

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

Each Party is also required to provide civil and criminal remedies against a person who receives or assists another to receive a signal without permission from the lawful distributor the signal. A Party may limit the application of Article 18.79 to cases in which a person intends to avoid payment for the signal.

Government use of software

Under Article 18.80.2, each Party is required to adopt or maintain appropriate laws, regulations, policies, guidelines that require central government agencies to only use legitimate computer software.

5.18.10 Section J: Internet Service Providers

Section J of the IP Chapter deals with "safe harbours" for internet service providers (ISP). If an ISP meets certain conditions which are set out in Article 18.82, that Party must ensure that the ISP is protected from being penalised for copyright infringement (known as a safe harbour).

For the purposes of Section J, an ISP is defined as:

- A provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing;
- A provider of online services for storage of material online at the direction of a user; or
- A provider of online services for information location, such as referring or linking users to online locations.

Article 18.82.1 requires each Party to establish or maintain a framework of legal remedies for rights holders to address copyright infringement online, and appropriate safe harbours for ISPs.

The framework must include legal incentives for ISPs to cooperate with copyright owners, or to take other action, to deter the unauthorised storage and transmission of copyrighted materials. Legal incentives are not defined in Article 18.82. Potential liability for copyright infringement might be an example of a legal incentive.

The framework must also include limitations on ISP liability that have the effect of precluding monetary relief being awarded against an ISP for copyright infringement. Limitations on the type of remedy available for copyright infringement, or limitations on liability itself being available against the ISP, can meet this standard.

Article 18.82.2 requires each Party to apply its limitations precluding monetary relief in four situations, if those situations would attract possible copyright liability under that Party's law:

- If the ISP is transmitting, routing, or providing connections for material without modification of its content.
- If the ISP is caching material through an automated process.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

- If the ISP is storing material on a system or network controlled or operated by or for the service provider at the direction of a user.
- If the ISP is referring or linking users to an online location by using information location tools, including hyperlinks and directories.

Article 18.82.3 requires each Party to require an ISP to expeditiously remove or disable access to material on its network or system if the ISP obtains actual knowledge that the material infringes copyright. The ISP must also be required to do this if it becomes aware of facts or circumstances that indicate the material is infringing, such as by receiving a notice from the rights owner. This is commonly referred to as “notice and takedown”. The notice and takedown obligations in Article 18.82 apply to ISPs who are storing material (such as a web locker) or who are referring or linking users to online locations (such as a search engine).

If an ISP removes or disables access under the notice and takedown obligations, the Party must ensure the ISP cannot be liable for doing so under other grounds. The Party must also ensure that its law provides that any notice sent to an ISP contains information reasonably sufficient to enable the ISP to identify the allegedly infringing material, and details of the person sending the notice.

Under Article 18.82.4, if a Party provides a “counter-notice” system (in addition to a notice and takedown system), that Party must require ISPs to restore any material they have disabled access to upon receiving a counter notice from the person who originally put it there, unless the rights owner takes court action within a reasonable time. Although New Zealand does not provide a counter notice system, it would need to comply with this obligation if it chose to adopt one.

Article 18.82.5 requires each Party to ensure that monetary remedies are available in its legal system if a person makes a material misrepresentation in a notice or counter notice and that causes injury to an interested Party.

Article 18.82.6 requires each Party to ensure that safe harbours for ISPs are not conditioned on the ISP monitoring its service, or proactively seeking out information about infringing activity on its network.

Article 18.82.7 requires each Party to ensure that a rights owner who has made a legally sufficient claim of copyright infringement can expeditiously obtain details of an alleged infringer from an ISP through a judicial or administrative process. The process must be consistent with the principles of due process and privacy.

5.18.11 Section K: Final Provisions

The Final Provisions Section provides transition periods for countries that need to change their laws in order to comply with the provisions of the IP Chapter. As noted above, New Zealand has secured a transition period of eight years from the date of entry into force of the Agreement for New Zealand before it is required to implement a 70 year term of protection for copyright works.

5.18.12 Plant variety rights and UPOV 91

The six annexes to the IP Chapter provide certain Parties with country-specific exceptions to the obligations in the IP Chapter or flexibilities in implementing the obligations. As explained above, Annex 18-A provides New Zealand with an alternative option to acceding to UPOV 91. Subject to that exception, the legal obligations that would be imposed on New Zealand in giving effect to, or acceding to, UPOV 91 are summarised below.

