable  
Development Objectives on Foreign Trade Policy*

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## Contents

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<b>1</b>	<b>Introduction .....</b>	<b>3</b>
<b>2</b>	<b>Background.....</b>	<b>4</b>
	2.1. Trade and Environment in a Multilateral Context .....	4
	2.2 Trade and Environment in New Zealand: External Factors .....	6
	2.3. Trade and Environment in New Zealand: Internal Factors .....	7
<b>3</b>	<b>Analysis of External and Internal Factors and their Influences on the Trade and Environment Framework .....</b>	<b>9</b>
	3.1 The New Zealand Government's Trade and Environment Framework .....	9
	3.2 Impacts on the Trade and Environment Framework: External Factors .....	10
	<i>The Doha Development Agenda and the CTE</i> .....	10
	<i>New Zealand's Dedication to the Agenda 21</i> .....	12
	<i>Consumer Demands</i> .....	14
	3.3 Impacts on the Trade and Environment Framework: Internal Factors.....	15
	<i>The Royal Forest and Bird Protection Society</i> .....	16
	<i>The Trade Liberalisation Network</i> .....	19
<b>4</b>	<b>Conclusion.....</b>	<b>21</b>
<b>5</b>	<b>Selected References .....</b>	<b>25</b>
<b>6</b>	<b>Acknowledgements.....</b>	<b>27</b>

# 1 Introduction

Negotiating environmental issues in multilateral, regional or bilateral free trade agreements always requires a comprehensive approach because, particularly in this area, negotiations are influenced both by external factors such as global crises, MEAs (Multilateral Environmental Agreements) or WTO (World Trade Organisation) provisions and internal aspects such as domestic law or pressure exerted by interest groups. Governments negotiating FTAs (Free Trade Agreements) have to pursue a double-edged diplomacy in order to serve interests both on the international and domestic level<sup>1</sup>.

Domestic pressure, consumer demands in New Zealand's major exporting destinations (EU and U.S.) and the government's own priorities necessitate maintenance of high environmental standards, particularly in terms of bio security. Furthermore, FTAs could offer the chance for a diversification of domestic industries by improving trade conditions for environmental goods and services. Because New Zealand can no longer compete on the bulk market with China participating in the world trade regime, trade niches like environmental goods and services combined with New Zealand's clean and green image can be a chance for a new competitive advantage. FTA negotiations could also offer new opportunities to further promote sustainable development goals.

This paper is meant to give an overview over trade and environment issues in New Zealand. Even though New Zealand is a small player in world trade, a case study on this country can provide valuable insights into the relationship between government and domestic groups and into the impact of this interaction on international negotiations. First results on the relationship between the Government, the bureaucracy, political institutions, political parties and interest groups, influence mechanisms and consultation procedures could be gained through personal interviews and internet research. In this paper, the relationship between the Government and interest groups will be treated and set into relation to the Trade and Environment Framework. An outline of external factors influencing the Government's Trade and Environment Framework and the Government's position on environmental issues in trade negotiations will be given.

The first part deals with the external and internal developments that had or have an impact on New Zealand Government's Trade and Environment Framework. Selected examples of external influences such as the Doha Development Agenda, the Agenda 21 and consumer demands will be addressed briefly. This will be followed by a section on internal factors. This passage will primarily consist of the presentation of two interest groups - an environmental organisation, the Royal Forest and Bird Protection Society, and a business organisation, the Trade Liberalisation Network. In order to define their position within society and their power potential and influence capacities, four aspects will be considered: preferences, aggregate structural power, issue-specific structural power and institutions.

Aggregate structural power is measurable because it encompasses all of the actor's resources, capabilities and position in the world, respectively society. The total resources of nation states refer to demographic, economic and military resources.<sup>2</sup> Translated into interest groups' resources, these resources would refer to the membership, financial situation and human resources. The concept of aggregate structural power is helpful to get an overall picture of the actor's position in international negotiation, respectively domestic negotiations.

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<sup>1</sup> For contributions to the aspect of double-edged diplomacy see Evans et al (1993), Zangl (1995,1999), Putnam (1988).

<sup>2</sup> The concept of power and its related aspects is based on Habeeb 1988, p. 17-22. Habeeb's concept of power refers to negotiations between two or more governments. This concept is adapted to negotiations between governments and domestic actors.

Because negotiation presupposes at least two actors and one issue, *issue-specific structural power* is an essential element for the analysis of negotiation. It focuses on the actor's capabilities and position vis-à-vis another actor in terms of a specific mutual issue. Taking into account several theoretical insights in various possibilities to explain social interaction, the power balance of an issue-specific relationship is determined by three variables, namely *alternatives*, *commitment* and *control*.

*Alternative* means that an actor who finds himself in a relationship with a second party can also achieve his preferred outcomes from a relationship with an independent third party. The aspect of alternatives is, however, a two-edged sword. While the availability of alternatives can increase an actor's issue power as it decreases the dependence on the other negotiating party, a lack of alternatives can weaken an actor's position vis-à-vis another actor by increasing his dependence on the other party.

The degree to which an actor wants his preferred outcome is referred to as *commitment*. This is based on the values the parties connect with the diverse possible outcomes. But again, there are two sides to be considered. Greater commitment means greater dedication to gaining preferred outcomes and can strengthen an actor's issue-power. If the commitment is based on need, the issue-power can be weakened for it strengthens the other party.

The third variable, *control*, refers to the degree to which one party can unilaterally achieve its preferred outcome despite the costs involved in doing so. In negotiations, this means that one actor can achieve a greater share of his preferred outcome than the other actor.

The interest groups' influence on the policy-making and decision-making process largely depends on the structural power, which basically means resources. Behavioural power, which means how these resources are used in negotiations, will play a role in domestic negotiations, respectively consultations between the Government, bureaucracy and interest groups and lobbying activities of the interest groups. This aspect will not be dealt with in this paper.

Finally, a preliminary conclusion will be drawn from an analysis of the aforementioned external and internal factors and their influence on the Trade and Environment Framework. An attempt will be made to give a preliminary outlook on potential external and internal factors on New Zealand's current and future trade negotiations.

## 2 Background

### 2.1. Trade and Environment in a Multilateral Context

Since the Agenda 21 as the guiding document for sustainable development has been adopted in 1992, many countries have tried to translate policy objectives to create more sustainability into concrete national policies. Sustainable development is an ambiguous term, which encompasses many areas, including environmental sustainability. The most common definition, which has also been adopted by the New Zealand Government, refers to "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"<sup>3</sup>

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<sup>3</sup> World Commission on Environment and Development (WCED).1987; further documents encompassing principles on sustainability: *The World Charter for Nature*, <http://www.un.org/documents/ga/res/37/a37r007.htm> (4.11.04); *The United Nations Rio Declaration on Environment and Development*, <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm> (4.11.04); *Making the Polluter Pay*, European Commission press statement, Brussels, 23 January 2002.

