

New Zealand - United Kingdom trade negotiations consultation

SUBMISSION FROM TRANSPARENCY INTERNATIONAL UK

Introduction

1. Tackling corruption may not be an obvious priority for a trade negotiations between the United Kingdom and New Zealand, but a free trade agreement between these countries is a valuable opportunity to show to the world the best practice in this regard, and set a standard for others to follow.
2. Overseas markets where corruption is endemic are difficult, if not impossible, operating environments for British business. When contracts are won through nepotism and bribery, **corruption in any country's public sector closes those markets to law-abiding British firms, becoming a barrier to shared prosperity through trade**. By contrast, transparency in trade is known to lower costs, alleviate information asymmetries, and improve market confidence and activity¹.
3. Research shows that corruption is detrimental to international trade and business.² The PwC Global Economic Crime Survey 2020 has found that 39% of UK respondents lost an opportunity to a competitor who they believed paid a bribe.³
4. Transparency International's 2020 *Exporting Corruption* report shows that of the world's 47 leading global exporters, 34 countries have limited, little or no anti-bribery enforcement.⁴ New Zealand is one of them, with only 7 qualifying investigations opened in the last four years, and no such cases brought and concluded in that time. **As Britain embarks on a new chapter as an independent trading nation, the Government should promote adherence to the OECD Anti-Bribery Convention through its Free Trade Agreements.**
5. HM Government has recently made the case that a reduction in global corruption, combined with lower barriers for business and stronger corruption penalties, can "improve the business environment, improve investment in public services and enhance UK soft power".⁵
6. New post-Brexit UK trade agreements are a once in a generation opportunity. Signing trade deals that embed anti-corruption provisions and reinforce good practice would help to level the playing field for law-abiding businesses and generate trust in the legitimacy of global trade. Implementing anti-bribery legislation and putting proper enforcement in place to make sure that companies don't bribe

¹ Anticorruption and Transparency Provisions in Trade Agreements. Transparency International Anti-Corruption Helpdesk (2018).

² The Impact of Corruption on Growth and Inequality. Transparency International Anti-Corruption Helpdesk (2014).

³ Global Economic Crime Survey 2020. PwC (2020).

⁴ Exporting Corruption. Transparency International (2020).

⁵ Prosperity Fund Business Case: Global Anti-Corruption Programme. HM Government (December 2019).

overseas and that domestic companies don't gain an unfair advantage through bribery is crucial to achieve a level playing field for law-abiding business.

Recommendations

7. There is ample precedence for this approach in existing regional and bilateral trade agreements around the world, including those currently applicable to the UK. At a minimum, trade agreements should include:

Provisions requiring state parties to ratify international anti-corruption and anti-bribery conventions

8. In order to **level the playing field for law-abiding business** all states should ensure their trade partners are also held to the same international anti-corruption standards. Stronger economies can hold their partners to these standards by requiring them to ratify international conventions on anti-corruption and anti-bribery in order to secure trade deals.
9. For example, provisions could require state parties to ratify the United Nations Convention Against Corruption (UNCAC) and the Organisation for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention).
10. While the UK and New Zealand already meet this condition, acknowledging it as a foundation for the agreement would send a clear signal to other prospective trading partners, who would not then feel they are being unfairly targeted.

Provisions to require state parties to address corruption and safeguard rule of law

11. In addition to ratifying international anti-corruption conventions, states should ensure that their trade partners address corruption in their own jurisdictions and in international fora. State partners should be required to adopt or maintain legislation that criminalises corruption, active and passive bribery, ensures appropriate penalties, demonstrates their commitment to an independent judiciary, with the law impartially enforced, and encourages whistleblower protection. In New Zealand's case trading partners like the UK should expect it to commit to make progress beyond its current 'limited enforcement' of active bribery internationally by its own businesses.
12. We recommend that more economically developed countries such as New Zealand and the UK, adopt and implement open contracting principles⁶ and leverage their

⁶ Open Contracting Global Principles, Open Contracting Partnership. Available at: <https://www.open-contracting.org/what-is-open-contracting/global-principles/> [Accessed 20/10/2020]

influence to secure open contracting initiatives that level the playing field for law-abiding businesses to win contracts. This will result in the businesses performing services as intended, for example in public infrastructure projects, and could decrease the estimated 20-25% fraud- and corruption-related procurement budget losses⁷, which are expected to be even higher during COVID-19⁸.

13. We also recommend the establishment of a public register of beneficial owners of companies in New Zealand and in any other countries that enact trade agreements with the United Kingdom. For those seeking to conceal and launder the proceeds of corruption, the role of the anonymous and untraceable legal entity is critical. These secretive entities provide little to no public information about who they are and who controls them. Public registers are a key tool to help tackle corruption and other serious financial crime.
14. Given that public beneficial ownership registers are the new global standard for corporate transparency, it is important that the countries that trade with the United Kingdom not lag behind. Furthermore, we encourage both the United Kingdom and New Zealand to join the Beneficial Ownership Leadership Group⁹, a global initiative convened by the Open Government Partnership and Open Ownership, to become global leaders in promoting corporate transparency and set a high bar against illicit financial flows.

Provisions to require compliance with anti-corruption regulations

15. Anti-corruption laws are an essential first step for all states, but to be meaningful there must also be action to ensure compliance with the regulations.
16. Stronger economies such as the UK and New Zealand, can incentivise compliance with anti-corruption regulations by including in their trade agreements **provisions against non-compliance**, such as **the introduction of enforcement mechanisms**. In jurisdictions where criminal responsibility is not applicable to firms, the existence of **dissuasive non-criminal sanctions** (such as fines or debarment) for engaging in corrupt activity is crucial. Standard provisions stipulating that countries may debar firms found guilty of corruption from competing for public contracts in either the home and/or host country are encouraged.

⁷ <https://bis.lexisnexis.co.uk/blog/posts/anti-bribery-and-corruption/latest-g20-action-plan-aims-for-transparency-to-mitigate-corruption-risk> [Accessed 9/11/2017]

⁸ COVID-19 Has Created Conditions in which Corruption in Health Procurement can Flourish. Transparency International Health Initiative (2020). Available at: <https://www.transparency.org.uk/covid-19-has-created-conditions-which-corruption-health-procurement-can-flourish-heres-how-open> [Accessed 20/10/2020]

⁹ Open Government Partnership, Beneficial Ownership Leadership Group. Available at: <https://www.opengovpartnership.org/beneficial-ownership-leadership-group/> [Accessed 29/10/20]

17. The United Kingdom and New Zealand are in a position to show to the world the best practice in this regard, and set a standard for others to follow, raising the bar on global standards to effectively tackle corruption globally.

About Transparency International UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 chapters worldwide, TI has extensive global expertise and understanding of corruption.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

We work in the UK and overseas, challenging corruption within politics, public institutions, and the private sector, and campaign to prevent the UK acting as a safe haven for corrupt capital. On behalf of the global Transparency International movement, we work to reduce corruption in the high risk areas of Defence & Security and Pharmaceuticals & Healthcare.

We are independent, non-political, and base our advocacy on robust research.