Chapter II of UPOV 91 sets out the general obligations of the Contracting Parties. Article 2 requires each Contracting Party to grant and protect breeders' rights.

Article 3 sets out the plant genera and species for which breeders' rights must be granted. Article 3(1) requires each Contracting Party that is already a UPOV member to extend protection to all plant genera and species if it does not already do so, within five years of the date that UPOV 91 enters into force for that Party. Article 4 requires each Contracting Party to accord national treatment to nationals and residents of other Contracting Parties.

Chapter III (5 – 9) sets out the conditions for the grant of a plant variety right (PVR). If these conditions are satisfied in relation to a particular variety, a PVR must be granted. No other conditions may be imposed. These conditions (novelty, distinctness, uniformity and stability) are essentially the same as those set out in UPOV 78 and in the Plant Variety Rights Act 1987 (PVR Act).

Chapter IV (Articles 10 – 13) sets out the procedures that must be provided for in respect of the making of applications for a PVR, in particular those relating to the filing of applications, right of priority, examination of the application and provisional protection. These conditions are essentially the same as those set out in UPOV 78 and in the PVR Act with only minor differences.

Chapter V (Articles 14 – 19) relate to the nature and scope of the exclusive rights that Contracting Parties must provide for PVR owners. Article 14 (1) – (4) set out the specific acts that PVR owners have the exclusive right to do. These rights are significantly greater than those provided for under UPOV 78 and the PVR Act. Article 14(5) provides that these rights extend to varieties 'essentially derived' from protected varieties. The rights provided in UPOV 78 and the PVR Act do not extend to such varieties.

Article 15 provides for exceptions to the exclusive rights provided for plant breeders. Compulsory exceptions are set out in Article 15(1). Each Contracting Party must provide for these exceptions. Two of the exceptions are somewhat narrower than those provided for under the PVRA, one (an experimental use exception) is new.

Article 15(2) is an optional exception relating to 'farm saved seed' of protected varieties. Farm saved seed is seed saved by a farmer from a crop that is used to plant a subsequent crop property. Contracting Parties are not required to provide for this exception. If a Contracting Party does provide this exception, that Party has some flexibility in how it applies the exception.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

Article 16 requires each Contracting Party to provide for 'exhaustion' of PVRs. The principle of 'national' exhaustion is applied. Where any material of a protected variety has been placed on the market by a PVR owner in a Contracting Party, with the consent of the PVR owner, the PVR owner has no rights over subsequent sales of the material, unless they involve further propagation of the material. The PVR Act is silent on the issue of exhaustion.

Article 17 requires that each Contracting Party shall not restrict the free exercise of the PVR except in the public interest. If such restrictions result in the grant of a compulsory license, then there is a requirement to ensure that the PVR owner receives 'equitable remuneration'. The PVR Act already meets this requirement.

Article 18 requires that a PVR is independent of any measures to regulate the use or exploitation of plant material. Article 19 requires that the term of the PVR must be at least 25 years from grant for trees and vines and at least twenty years from grant for other types of plant. The PVR Act currently provides a term of 23 years from grant for woody plants and 20 for all others.

Chapter VI of UPOV91 (Article 20) deals with the rules relating to plant variety denominations. The denomination is the 'generic' name by which a protected variety is known. The rules in Article 20 are consistent with the practice established in the PVR Act.

If New Zealand accedes to UPOV 91, New Zealand would be required to adopt all measures necessary for the implementation of UPOV 91 (Article 30(1)). By virtue of its obligations under UPOV 78, New Zealand already fulfils many of these requirements.

Chapter VII (Articles 21 and 22) deal with nullity and cancellation of a PVR. A PVR must be declared null and void if it is established that the criteria for grant were not met at the time of grant. A PVR may be cancelled, if subsequent to grant it is established that the conditions for grant are no longer met. The PVR Act provides for both (although under the general heading 'Cancellation of grants').

Chapter VIII sets out the administrative provisions for the UPOV Union. There is a requirement (in Article 29) that each Member State makes a financial contribution to the finances of the Union. This mirrors a similar obligation in UPOV 78.

Chapter IX deals with implementation of the Convention, and other Agreements. Under Article 30(2) of UPOV 91, a Contracting Party depositing its instrument of accession must be in a position, under its laws, to give effect to the provisions of UPOV 91. In practice this means amending the PVR Act so that it is consistent with UPOV 91.