New Zealand, which is worldwide known as a green, clean and nuclear-free country, has dedicated itself to the principle as well. Since 1944, New Zealand has signed more than fifty multilateral treaties related to sustainable development. Although several successful national policies have been implemented, it still remains a challenge to coordinate and manage “social policy and economic policy to ensure development in environmentally sustainable ways”. This is partly because many difficulties remain to bring “sustainable development to the top of the agenda of most major groups”, to coordinate diverse interests and to overcome institutional deficiencies such as “a lack of support among vested interest groups”.<sup>4</sup>

These problems and challenges become explicit when it comes to trade and environment, which is part of the sustainable development agenda as well. New Zealand is a small nation on the edge of the global economic stage and is thus heavily dependent on a well-functioning trade. Therefore, New Zealand is committed to the principle of a worldwide trade liberalisation. However, serious efforts to be made in order to protect the global and national environment are vital to maintain natural resources to ensure “long-term economic vitality”. Thus, New Zealand is a strong supporter of multilateral initiatives “to make trade and the environment mutually supportive” and bases its own approach on the “principles endorsed by the international community at UNCED [(United Nations Conference on Environment and Development)] and enshrined in relevant trade agreements”. The Organisation for Economic Cooperation and Development’s Joint Session of Trade and Environment Experts (OECD JEG) and the World Trade Organisation’s Committee on Trade and Environment (WTO CTE) are the major multilateral fora where New Zealand participates in.<sup>5</sup>

If global trade liberalisation is not managed in an environmentally sustainable way, environmental deterioration will be the consequence, which will finally lead to economic downturns because of, for example, a lack of important natural resources. Thus, a sector-integrated approach of trade and environmental policy-making is necessary. Without changing the framework conditions for activities in policy sectors which are primarily responsible for environmental degradation, including trade policy, countries will find themselves in a vicious circle and will finally not be able to actually solve problems and meet the needs of cross-cutting issues such as environmental protection. This aspect could be integrated in concrete negotiations of environmental issues in free trade agreements in order to tackle this problem. Two solutions could arise from such negotiations. The first one refers to the integration of concrete environmental standards in free trade agreements (FTAs). Past negotiations show, however, that the integration of standards is very difficult, particularly when a developing country is involved in the negotiations. The second one refers to the diversification of exporting industries, which means that, for instance, trade facilitation measures for environmental goods and services could foster environmentally friendly production procedures. How far such objectives can be realised in actual negotiations often depends on the concrete bargaining situation, which is again influenced by external and internal factors. These factors have an impact on the power balance of the negotiating parties and thus the tactics to be used.

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<sup>4</sup> See *Economic Aspects of Sustainable Development in New Zealand*, <http://www.un.org/esa/agenda21/natlinfo/countr/newzea/eco.htm>, 21.09.04.

<sup>5</sup> See *Economic Aspects of Sustainable Development in New Zealand*, <http://www.un.org/esa/agenda21/natlinfo/countr/newzea/eco.htm>, 21.09.04; see also <http://www.oecd.org>; <http://www.wto.org>.

## 2.2 Trade and Environment in New Zealand: External Factors

Although domestic factors increasingly play an important role in foreign policy-making, external factors still dominate the area of foreign policy and must therefore not be neglected. Furthermore, there is an interaction of external and internal factors, which influences the policy- and decision-making process. It is thus vital to outline the external conditions that fostered the development towards a trade and environment framework and that provide new opportunities or constraints for major New Zealand exporting industries.

The Parliamentary Commissioner for the Environment (PCE) named two major aspects that influence the sustainability of New Zealand's environment, namely climate change and globalisation. He states that

“[o]verseas consumers are demanding higher environmental standards, but [New Zealanders] are also experiencing more movement of goods and people across [their] borders. This brings increased bio security risks, and potential tensions between [their] commitments made under multilateral environmental and free trade agreements. The essential point is that New Zealand's environmental ‘futures’ are dependent on the environmental health of the planet and the way [they], as a tiny trading nation, relate to the rest of the world”.<sup>6</sup>

New Zealand depends on a healthy environment particularly because New Zealand has a predominantly land and ocean based economy. Products derived from the biological sector are often bought by more prosperous citizens who expect high environmental qualities<sup>7</sup>. This means that New Zealand has to maintain such a high environmental quality of its products in order to compete on the world market. Although this is certainly a good wealth creation opportunity and basically the only chance for New Zealand's economy to remain competitive, this might cause difficulties when New Zealand is negotiating with countries that do not share the same environmental values, such as less developed countries. Thus, New Zealand must have a strong interest in safeguarding its environmental protection measures in international, particularly bilateral, trade agreements not only for ecological and social reasons but also for economic ones. The problem does not only lie in different attitudes towards environmental protection but also in the fact that

“[e]conomic systems globally do not tend to value and price ecosystem services [...]. [People] buy and pay taxes on land but not on air or the assimilative capacity of the environment. An analysis of the Government strategy *Growing an Innovative New Zealand* (2002) indicates that the economy will take priority over the other two when key decisions are being made.”<sup>8</sup>

With regard to bilateral trade negotiations, particularly with countries that promise good market access like China, it can be questioned whether environmental values are sacrificed for the sake of getting the deal done. However, as already indicated, consumer demands and the need for diversification, for instance, might have an impact on the integration of environmental values, standards and protection measures in such an agreement. It is thus vital to analyse which external factors finally have an impact on the integration of environmental issues in trade negotiations, respectively trade agreements.

Other external factors, which were mentioned by the PCE, include bio security risks. Increased trade, for example, requires rigid rules to prevent bio security breaches, which not

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<sup>6</sup> Parliamentary Commissioner for the Environment. 2003, p. 19.

<sup>7</sup> *ibid.* p. 19; see also *Growing an Innovative New Zealand* (2002), <http://www.gif.govt.nz>.

<sup>8</sup> Parliamentary Commissioner for the Environment. 2002, p. 49.

only influence New Zealand's native fauna and flora by establishing new alien species, but also could lead to an economic catastrophe. The introduction of pests and diseases could cause the collapse of New Zealand's economy because most of the countries' domestic industries are based on the production of primary goods. The pursuit of a strict bio security regime will be vital for New Zealand's economic survival. Thus, New Zealand must have a strong interest in the promotion of the negotiating partner's well-functioning bio security regime as well.

Finally, the New Zealand Government has to make sure that commitments made under multilateral environmental agreements (MEAs) are not challenged by provisions under free trade agreements and vice versa. Therefore, the Doha Development Agenda and the work of the WTO CTE and the Agenda 21, which is not an exclusive MEA but which is the most important document for sustainable development and also linked to trade and environment issues, will be examined. The interest of this study, however, does not primarily lie in a thorough examination of controversies within these agreements. With regard to trade negotiations, it is important to find out how these agreements are used for tactical reasons. This analytical aspect will again be found when it comes to the analysis of internal factors and interest groups' influence on trade and environment issues.

### **2.3. Trade and Environment in New Zealand: Internal Factors**

In 2001, the New Zealand Government adopted a Trade and Environment Framework which is supposed to be the guiding principle in both multilateral and bilateral trade negotiations. Yet, when it comes to potential or actual negotiations on Closer Economic Partnerships (CEPs), respectively free trade agreements (FTAs), many problems arise. The greening of New Zealand's foreign trade policy is a sector-related problem. Trade and environment issues are still seen as separate entities, particularly among many interest groups, but also among ministries and departments. Even though the PCE found out that New Zealand's clean and green image has a value, which is worth hundreds of millions or billions of dollars<sup>9</sup>, some people, mainly from the private sector, share a common view with regard to economic and environmental issues. They think that "New Zealand must improve its economic performance (i.e., increase GDP) before it can address social and environmental sustainability"<sup>10</sup>. There is a potential risk that "New Zealand will lose value that is created by the current environmental image if [New Zealanders] are not vigilant in dealing with the problems that could threaten the [clean and green] image"<sup>11</sup>. The business sector has always had a significant influence on the policy- and decision-making process. This will not change in the near future. It is thus vital to further explore how interest groups from this sector have an impact on trade and environment issues and how this influence is exerted.

The Government set up a taskforce to deal with trade and environmental aspects under the Trade and Environment Framework, which consists of members of the Ministry of Foreign Affairs and Trade (MFAT) and the Ministry for the Environment (MfE). However, many government agencies related to environmental issues, such as the Department of Conservation (DOC), do not think they should engage in trade and environment issues. This shows that even though efforts are made to integrate policies, the traditional organization model of bureaucracy, which is based on specialization and division of work, still exists and makes cooperation between different ministries and departments difficult, particularly in the field of trade and environment. The result is that there is often a parallel pursuit of sometimes

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<sup>9</sup> *ibid.*, p. 50.

<sup>10</sup> *ibid.*, p. 49.