No reservations to UPOV 91 are permitted (Article 35(1)), except for one exception (Article 35(2)) that New Zealand is not eligible to take advantage of.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

Article 36 requires a Contracting Party that deposits its articles of ratification or accession to provide specified information to the Secretary General. Each Contracting Party is also required to promptly notify the Secretary General of any changes to its PVR legislation and the extension of the application of UPOV 91 to additional plant genera and species.

UPOV 91 does not include a dispute resolution process.

5.19 Labour

Article 19.3.1 requires each Party to adopt and maintain in its laws and regulations (as well as in relevant practices) the following rights as stated in the *International Labour Organization (ILO) Declaration*:

- Freedom of association and the effective recognition of the right to collective bargaining
- The elimination of all forms of forced or compulsory labour.
- The effective abolition of child labour and, for purposes of TPP, a prohibition on the worst forms of child labour.
- The elimination of discrimination in respect of employment and occupation.

Parties are also required (under Article 19.3.2) to adopt and maintain laws and regulations (as well as relevant practices) governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. New Zealand would be able to determine what are acceptable conditions of work for it.

Parties are prohibited from waiving, or otherwise derogating from (or offering to do so), their laws or regulations implementing:

- Article 19.3.1, if to do so would be inconsistent with one of the ILO rights listed in that paragraph; or
- Article 19.3.1 or 19.3.2, if to do so would weaken or reduce adherence to one of the ILO rights listed in Article 19.3.1, or to a condition of work referred to in Article 19.3.2 in a special trade or customs area in the Party's territory.

This prohibition only applies where the waiver or derogation is done in a manner affecting trade or investment between the Parties.

Under Article 19.5, a Party must not fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of the Agreement. However, the Article specifies that each Party retains the right to exercise reasonable enforcement discretion and to make bona fide decisions with regard to the allocation of resources between labour enforcement activities among the labour rights and acceptable conditions of work listed in Article 19.3.1 and Article 19.3.2.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

Each Party is required to discourage (through initiatives it considers appropriate), the import of goods produced in whole or in part by forced or compulsory labour (Article 19.6).

Article 19.7 requires each Party to endeavour to encourage enterprises to adopt voluntarily corporate social responsibility initiatives on labour issues that it endorses or supports.

Article 19.8 obliges each Party to take certain steps regarding public awareness and procedural guarantees, including to promote awareness of its labour laws, and to ensure that persons with a recognised interest under its law in a particular matter have access to impartial and independent tribunals for enforcement of its labour laws. There are also obligations around due process requirements for such proceedings, for there to be a right of review or appeal, and for there to be procedures to effectively enforce final tribunal decisions.

Each Party must consider written submissions from persons of a Party on matters related to the Chapter, and must make its procedures for the receipt and consideration of submissions readily accessible and publicly available (Article 19.9).

Labour Council

The Chapter establishes a Labour Council (Article 19.12), composed of senior governmental representatives, with functions that include to consider matters related to the Chapter and discuss matters of mutual interest, and establish and review priorities to guide decisions by the Parties about labour cooperation and capacity building activities. The Council is also required to review implementation of the Chapter during the fifth year after entry into force of the Agreement and thereafter as agreed between the Parties with a view to ensuring its effective operation. Provision is made for the Council to meet regularly.

The Council is required to provide a means for receiving and considering views from interested persons on matters related to the Chapter. Each Party has to convene a new, or consult an existing, national labour consultative or advisory body, or maintain a similar mechanism, for members of its public to provide views on matters regarding the Chapter (Article 19.13.2).

The Parties are required to, as appropriate, liaise with relevant regional and international organizations, such as the ILO and APEC, on matters related to the Chapter (Article 19.12.9).

Article 19.11 makes provision for a cooperative labour dialogue between Parties on any matter arising under the Chapter in the event that this is requested by a Party. Also, there is provision in Article 19.14 for Labour Consultations. These may be requested at any time by a Party and the consulting Parties are required to make every attempt to arrive at a mutually satisfactory resolution of the matter through such consultations. The Parties may request advice from an independent expert chosen by consensus to assist them and may have recourse to procedures as good offices, conciliation or mediation. If the consulting Parties are unable to resolve the issue, then any consulting Party may request that the Council representatives of the consulting Parties convene to consider the matter. This may also involve advice from experts and recourse to procedures such as

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

good offices, conciliation or mediation. Labour Consultations must be conducted before a Party is able to have recourse to dispute settlement under Chapter 28 (Dispute Settlement).

5.20 Environment

General obligations

Article 20.3 contains several core obligations:

- * Each Party must strive to ensure that its environmental laws and policies provide for and encourage high levels of environmental protection, and must also strive to continue to improve its levels of environmental protection.
- * A Party must not fail to effectively enforce its environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties.
- * A Party may not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties.

Other, more specific obligations are set out below.

Ozone layer

Each Party must take measures to control production and consumption of, and trade in, substances that are controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Article 20.5.1). New Zealand would be deemed in compliance with this obligation if it maintained the *Ozone Layer Protection Act 1996* (or any subsequent measure that provides an equivalent or higher level of environmental protection).

Each Party must make publicly available appropriate information about its programmes and activities related to ozone layer protection (Article 20.5.2).

Parties must cooperate to address matters of mutual interest related to ozone-depleting substances (Article 20.5.3).

Protection of the marine environment from ship pollution

Each Party is required to take measures to prevent pollution of the marine environment from ships where that pollution is regulated by the International Convention for the Prevention of the Pollution from Ships (MARPOL) (Article 20.6.1). New Zealand would be deemed in compliance with this obligation by maintaining the measures in the *Maritime Transport Act* which implement its obligations under MARPOL (or any subsequent measure that provides an equivalent or higher level of environmental protection).

The Parties are required to cooperate to address matters of mutual interest with respect to the pollution of the marine environment from ships (Article 20.6.3).

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

Each Party is required to make publicly available appropriate information about its programmes and activities related to the prevention of pollution of the marine environment from ships (Article 20.6.2).

Biodiversity

Each Party must promote and encourage the conservation and sustainable use of biological diversity, in accordance with its law or policy (Article 20.15).

Invasive alien species

The Committee that is established under the Environment Chapter is required to coordinate with the Committee established under Chapter 7 (Sanitary and Phytosanitary Measures) to identify cooperative opportunities to share information and management experiences on the movement, prevention, detection, control, and eradication of invasive alien species, with a view to enhancing efforts to assess and address the risks and adverse impacts of invasive alien species (Article 20.14).

Marine capture fisheries

Article 20.16 sets out a number of obligations in respect of marine capture fisheries. Each Party must seek to operate a fisheries management system that regulates marine wild capture fishing and that is designed to prevent overfishing and overcapacity, to reduce bycatch of non-target species and juveniles, and to promote the recovery of overfished stocks for all marine fisheries in which its persons conduct fishing activities. Such a management system is required to be based on the best scientific evidence available and on internationally recognized best practices for fisheries management and conservation. Each Party is also required to promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals, through the implementation and effective enforcement of conservation and management measures.

The Article also addresses subsidies, prohibiting Parties from granting or maintaining any of the following subsidies that are specific in accordance with the meaning given to that term in the WTO's *Subsidies and Countervailing Measures (SCM) Agreement*:

- Subsidies for fishing that negatively affect overfished fish stocks.
- Subsidies provided to any fishing vessel while listed by the flag State or a relevant Regional Fisheries Management Organisation or Arrangement for illegal, unreported or unregulated fishing in accordance with the rules and procedures of such organization or arrangement and in conformity with international law.

Subsidy programmes established by a Party before the entry into force of TPP and that negatively affect overfished stocks have to be brought into conformity as soon as possible and no later than three years of the date of entry into force.

Each Party is required to make best efforts to refrain from introducing new, or extending or enhancing existing, subsidies that meet the tests in Articles 1.1 and 2 of the SCM Agreement and that contribute to overfishing or overcapacity.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

Each Party must notify regularly to the other Parties any subsidy that meets the tests in Articles 1.1 and 2 of the SCM Agreement, and that the Party grants or maintains to persons engaged in fishing or fishing related activities. Notifications have to cover subsidies provided within the previous two-year period and include the information required under Article 25.3 of the SCM Agreement. To the extent possible, notifications must have the information listed in Article 20.18.10, including the catch data by species in the fishery for which the subsidy is provided; status of the fish stocks in the fishery for which the subsidy is provided; fleet capacity in the fishery for which the subsidy is provided; conservation and management measures in place in the relevant fish stock; and total imports/exports per species.

Article 20.16 also requires each Party to provide, to the extent possible, information in relation to other fisheries subsidies that it grants or maintains and that are not prohibited under the Article, in particular fuel subsidies.

A Party may request additional information from the notifying Party regarding its notifications. In such a case, the notifying Party must respond to the request as quickly as possible and in a comprehensive manner.