<sup>11</sup> *ibid.*, p. 50.

contradictory policies, which finally leads to problems when it comes to the implementation of these policies. The same is true for trade negotiations and free trade agreements. A lack of cooperation between the different departments could be a disadvantage in the negotiations if contradictory policies are also pursued within actual negotiations. This could weaken the Government's bargaining power. However, it must be mentioned that not only regional and bilateral free trade negotiations are a relatively young discipline for government officials (except for experiences made with the Closer Economic Relationship (CER) between Australia and New Zealand) but that also the integration of environmental and labour issues has seriously started approximately five years ago. A learning process is therefore still underway and a cooperation between the different ministries and departments but also consultation procedures between the government and domestic actors.

Interest groups are a key feature of a well-functioning, pluralistic democracy and, in addition, often relevant for the political survival of a government. These groups represent key interests of the society and the government attempts to involve them in the policy-making process. Generally, all interest groups are considered equal. But when it comes to economic and trade policy, research has revealed that some interest groups are more equal than others. This is particularly important for a greening of New Zealand's trade policy because interest groups' influence can be decisive concerning the success or failure of a policy integration. While non-governmental organisations (NGOs)<sup>12</sup> promote an integration of environmental issues in trade agreements, many business groups regard such policy integration as obsolete because MEAs are considered sufficient to deal with environmental problems. It remains a challenge for a government to meet key stakeholders' interests, addressing major needs of both trade and environmental issues and to negotiate best outcomes on the international level. As already stated, the business sector has great influence when it comes to foreign trade policy. Thus, it is vital to analyse not only this sector's influence but also the impact NGOs can have on this policy field and how they try to exert influence on the policy-formulation and decision-making process. Finally, both the business sector's and NGOs' influences have to be analysed with regard to actual negotiations and the Government's negotiating tactics.

The New Zealand Government tried to involve key stakeholders by setting up a Ministerial Trade Advisory Group. This group consists of representatives of key industries and other interest groups having a say in trade matters. As already mentioned above, the Government set up a Trade and Environment Framework. Thus, to represent environmental issues, the Royal Forest and Bird Protection Society (Forest and Bird) is a member of the board. The advisory group was established in 2003. Therefore, it remains a question whether this group is just a sounding board and more an element of symbolic politics or whether it can be influential in the future.

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<sup>12</sup> An ultimate and exact definition of NGO does not exist. Scholars or organizations such as the United Nations (UN) often define this term with a special regard to their interests or concerns. The UN, for instance, considers "any non-profit, voluntary citizens' group which is organized on a local, national or international level [...] [and which is] [t]ask-oriented and driven by people with a common interest" as an NGO (<http://www.un.org/dpi/ngosection/brochure.htm>, 21.09.04; see also <http://www.un.org/esa/coordination/ngo>, 21.09.04; for the concept of civil society see also Anheimer 2004, Glasius 2004, Kaviraj 2003). Nevertheless, attempts have been made to define the term civil society. NGOs are regarded as being part of the wider concept of civil society. The concept of civil society is commonly referred to "the network of non-governing organisations found between the individual, and the government and its bureaucracy" (Gustafson 2001, p. 28). In the World Bank's view, civil society refers to "the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations." NGOs are part of the wider group of Civil Society Organizations (CSOs), which also encompass community groups, labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations. (<http://web.worldbank.org>, 21.09.2004).



Generally, all interest groups have the right to hand in submissions and thus express their attitude towards future CEPs or FTAs. Next to the official way of influencing a government's policy, consultations on an informal level can be decisive for an interest group's influence on the policy-making processes. This is a delicate and also difficult issue to explore because, naturally, this is not well documented, information is based on personal statements and, sometimes, people are still very secretive concerning informal consultation procedures. However, this is a topic worth examining because further research can again reveal key factors responsible for a success or failure of policy integration.

### **3 Analysis of External and Internal Factors and their Influences on the Trade and Environment Framework**

This section outlines the New Zealand Government's Trade and Environment Framework. The following analysis of external and internal factors and their relationship to the Trade and Environment Framework is supposed to clarify which factors have had a greater impact on the policy framework. In addition, the analysis of internal factors, respectively two interest groups that are involved or show some interest in trade and environment issues, facilitates a preliminary outlook on potential influence mechanisms and opportunities with regard to current and future trade negotiations. It must be mentioned that this analysis is embedded in a greater research project on domestic influences on New Zealand's trade negotiations. Even though first important insights could be gained, this analysis should be regarded as preliminary.

#### **3.1 The New Zealand Government's Trade and Environment Framework**

The Government acknowledges that

“trade and the environment are related (...) because all economic activity is based on the environment – whether because all basic inputs are sourced from nature (metals, minerals, forests and fisheries) or because the energy needed to process them is derived from the environment. The waste produced at the end of most tradable goods' life cycle is also absorbed by the environment. The environment affects trade, in turn, because exporters often have to respond to consumer demand for ‘green’ or ‘greener’ goods”.<sup>13</sup>

The activities within the Trade and Environment Framework are based on current developments within the WTO CTE. The New Zealand Government focuses on three core aspects:

- “Win-win-win” agendas
- Environmental Goods and Services
- Eco-labelling

A “win-win-win” agenda means that trade, environment and development objectives are mutually beneficial and do not contradict each other. New Zealand's interests thus focus on the elimination of trade-distorting measures in the fisheries, agriculture and energy sectors. Concerning fisheries, New Zealand argues that worldwide fish subsidies lead to over-exploitation of fish stocks. Thus, these subsidies disadvantage developing countries that are dependent on revenues from the fisheries sector, like the Pacific Islands Countries (PICs), and distort the international fisheries trade.

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<sup>13</sup> This quotation is taken from the Government's website *Trade and the Environment*, <http://www.mfat.govt.nz/foreign/env/tradeandenvt/tradeandenvt.html>, 6/10/04. This chapter is a summary of this website and the Ministry of Foreign Affairs' publication *Trade Matters, August 2004*.

The Government sees benefits from a reduction or elimination of tariffs on environmental goods and services for its environment sector. Even though this is a legitimate point to mention, this issue is highly complicated. Because there are so many different views on what has to be regarded as “environmental goods and services”, a common definition has not been developed so far. While some countries think that these goods and services must have a direct, positive impact on the environment, others believe that environmental goods encompass any goods which are produced in an environmentally friendly manner. The WTO, OECD and APEC (Asia-Pacific Economic Cooperation) have already made attempts to set up a list of these goods and services. However, there is still work to do to reach a joint definition.

Labelling for environmental purposes is a highly controversial topic. The most common argument against eco-labelling refers to suspicions that countries could use such schemes as a way of protecting their own industries. In addition, concerns are raised that labelling could lead to remarkable compliance costs for businesses, which could disadvantage them on the world market. In contrast, some believe that eco-labelling could promote sustainable outcomes, also because of informed consumer choices. New Zealand wants to support current WTO initiatives to encourage non-discrimination and transparency in such labelling schemes and to enable consumers to make informed choices.

Finally, this Trade and Environment Framework highlights current activities at the WTO CTE. In addition to the above mentioned aspects of trade and environment, the New Zealand Government appreciates the work being done on the relationship between WTO rules and trade obligations under MEAs. New Zealand’s trade and environment policy is based on WTO activities. New Zealand’s focus on the above mentioned three issues reflects its own interests with regard to domestic core industries and new business opportunities. Due to a lack of own capacities, the New Zealand Government and the taskforce on trade and environment rely on outcomes achieved by the WTO CTE, where New Zealand itself is engaged as well.

### **3.2 Impacts on the Trade and Environment Framework: External Factors**

The external factors to be considered here will include the Doha Development Agenda and the Committee on Trade and Environment (CTE) as examples for the above mentioned external shocks, the Agenda 21 as an example for obligations under other trade-related agreements, the Thailand-Australia Free Trade Agreement (TAFTA) and the EU-Chile Association Agreement to outline other states’ preferences and, finally, the impact of consumer demands.

#### *The Doha Development Agenda and the CTE*

In the early 1970s, WTO members have already raised concerns about the impact of economic growth on social developments and the environment<sup>14</sup>. Since then, many initiatives have been started, changes have been made to regulations and additional provisions relating to environmental issues have been set up<sup>15</sup>.

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<sup>14</sup> An outline of the history of trade and environment issues can be looked up at WTO Secretariat 2004, pp 1-14; see also Rao 2000.