Article 20.18 also addresses illegal, unreported and unregulated (IUU) fishing. The Parties must endeavour to improve cooperation internationally in relation to the importance of concerted international action to address IUU fishing, as reflected in regional and international instruments. In support of efforts to combat IUU fishing practices and to help deter trade in products from species harvested from such practices, each Party is required to:

- * Cooperate with other Parties to identify needs and build capacity.
- * Support monitoring, control, surveillance, compliance and enforcement systems.
- * Implement port State measures.
- * Strive to act consistently with relevant conservation and management measures adopted by Regional Fisheries Management Organizations (RFMOs) of which it is not a member so as not to undermine those measures.
- * Endeavour not to undermine catch or trade documentation schemes operated by RFMOs or Arrangements (RFMAs) or an intergovernmental organisation that has in its scope the management of shared fisheries resources, where the Party is not a Member of those RFMOs or RFMAs.

Conservation and trade

Each Party is required under Article 20.17 to adopt, maintain and implement laws, regulations and any other measures to fulfil its obligations under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES).

In relation to wild fauna and flora, the Parties are required to:

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

- Exchange information and experiences on issues of mutual interest related to combating the illegal take of, and illegal trade in, wild fauna and flora.
- Undertake, as appropriate, joint activities on conservation issues of mutual interest, including through relevant regional and international fora.
- Endeavour to implement, as appropriate, CITES resolutions that aim to protect and conserve species whose survival is threatened by international trade.
- Take appropriate measures to protect and conserve wild fauna and flora that it has identified are at risk within its territory.
- Maintain or strengthen government capacity and institutional frameworks to promote sustainable forest management and wild fauna and flora conservation, and endeavour to enhance public participation and transparency in these frameworks.
- Endeavour to develop and strengthen cooperation and consultation with interested non-governmental entities in order to enhance implementation of measures to combat the illegal take of or illegal trade in wild fauna and flora.

Each Party must take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence, were taken or traded in violation of its law or another applicable law, where the primary purpose of the law is to conserve, protect, or manage wild fauna or flora. In addition, each Party shall endeavour to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.

Environmental goods and services

Under the Environmental Goods and Services provision (Article 20.20), the Parties must endeavour to address any potential barriers to trade that may be identified by a Party, including by working through the Environment Committee and in conjunction with other relevant TPP Committees, as appropriate.

Cooperation frameworks

Article 20.10 on Cooperation Frameworks requires the Parties to cooperate to address matters of joint or common interest among them related to the implementation of the Chapter, where there is mutual benefit from such cooperation. Each Party must designate the authority responsible for cooperation to serve as its national contact point on matters relating to coordination of cooperation activities and must notify the other Parties in writing within 90 days of entry into force of the Agreement of its contact point.

Where possible and appropriate, the Parties are required to seek to complement and utilise their existing cooperation mechanisms and take into account relevant work of regional and international organisations. Each Party is required to promote public participation in the development and implementation, as appropriate, of cooperative activities.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

The Parties are required, through their national contact points for cooperation, to periodically review the implementation and operation of Article 20.10 and report their findings to the Committee that is established under the Chapter. Through the Committee, the Parties may periodically evaluate the necessity of designating an entity to provide administrative and operational support for cooperative activities. If the Parties agree to establish such an entity, they must agree on the funding on the entity, on a voluntary basis to support its operation.

Procedural matters

Each Party is required under Article 20.7 to promote public awareness of its environmental laws, regulations and policies by ensuring that relevant information is available to the public.

Each Party must ensure that interested persons in its territory can request the competent authorities to investigate alleged violations of its environmental laws, and that the competent authorities give due consideration to those requests.

Each Party must ensure that proceedings for the enforcement of its environmental laws are available under its law. These proceedings may be judicial, quasi-judicial, or administrative, and must be fair, equitable, transparent, and comply with due process of law. Any hearings must be open to the public, unless the administration of justice requires otherwise. Persons with a recognised interest under the country's law in a particular matter must have appropriate access to these proceedings.

Each Party is required to provide appropriate sanctions or remedies for violations of its environmental laws and to ensure that, in the establishment of the sanctions or remedies, appropriate account is taken of relevant factors including the nature and gravity of the violation, damage to the environment, and any economic benefit the violator derived from the violation.

Public participation and submissions

Each Party must seek to accommodate requests for information about their implementation of the Chapter, and must use consultative mechanisms (for example, national advisory committees) to seek views on matters related to implementation of the Chapter (Article 20.8).