<sup>15</sup> See WTO Secretariat 2004, pp. 1-3; GATT Secretariat 1972; results of the Tokyo Round (1973-1979); the Tokyo Round Agreement on Technical Barriers to Trade (“Standards Code”); results of the Uruguay Round (1986-1993); environmental issues addressed in Standards Code, General Agreement on Trade in Services (GATS), Agreements on Agriculture, Sanitary and Phytosanitary (SPS), Subsidies and Countervailing Measures (SCM), Trade-Related Aspects of Intellectual Property Rights (TRIPS); Preamble of the Marrakesh Agreement; See <http://www.wto.org>.

The Group on Environmental Measures and International Trade (EMIT Group), which was established in 1971, had only been convened in 1991 because of the upcoming United Nations Conference on Environment and Development (“Earth Summit”). This group focused on the effects of environmental measures on international trade in general, the relationship between WTO rules and trade provisions made under MEAs and the transparency of national environmental regulations that have an impact on trade.<sup>16</sup> The work of the EMIT Group was continued by the WTO Committee on Trade and Environment (WTO CTE), which was established in 1994<sup>17</sup>. The CTE has a broader-based mandate and is based on the promotion of sustainable development, which means that trade and environmental measures should be mutually supportive. In 2001, the Committee on Trade and Environment Special Session (CTESS) was established in order to launch negotiations on special issues related to trade and environment and to discuss environmental and developmental aspects of the Doha negotiations<sup>18</sup>. Next to the CTE regular and the CTESS, fisheries subsidies, which play a significant role in sustainable development, are discussed in the Negotiating Group on Rules<sup>19</sup>.

Four paragraphs of the Doha Development Agenda are specifically related to the work on trade and environment. According to these paragraphs, the work of the WTO in general and the CTE in particular ought to focus on the relationship of WTO rules and trade obligations under MEAs, on the information exchange between the WTO and MEAs (including granting them observer status), on the elimination of tariff and non-tariff barriers to environmental goods and services, on the effect of environmental measures on market access and win-win-win situations, on relevant provisions of the TRIPS agreement, on labelling requirements for environmental purposes, on technical assistance, capacity-building and environmental reviews<sup>20</sup>.

The briefly outlined areas of work of the CTE again indicate that the New Zealand Trade and Environment Framework is largely based on activities within the CTE. Decisions agreed on in the WTO are or will be reflected in the New Zealand trade and environment policy. Multilaterally achieved outcomes are easier to negotiate in bilateral agreements, particularly if the negotiating counterpart is also a member of the WTO. The work of the CTE has specific relevance to bilateral negotiations, particularly if the issues discussed at the WTO are combined with specific national interests.

The New Zealand Trade and Environment Framework focuses on the “win-win-win” agendas, trade facilitation for environmental goods and services and labelling issues. These aspects are of specific national interest and will thus be negotiated not only on a multilateral basis but also within bilateral or minilateral negotiations. By developing concrete definitions for environmental goods and services in bilateral negotiations, the work of the WTO could be supported because such provisions could be tested on a smaller scale and New Zealand could set benchmarks for future negotiations. This is particularly true for the China FTA because both parties are interested in trade of environmental goods and services.

To negotiate labelling issues in bilateral negotiations will be in the interest of the New Zealand Government to safeguard the country’s clean and green image, to provide for informed consumer choices within its own country and in the exporting destinations and to

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<sup>16</sup> WTO Secretariat 2004, p. 4.

<sup>17</sup> For establishment of the WTO CTE and work programme see Ministerial Decision on Trade and Environment 1994, <http://www.wto.org>.

<sup>18</sup> WTO Secretariat 2004, pp. 5, 9.

<sup>19</sup> WTO Secretariat 2004, pp. 9, 24.

<sup>20</sup> See Doha Development Agenda, paragraphs 31-33, 51; paragraph 51 specifically refers to sustainable development; for fisheries issues see paragraph 28; for a summary of these provisions see Trade and Environment; see <http://www.wto.org>.

make sure that New Zealand can further compete on the world market with explicitly marked quality products.

The New Zealand Government tries to achieve “win-win-win” agendas in bilateral negotiations because of its own sustainable development goals. This means that the Government is not only interested in fostering its own sustainability and protecting its environment, but also in supporting development in the countries it is negotiating with. New Zealand’s dedication to the principles of sustainable development is not only pursued within the WTO, but also on a national basis with an international outlook because of its commitment under the Agenda 21.

### *New Zealand’s Dedication to the Agenda 21*

In July 2001, officials from eleven government departments came together in order to set up a work programme on sustainable development, which was to be based on the Agenda 21. They decided to work on a *Sustainable Development Strategy* which was to be based on the *Growth and Innovation Framework* and some key principles including the creation of win-win solutions, sustainable economic growth, risk management and democratic values. Cabinet agreed to include all these principles in the Government’s economic, social and environmental policies. The Minister of the Environment was appointed coordinator of the day to day work.<sup>21</sup>

Frameworks dealing with sustainable development not only include the two above mentioned strategies but also the *Key Government Goals to Guide the Public Sector in Achieving Sustainable Development* and *The Sustainable Development for New Zealand Programme of Action*. All of them are “mutually consistent and mutually reinforcing in their approach”<sup>22</sup>. All frameworks focus on a comprehensive approach towards sustainable development as it is set out in the Agenda 21. This means that sustainability and positive outcomes are seen over the longer term and include economic, social, environmental and cultural issues. With regard to economic growth, it is one of New Zealand’s key objectives to return New Zealand’s per capita income to the top half of the OECD while at the same time acknowledging that they “can put on hold social and environmental progress, and concentrate solely on economic growth. Implicit in the quality of the growth [they] are seeking will be integration of the economic, environmental and social pillars of sustainable development”<sup>23</sup>. Thus, it is one major aim “ensure that the New Zealand business sector adopts sustainable business practices”<sup>24</sup>.

New Zealand also tries to promote its sustainable development objectives and initiatives on the international level as well. This is not only true for New Zealand’s development assistance, which can be seen, for example, in the South Pacific Regional Environment Programme (SPREP), but also for New Zealand’s trade policy. Trade liberalisation activities could have an impact on issues addressed by the Agenda 21. Examples include climate change (Chapter 9), land resources (Chapter 10), protection of the oceans (Chapter 17), conservation of biological diversity (Chapter 15), sustainable agriculture

<sup>21</sup> Parliamentary Commissioner for the Environment 2002; Ministry for the Environment 2003.

<sup>22</sup> Department of Prime Minister and Cabinet 2003, p. 10; For key objectives see *Growing an Innovative New Zealand* (2002), <http://www.beehive.govt.nz/innovate/innovative.pdf> (4.11.04); *Key Government Goals to Guide the Public Sector in Achieving Sustainable Development*, [http://www.dPMC.govt.nz/dPMC/publications/key\\_goals.html](http://www.dPMC.govt.nz/dPMC/publications/key_goals.html) (4.11.04); *Sustainable Development for New Zealand Programme of Action* see <http://www.beehive.govt.nz/hobbs/30199-med-susined-developm.pdf> (4.11.04).

<sup>23</sup> New Zealand Government 2002, p. 12.

<sup>24</sup> Programme of Action 2003.

(Chapter 14) or biotechnology (Chapter 16). These issues are also addressed by interest groups when it comes to the integration of environmental policies into trade policy.

#### **PRINCIPLES OF SUSTAINABLE DEVELOPMENT FOR POLICY AND DECISION MAKING**

The government recognises that its decisions should ensure the wellbeing of current and future generations. It will take account of the economic, social, economic, environmental, and cultural consequences of its decisions by:

- considering the long-term implications of decisions
- seeking innovative solutions that are mutually reinforcing, rather than accepting that gain in one area will necessarily be achieved at the expense of another
- using the best information available to support decision making
- addressing risks and uncertainty when making choices and taking a precautionary approach when making decisions that may cause serious or irreversible damage
- working in partnership with local government and other sectors and encouraging transparent and participatory processes
- considering the implications of decisions from a global as well as a New Zealand perspective
- decoupling economic growth from pressures on the environment
- respecting environmental limits, protecting ecosystems and promoting the integrated management of land, water and living resources
- working in partnership with appropriate Maori authorities to empower Maori in development decisions that affect them
- respecting human rights, the rule of law and cultural diversity.

(Sustainable Development for New Zealand. Programme of Action, Ministry for the Environment 2003, p. 9)

Though the Agenda 21 seems to have more impact on New Zealand's national than international policy strategies, it cannot be denied that some of these issues like, for instance, fisheries and agriculture, are mentioned in the Trade and Environment Framework. The PCE states that the Agenda 21 is "a major international environmental initiative that has had relatively little impact in New Zealand"<sup>25</sup>. However, it could be argued that the principles nation states agreed on in the Agenda 21 could gain more weight in the future because sustainable development could become the guiding principle in many policy sectors.

As already outlined, the Trade and Environment Framework is primarily based on the work of the WTO CTE. Thus, the New Zealand Government has to make sure that its trade policy is in accordance with MEAs. The Agenda 21 is one example for New Zealand's obligations under other international agreements. But because the Agenda 21 is not an exclusively multilateral environmental agreement and has shown little impact on New Zealand's trade policy, the priority for an analysis of the coherence between MEAs and trade agreements relates to other issues. It becomes far more complex, for instance, when it comes to agreements like the Convention on Biological Diversity (CBD)<sup>26</sup> and the Cartagena Protocol<sup>27</sup> or the Kyoto Protocol. To guarantee coherence between all these agreements,

<sup>25</sup> Parliamentary Commissioner for the Environment 2003, p. 19.

<sup>26</sup> The full text of the document is available on <http://www.biodiv.org/doc/legal/cbd-en.pdf>.

<sup>27</sup> New Zealand wants to ratify the Protocol in 2005. Submissions on New Zealand's ratification reflect people's interest in regulations or imports of genetically modified organism. Submissions can be accessed on <http://>

particularly because they are all cases of soft law, and trade agreements, which are hard law, is one of the future challenges to make trade more sustainable, environmentally friendly and fairer.

Other aspects of the Agenda 21, which have to be explored further with regard to trade and environment issues are the roles of indigenous people (Chapter 26), non-governmental organizations (Chapter 27), business and industry (Chapter 30) and farmers (Chapter 32). It is explicitly mentioned that these groups should have a say in sustainable development issues. As the policy integration of environment issues in trade policy is also part of the sustainable development agenda, it could be argued that these groups should have the right to participate in these issues as well. This aspect will be explored when it comes to the influence of internal factors on New Zealand's Trade and Environment Framework.

### *Consumer Demands*

New Zealand's clean and green image becomes more and more important for a well-functioning export. In 2001, the Ministry for the Environment (MfE) undertook a survey on how New Zealand's clean and green image affects customer behaviour in major exporting destinations and how this, in turn, could have an impact on New Zealand exporting industries. Impacts on three key sectors – dairy products, tourism and organic food – were analysed. The results clearly showed that the green and clean image had a real export value. Consumers in major exporting destinations would buy more than 50% less dairy products if New Zealand was no longer regarded as a clean and green country. The same was true for the tourism sector because tourists would reduce their travels to New Zealand to 50 to 80%. Concerning organic produce, consumers would probably no longer buy New Zealand organic food if GM crops were released without any controls or regulations. In total, New Zealand would lose billions of dollars in revenue if New Zealand were to lose its green and clean image. Although New Zealand is still green and clean in world standards, it could rapidly lose what could be considered as a competitive advantage if the reality proved to be worse than the image.<sup>28</sup>

The potential effects of consumer behaviour on New Zealand's exporting industry clearly show that the New Zealand Government must have a strong interest in safeguarding principles, which could be relevant for the country's economy with regard to the environment, in future trade agreements. These principles include the maintenance of a stringent bio security regime, precise regulations on GM crops and organisms and the right to unexceptionally pursue national environmental policies. It could be argued that these issues are dealt within national environmental legislation and multilateral environmental agreements. But as a thorough examination of already existing trade agreements has shown, domestic legislation can easily be challenged by other countries which could interpret certain laws and regulations as means to protect domestic industries<sup>29</sup>. Some also argue that New Zealand could maintain its own environmental standards and to promote domestic initiatives to achieve more sustainable outcomes and to keep its green and clean image without co-opting these standards on other countries within trade agreements. However, the New Zealand

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[www.mfat.govt.nz/foreign/env/biosafety/submissionsindex.html](http://www.mfat.govt.nz/foreign/env/biosafety/submissionsindex.html); For general information on New Zealand's attitude towards the Cartagena Protocol see <http://www.mfat.govt.nz> (16.10.04).

<sup>28</sup> The study "Valuing our Clean Green Image" can be accessed on <http://www.mfe.govt.nz>; this report is a complement to the qualitative study Green Market Signals (MfE); other findings on New Zealand's clean and green image can also be read in Parliamentary Commissioner for the Environment 2002.

<sup>29</sup> Chapter 11 of the North Atlantic Free Trade Agreement (NAFTA), the so-called expropriation clause, has been heavily debated because in theory, this clause could hinder governments to take domestic legislative measures to protect the environment. For full text of NAFTA see [http://www.nafta-sec-alena.org/DefaultSite/index\\_e.aspx?DetailID=78](http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=78) (4.11.04). For further information on trade and environment issues see Deere 2002; Rojas-Amandi 1998.

Government has to include environmental issues which are clearly export-related like, for instance, genetic engineering (GE) issues. Countries like China, for example, might have different attitudes towards GE than New Zealand, which could have an impact on New Zealand imports, which will also be regulated in a bilateral trade agreement. An increase in bio security risks might require changes in current sanitary and phytosanitary (SPS) provisions or investment rules might affect conservation issues. Eco-labelling for the sake of informed consumer choice, which is important for major exporting destinations, has to be dealt with in trade agreements. Eco-labelling could support New Zealand's green and clean image, which in turn could be a competitive advantage on the world market. Thus, New Zealand has to make clear that such measures are not seen as protective measures and cannot be legally challenged. Consumer demands for more environmental goods and services could also be addressed by lowering tariffs on these goods and services. This could support new industries and help New Zealand to diversify its economy in order to compete on the world market.

Generally, consumer behaviour is a vital external factor that influences the policy integration of environmental policy into trade policy. The logic consequence is that this factor has also an impact on negotiations on environmental issues in trade agreements. How this aspect influences negotiating tactics and the outcome of trade negotiations will have to be analysed.

### **3.3 Impacts on the Trade and Environment Framework: Internal Factors**

The influences of internal factors on the Government's Trade and Environment Framework have not been clarified so far. However, an overview of representative interest groups that are involved or show an interest in trade and environment issues can help to make influences or opportunities to exert some influence on the policy-making process more explicit. Some careful conclusions can be drawn from in this chapter outlined aspects of influence mechanisms and opportunities.

The information of these groups' interest in trade and environment issues was gained by looking at the submissions which were made on the New Zealand-Thailand CEP and by asking representatives of several organisations in personal interviews. There are only a small number of organisations that specifically refer to trade and environment issues in their official positions towards specific trade agreements or trade liberalisation in general. Organisations with interest in trade and environment issues include the Royal Forest and Bird Protection Society, the Trade Liberalisation Network, Federated Farmers and the New Zealand Business Roundtable.

The following part on internal factors will briefly present the Royal Forest and Bird Protection Society and the Trade Liberalisation Network to highlight domestic controversies on trade and environment issues. Aspects to be considered are preferences, aggregate structural power, issue-specific structural power and institutions. Their relationship to the bureaucracy and government can only be treated superficially because the analysis is still in progress.

### *The Royal Forest and Bird Protection Society*

The Royal Forest and Bird Protection Society sees itself as the largest national conservation organisation in New Zealand. The overall objective of the organisation is to preserve and protect the native plants and animals and natural features of New Zealand<sup>30</sup>.

Most of the conservation organisations in New Zealand do not see a direct link between New Zealand's trade and environmental policies and are thus not actively engaged in trade issues. The organisation's interest in trade and environment issues is emphasized by their membership in the recently established Ministerial Trade Advisory Group with their president representing the Society. Being part of an official government delegation at the World Trade Organisation's negotiations in Cancún, the president could raise awareness of New Zealand's environmental issues in an international trade forum. The fact that Forest and Bird is a member of the Advisory Group also shows that the organisation enjoys high credibility, is representative and has a relatively strong position within society.

Compared to many other conservation organisation, Forest and Bird sees impacts of trade on the environment and tries to actively engage in trade issues by making submissions to the Ministry of Foreign Affairs and Trade (MFAT) on current trade initiatives such as Closer Economic Partnerships (CEPs) with Thailand, China and Singapore/Chile under the P3 negotiations. So far, Forest and Bird has been the only conservation organisation in New Zealand that made these submissions.

### *Preferences*

In 2001 Forest and Bird adopted a policy stating that they wanted

“[...] to ensure that global trade and investment regimes enhance and do not undermine New Zealand's capacity to adequately preserve and protect the indigenous flora and fauna and natural features of New Zealand, for the benefit of the public, including future generations”<sup>31</sup>.

The organisation is primarily concerned about negative impacts on New Zealand's bio security regime and conservation work. The latter could be deeply affected by investment rules which would compete with domestic legal provisions to protect New Zealand's environment. They see the danger of governments being “dissuaded from passing laws to protect the environment if they are considered to contravene trade agreements”. Legal problems could also arise from a clash of provisions under MEAs and CEPs. In addition, CEP negotiations could foster domestic agricultural production, which might put stress on New Zealand's environment as well. Concerning the production in general, Forest and Bird is concerned that problems might also occur “where it is argued that higher environmental standards increase the cost of production and give an unfair advantage to countries without the same level of environmental protection”. To lower the costs of production, “environmentally friendly production methods are undercut by production methods that receive an indirect subsidy from lowered environmental standards”. However, Forest and Bird admits that comprehensive trade agreements could also “enhance the quality of the environment by reducing subsidies that contribute to over production, e.g. farming subsidies resulting in the clearance of land with conservation values or fishing subsidies encouraging unsustainable fishing rates”<sup>32</sup>.

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<sup>30</sup> See <http://www.forestandbird.org.nz>.

<sup>31</sup> See <http://www.forestandbird.org.nz>.

<sup>32</sup> Summary of submission made to the New Zealand-Thailand CEP; personal interviews.



Another issue, which has only recently become part of the agenda, is the increased introduction of genetically modified seeds and crops which would severely affect and modify New Zealand's indigenous fauna and flora.

Generally, Forest and Bird is not against free trade as long as environmental standards are maintained and conservation work is not undermined by trade and investment rules which were agreed on in the final trade agreement. The organisation emphasizes the importance of multilateral negotiations. Multilateralism is finally the best way to guarantee a better integration of environmental issues in trade negotiations. Concerning bilateral or mini-lateral negotiations, Forest and Bird is more sceptical because they have already analysed several bilateral treaties where environmental issues were excluded or trade and investment rules could have a deep impact on domestic environmental law, conservation and environmental protection. The most prominent example is Article 11 in the NAFTA agreement which says that the agreed investment rules under NAFTA could finally break domestic law via the expropriation clause.<sup>33</sup>

### *Aggregate Structural Power*

As already mentioned, Forest and Bird is New Zealand's largest conservation organisation. With approximately 600 000 members, an annual income of approximately NZ\$ 1.5 millions, total assets of approximately NZ\$ 4.3 millions and permanent staff of 20 people<sup>34</sup>, Forest and Bird has a relatively strong resource power compared to other NGOs in the country. However, compared to business organisations, this is a low power position concerning resource power. The only threat potential lies in the number of members. If the members are not satisfied with the policies pursued by the Government, the Government could lose votes in the next elections.

With regard to trade, Forest and Bird has not the resource potential to set up campaigns on the current trade policy. There are other vital, primarily domestic, issues to be addressed and a lack of staff makes further engagement – next to submissions, press releases and consultations with officials – difficult.

Forest and Bird enjoys high credibility within the country and is seen as the strongest and most influential lobby group in environmental issues. Even though trade and environment issues are not the top priority of the organisation, it has the potential to influence the Government's position because of its position within society.

### *Issue-specific Structural Power*

Concerning the aspects of alternative and control, the organisation has no means to achieve their aims without cooperating with the Government. This lack of power can partly be balanced if the commitment to achieve these objectives is very high. The degree of commitment can also be supported by choosing the right issues to be addressed with regard to trade and environment.

The best way to show such a commitment and to influence the Government, respectively the responsible officials, with regard to New Zealand's free trade policy is by having well researched legal arguments (e.g. analysing several case studies, outlining domestic legal provisions concerning environmental protection and conservation, arguing

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<sup>33</sup> Personal interviews.

<sup>34</sup> See <http://www.forestandbird.org.nz/about/staff.asp> (25.10.04); Annual Report 2004 <http://www.forestandbird.org.nz/AboutUs/annualreport2004.pdf> (25.10.04).

with rules and provisions under MEAs), emphasizing economic consequences if environmental standards were lowered (e.g. bio safety measures) while at the same time highlighting new business opportunities (e.g. sustainable energy sector, environmental goods and services, new technologies), mentioning political costs (e.g. loss of credibility, loss of voters' support in the next elections) and raising moral questions (e.g. preservation of the environment for future generations). Means to raise public awareness and to receive the Government's and officials' attention include press releases, reports and articles in print media, campaigns, presence at official meetings, unofficial consultations, submissions and coalition-building with other NGOs.

In how far the commitment of the organisation will have an impact on current negotiations remains to be examined.

### *Institutions*

A typically New Zealand phenomenon is that even though there are official consultation procedures, most of the consultations take place on an unofficial level. Therefore, it is important for NGOs to have contacts at all levels of the political system. Most of the NGOs in New Zealand, including Forest and Bird, can regularly contact officials at the relevant ministries and departments, parliamentarians, people at the Prime Minister's office and ministers.

Forest and Bird has regular official meetings with the Department of Conservation (DOC) and the Ministry for the Environment. Whenever further information is required, the staff from Forest and Bird "picks up the phone" and talks to the relevant persons. With regard to trade issues, "picking up the phone" is again a good way to receive additional information. However, the organisation often gets less information on trade negotiations compared to representatives from the business community. Nevertheless, concerning official meetings, Forest and Bird is a member of the Ministerial Trade Advisory Group and is thus officially involved in trade issues. It has to be mentioned though that this group normally meets twice a year and is not necessarily representative for the whole consultation procedures taking place throughout the year.

Official meetings are a good way to present the organisation's attitude towards trade liberalisation and free trade to officials and the Government. Phone calls, email exchanges and unofficial consultation are again good means to enforce the own position and to exert some influence on officials, respectively the Government. Submissions on potential or current trade negotiations are another way to inform the Government about the organisation's position. An example would be the submission made on the Thailand-New Zealand CEP<sup>35</sup>.

Campaigns and media releases are also means to have an impact on the Government's position. Even though campaigns and media releases are seldom directly concerned with trade issues, they nevertheless have an impact on these issues. Concerns which are raised about foreign investment rules or slipshod work on bio security matters are related to trade and environment issues<sup>36</sup>. Campaigns against the exploitation of endangered fish stocks or increases in, e.g. squid fishing, because of negative impacts on other species such as the

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<sup>35</sup> See <http://www.forestandbird.org.nz>.

<sup>36</sup> See media releases of 2003, e.g. "Confusion over GATS rules for land sales to overseas interests" (6 March 2003) or "Container inspections miss 95% of insects and spiders" (17 March 2003), <http://www.forestandbird.org.nz/mediare/03index.asp> (25.10.04).

albatross are again not directly linked to foreign trade<sup>37</sup>. Nevertheless, these issues have to be raised in trade negotiations as well if domestic initiatives and environmental issues are generally taken seriously.

Attitudes cannot only be delivered via the public, respectively the media, but also via parliamentarians. Information can be given to Members of Parliament (MPs) who can raise concerns indicated by the NGO in parliamentary debates or can ask the responsible minister. NGOs' preferences for certain parties are most of the time obvious. Forest and Bird, for example, sees its objectives better represented by the Green Party than the National Party. A logical consequence is that consultations with Green MPs are more frequent. Contacts to Labour MPs are also on a regular basis so that influence on the Government can also be sought by lobbying the MPs of the majority in parliament on which the Government has to rely to stay in power.

### *The Trade Liberalisation Network*

The main objective of the Trade Liberalisation Network (TLN) is to encourage broad public understanding and support for trade and trade liberalisation. It is a relatively young organisation, which was founded in 2001 and is funded and guided by approximately 75 per cent of New Zealand's leading export interests. Members of the TLN executive board come from New Zealand's leading business organisations and enterprises such as The New Zealand Meat Industry Association, Fonterra, The New Zealand Forest Industries Council or The Seafood Industry Council. The TLN cooperates with many other like-minded organisations and also individuals in order to achieve their goals. In addition, the network wants to provide its members and supporters with information and resources so that they can further promote the benefits of trade liberalisation "in ways that are meaningful to New Zealanders".<sup>38</sup>

### *Preferences*

The TLN strongly advocates for trade liberalisation because the organisation thinks that trade liberalisation promotes growth, creates jobs, assists developing countries and leads to social progress<sup>39</sup>.

With regard to environmental issues, the TLN is convinced that trade is good for the environment. They base their views on studies that have shown that people begin to care about the environment once their annual income reaches around 5 000 US dollars. The TLN takes a strong stance when it comes to trade restrictions for environmental purposes. In their view, such restrictions are merely costly and do not tackle the environmental damage, which is caused by food production for the home market. The abolition of agricultural subsidies would be a far better instrument to deal with environmental damage. In addition, the TLN sees potential benefits for the environment by liberalising trade in environmental services.<sup>40</sup>

As a consequence, the TLN generally opposes the inclusion of environmental standards within bilateral trade agreements. They argue that environmental standards could

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<sup>37</sup> See media releases of 2004, e.g. "Squid fishing increase would kill 500 more albatross and petrels" (6 April 2004) or "Forest and Bird launches the Best Fish Guide and challenges the fishing industry to 'Pull up their stocks'" (3 June 2004), <http://www.forestandbird.org.nz/mediarelease/2004/index.asp> (25.10.04).

<sup>38</sup> See <http://www.tln.org.nz> and <http://www.tln.org.nz/speeches-detail.asp?speechID=118> (25.10.04).

<sup>39</sup> See <http://www.tln.org.nz>.

<sup>40</sup> See <http://www.tln.org.nz> and <http://www.tln.org.nz/speeches-detail.asp?speechID=118> (25.10.04) and <http://www.vuw.ac.nz/nziia> (25.10.04).

have an adverse effect on the ability of developing countries to compete, particularly if these standards were used as a means to restrict competition between countries.<sup>41</sup>

They have only a general attitude towards trade and environment. Most of the time, the business community argues that trade and environment issues are sufficiently dealt with in multilateral fora and should therefore not be considered in New Zealand's own bilateral trade agreements. They do not see any specific environmental problems which could arise from bilateral trade deals and should thus not be of any concern. In their opinion, domestic law and international agreements tackle potential difficulties and problems with regard to trade and environment. Therefore, the free flow of goods, services and investment should not be hindered by setting up trade rules in order to protect the environment.<sup>42</sup>

### *Aggregate Structural Power*

Even though specific numbers on the annual budget of the organisation are not available, it is likely to be high or, at least, to be significantly topped up if necessary when the membership is considered. For the year 2004, thirty of the leading business organisations and exporting companies, which have already been mentioned above, are sponsors of the organisation. This implies that the financial background for campaigns should be satisfying and sufficient. The membership itself is a strong argument in favour of significant influence on the Government in trade issues. With regard to permanent staff, other interest groups have a comparative advantage. However, it must not be neglected that the TLN was exclusively set up to promote trade liberalisation issues. This means that staff, which mainly consists of one executive officer, is responsible to do research on current trade issues, to lobby the Government and its agencies on trade and to set up campaigns to inform the public on trade liberalisation. Even though an NGO like Forest and Bird has more permanent staff, they organisation does not have a person which is exclusively responsible for trade issues. Thus, their human resources are not competitive in trade issues. Nevertheless, the TLN does not concentrate on environmental issues and thus does not have the expertise in these topics. Members generally object the inclusion of environmental issues and do not extensively deal with trade and environment issues. Thus, their influence on the Government with regard to environmental issues cannot be measured. Generally, the fact that the expertise lies more in environmental organisations than in business organisation could be a chance for environmental NGOs to have an impact on trade policy.

### *Issue-Specific Structural Power*

Even though the TLN has a high potential to influence the Government, it has not the possibility to realise its goals without the support of the Government. The aspect of having an alternative is not given and the organisation cannot achieve its aims unilaterally.

Once again, it is the aspect of commitment that can balance the lack of the other two. If staff and members are dedicated to achieve their preferred outcomes, they can have a strong position towards other interest groups and the Government.

The organisation's commitment can be seen in the initiatives taken to further promote trade liberalisation. The TLN frequently releases press statements, publishes information on the website, regularly meets with businesses to form coalitions, sets up meetings with NGOs,

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<sup>41</sup> See submission on the Thailand-New Zealand CEP, <http://www.tln.org.nz/submissions-detail.asp?subID=16> (25.10.04) and submission on the China-New Zealand FTA, <http://www.tln.org.nz/submissions-detail.asp?subID=17> (25.10.04).

<sup>42</sup> Personal interviews.

Maori, schools and other non-business institutions from time to time and regularly discusses issues with the media. In addition, the TLN makes submissions on trade agreements, which are supported by submissions made by members of the TLN.<sup>43</sup>

The organisation has strong economic arguments in favour of trade liberalisation and can defend them towards the Government and the public. As already indicated, the members' interest does not lie in environmental issues. The members are thus not that committed to strongly oppose the inclusion of general environmental guidelines, which means to put significant efforts in making sure that environmental issues are definitely not included in trade agreements. However, it might be different when it comes to concrete measures or standards to be included. These are regarded as trade barriers and might face more opposition.

### *Institutions*

The TLN is well aware of the fact that it has a disproportionate relationship with the Government because of its Wellington position and the board it consists of. With regard to trade policy, the TLN has frequent consultations with MFAT. Because it is difficult for MFAT to reach all people and all companies, officials often consult with groups like business councils, chambers of commerce and organisations like the TLN to reach as many companies as possible.

The fact that the TLN is a business organisation and represents 75% of New Zealand's leading export interests makes it easier for the organisation to reach officials, to frequently consult with MFAT and the Government on an official and unofficial basis and to get sufficient information on current trade developments. Thus, it is not necessary to take "deviations" and lobby parliamentarians or members of select committees because, most of the time, the TLN can exert its influence directly. Nevertheless, reaching parliamentarians can be a useful supportive strategy.

MFAT consults with these groups very frequently because the ministry needs the information and expertise. The business community has logically more expertise in trade matters than NGOs and are therefore more often involved. Environmental issues are seldom discussed among business people and between them and MFAT. But if some businesses or the TLN have concerns and want to present their attitude to the Government, they can easily do this.<sup>44</sup>

## **4 Conclusion**

The Trade and Environment Framework was a government-led initiative, a so-called top down approach. Even though the Government considered its constituencies and therefore initiated the integration of environmental issues into its trade policy, this decision was certainly influenced by external developments in a significant way. This becomes explicit not only by talking to people who are involved in trade and environment issues but also by looking at the external and internal factors that are reflected in this policy framework.

The reconciliation between trade and the environment was more important multilaterally within the WTO, which finally led to the establishment of the CTE. It was years after the foundation of the CTE that the New Zealand Government formulated its own Trade and Environment Framework. The framework is based on the work of the WTO CTE and additionally focussed on New Zealand's interests with regard to the environment. The

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<sup>43</sup> <http://www.tln.org.nz>; personal interviews.

<sup>44</sup> Personal interviews.

discussions within the CTE are taken into account and adapted to bilateral negotiations. The working groups in bilateral negotiations that deal with trade and environment issues represent New Zealand's interests, which basically reflect the matters discussed at the CTE such as the debate on environmental goods and services.

The principle of sustainable development certainly plays a role in trade issues as well, but the importance of the Agenda 21 lies more in initiatives which have to be realised on the national level, e.g. the promotion of sustainable energy, than in establishing ecologically friendly trade by improving production procedures. Such initiatives, however, can contribute indirectly to a more sustainable and environmentally friendly trade. It remains to be seen whether the Agenda 21 will have a greater impact on New Zealand's trade policy in the future or whether the aspect of sustainable development, particularly ecologically sustainable development, will be directly linked to trade initiatives.

The consequences of globalisation and the fact that New Zealand could no longer compete on the bulk market might have contributed to a re-evaluation of the trade and environment aspect. The Government could have left the discussions of these issues to the CTE only. However, the Government decided to highlight this aspect as one of New Zealand's national interests in trade negotiations, including bilateral trade negotiations. It could be assumed that the necessity to a diversification of the New Zealand industry might have led or is still leading to a certain greening of New Zealand's trade policy. New Zealand's "green and clean image" sells well and "green and clean" products and services are demanded by many consumers in major exporting destinations (EU, U.S. and Asia). This could be a competitive advantage for New Zealand's exporting industries. Therefore, a shift towards more environmentally friendly goods and services would be worth strengthening. It is thus in New Zealand's interest to promote and safeguard such an image, which should also be reflected in trade negotiations.

Another aspect why the New Zealand Government is "greening" the trade policy is the fact that a degradation of New Zealand's environment, particularly caused by bio security risks, would be an economic disaster. The introduction of, for example, the foot and mouth disease would destroy many of the leading exporting industries, such as the dairy industry and meat. The protection of the environment must therefore be guaranteed in trade agreements.

Other trade agreements are also examined with regard to environmental issues. This can be helpful for tactical reasons, when the Government wants to include environmental issues in the trade agreement and the other party is unwilling to do so. In addition, it is important to find out in how far environmental issues can be specified so that they can still be negotiated and have a realistic chance to be included in the trade agreement. However, it can be a disadvantage for New Zealand if a country like Australia has negotiated a trade agreement with Thailand without mentioning environmental issues at all. But these agreements did not have an impact on the overall Trade and Environment Framework because on the one hand, the framework had been established before TAFTA was concluded. On the other hand, it did not cause a changing of the framework because the objectives of the Government have remained the same and have not been affected by TAFTA. It might have had an impact on the thinking of the Government towards an inclusion of environmental issues in bilateral agreements that, for example, the EU started to include environmental issues in trade agreements or that these aspects can be found in bilateral agreements negotiated by the U.S., but did not have an impact on the drafting of the framework in general. Experiences made during the negotiations on the New Zealand-Singapore CEP might

have influenced the Government's decision to set up such a policy framework. This will be further examined.<sup>45</sup>

Concerning internal factors, it can be argued that interest groups can exert significant influence on the New Zealand Government. One reason can be found in the fact, that the Government needs the information and expertise from research undertaken by interest groups on certain policy issues, including trade and environment matters. Another aspect is the consultative nature of the current Government. Discussions with MFAT officials<sup>46</sup> made it once again clear that, with a unicameral and non-federal system, there has always been a tradition and necessity of dialogue between the government and interest groups. However, in former times, the Government has shown a far more secretive behaviour and has therefore been heavily criticized. The Government moved to a more open government style, which basically started with the establishment of the Official Information Act in 1982. It was no longer a system of giving away information when there was a good reason to publish them, but a system of withholding information when there was a good reason not to publish them. The philosophy has thus changed. But a learning process was necessary and is still underway, also for all the different government agencies. One reason why the government changed to a more open system was the change from the traditional first-past-the-post Westminster system to MMP (Mixed Member Proportional Representation) because now coalition governments were more likely and thus consensus building and consultations became even more important. Now, interest groups are consulted more frequently and information can be obtained more easily. Most of the time, information can be unofficially gained by talking to the relevant officials and by ordering releases under the Official Information Act. The Government encourages interest groups to hand in submissions on potential trade agreements and to engage in official meetings. This shows that the potential for exerting influence on the Government does certainly exist.

Concerning the drafting of the Trade and Environment Framework, however, internal factors played only a minor role. As already mentioned above, the integration of environmental issues into New Zealand's trade policy has been considered as a national interest and top-down approach. The argument of a government-led initiative and the minor role of internal factors can also be supported by just looking at the content of the framework. While issues of the WTO CTE are addressed, matters of deep concern to interest groups like bio security, investment rules and GE are not explicitly referred to in the Trade and Environment Framework. This might be for tactical reasons or that the Government does not consider a specific reference necessary because these issues are treated elsewhere. Another reason might be that these aspects are not explicitly connected to New Zealand's trade policy or trade interests at all.

The aforementioned external factors clearly outweighed internal aspects. Whether the influence of internal factors on a policy framework, respectively interest groups, can be increased by changing the power balance, which means by increasing aggregate or issue-specific structural power, is questionable and needs further research. The fact that interest groups did not have such a strong impact on the Trade and Environment Framework does not

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45 Besides SPS provisions, this agreement does not address any environmental issues. This certainly reflects Thailand's opposition towards an integration of environmental policy measures in trade agreements. Thailand fears that other countries could use these policy measures as a means of protectionism so that Thai industries could be disadvantaged. It is now the question whether this agreement was a test-run and New Zealand has to follow the same line in order to get the trade deal or whether New Zealand considers environmental issues as too important to be neglected in trade negotiations. New Zealand managed to set environmental issues on the agenda. In how far these issues will finally be integrated in the agreement and whether the Thailand-Australia Free Trade Agreement (TAFTA) will have a negative impact on the negotiations still remains the question. For full text of TAFTA see [http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta\\_toc.html](http://www.dfat.gov.au/trade/negotiations/aust-thai/tafta_toc.html) (4.11.04).

<sup>46</sup> Personal interviews.

mean that interest groups do not have an interest in the promotion of trade and environment issues and in drafting policy strategies. But this interest becomes more explicit in actual trade negotiations. The role of environmental issues in the New Zealand-Thailand FTA provokes more controversial discussions among interest groups and between the Government and interest groups than the drafting of a general policy framework on trade and environment. The role of interest groups will be more decisive in the actual trade negotiations because these negotiations will concretely affect their interests, values and also wallets. Providers of environmental goods and services, industries that could be affected by trade restrictions for environmental purposes, business organisations and NGOs will carefully follow the trade negotiations in order to make sure that their interests will be respected. The influence interest groups can have on the trade negotiations will then certainly depend on their structural power such as resources and lobbying activities and generally the power balance between the government, bureaucracy and interest groups.

Negotiations on environmental issues in free trade agreements will depend on the external scenario and the power balance of domestic actors that are involved in these negotiations. External factors are often more decisive in the integration of environmental issues but can be balanced by internal factors when powerful domestic actors are involved. Finally, the role that interest groups can play is not only a matter of power but also of tactics. The perfect timing of an embarrassing or controversial press release, side payments or coalition-building can change the power balance, respectively the influence of interest groups on trade policy-making.

In summary, external factors were more responsible for the development of a Trade and Environment Framework than internal factors. However, the fact that this was a government-led initiative indicates that internal factors must have played, at least, a small role – not so much in terms of interest groups' influences than in terms of the realisation of values of members of the Government and bureaucracy. Internal factors, particularly interest groups, have played a role and will be more decisive in terms of the launching of trade talks and the actual trade negotiations.



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