Further, each Party must provide for the receipt and consideration of written submissions from persons regarding its implementation of the Chapter, and must respond in a timely manner to those submissions (Article 20.9). Each Party has to make its procedures for the receipt and consideration of written submissions readily accessible and publicly available.

Voluntary mechanisms

Under Article 20.11, each Party is required to encourage:

- ◊ The use of flexible and voluntary mechanisms (such as voluntary auditing) to protect its natural resources and environment.
- ◊ The continued development and improvement of criteria used in evaluating environmental performance by its relevant authorities, businesses and business organizations, non-

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

governmental organizations, and other interested persons involved in the development of
such criteria.

Institutional arrangements

Each Party must designate a national contact point in order to facilitate communication between the
Parties in the implementation of the Chapter (Article 20.11.1).

Consultations and dispute resolution

The Chapter establishes a three-step consultation process in Article 20.20 to address any matter that
might affect its operation.

Step 1 - Environmental Consultations: In the first step, a Party (the requesting party) may request
consultations with any other Party (the responding party) by delivering a written request to the
responding Party's contact point. Any other TPP Party that considers it has a significant interest in
the matter (a participating party) may participate in the consultations.

Consultations must begin promptly, unless agreed by the relevant Parties, and the Parties must
make every effort to arrive at a mutually satisfactory resolution to the matter, which may include
appropriate cooperative activities. The consulting Parties may seek advice or assistance from any
person or body they consider appropriate.

Step 2 - Senior Representative Consultations: If the consulting parties fail to resolve a matter in the
first step, a consulting party may request that the matter be considered by Committee
representatives from the consulting parties.

Step 3 - Ministerial Consultations: If the consulting Parties have failed to resolve the matter in the
second step, a consulting Party may refer the matter to the relevant Ministers of the consulting
Parties who shall try to resolve the matter.

Dispute resolution

If the consulting Parties fail to resolve the matter in accordance with the three steps summarised
above, the requesting Party may request either consultations or establishment of a panel under
Chapter 28 (Dispute Settlement). However, for a dispute arising under Article 20.17.2 (Conservation
and Trade) a panel convened under Chapter 28 (Dispute Settlement) must, if appropriate, seek
technical advice or assistance from an entity authorised under CITES to address the particular
matter, and provide the consulting parties with an opportunity to comment on any technical advice
or assistance received. The panel must give due consideration to any interpretive guidance it
receives.

Before a Party initiates dispute settlement for a matter arising under Article 20.3.4 or 3.6 (General
Commitments), it must consider whether it has an environmental law in force that is very similar to
the environmental law that would be the subject of the dispute. If a Party requests consultations on
a matter arising under Article 20.3.4 or 3.6 (General Commitments), and the responding Party
considers that the requesting Party does not maintain an environmental law that is very similar to

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

the environmental law that would be the subject of the dispute, the Parties must discuss the issue during the consultations.

5.21 Cooperation & Capacity Building

This Chapter provides for the Parties to establish and strengthen cooperation and capacity-building activities to implement the Agreement, to enhance each Party's ability to take advantage of the economic opportunities created by the Agreement, and promote and facilitate trade and investment between the Parties.

The Parties are required to work to provide the appropriate financial or in-kind resources for cooperation and capacity building activities carried out under the Chapter, subject to the availability of resources. Also, the different levels of development of the Parties and the comparative capabilities that different Parties possess to achieve the goals of this Chapter must be recognised.

The Chapter establishes a Committee on Cooperation and Capacity Building which is to meet within one year after the Agreement enters into force, and after that as necessary. This Chapter is not subject to the Dispute Settlement mechanism in Chapter 28.

5.22 Competitiveness & Business Facilitation

The Chapter establishes a Competitiveness and Business Facilitation Committee and sets out activities for the Committee to undertake in order to develop and strengthen supply chains. This Chapter is not subject to the Dispute Settlement mechanism in Chapter 28.

5.23 Development

The Development Chapter affirms the Parties' commitment to provide and strengthen an open trade and investment environment that seeks to improve the welfare, reduce poverty, raise living standards and create new employment opportunities in support of development. It establishes a Development Committee, with functions that include:

- Facilitating the exchange of information on matters relating to the Chapter.
- Discussing proposals for future joint development activities and inviting non-governmental entities to participate in those activities, as appropriate.
- Considering the implementation of the Chapter, with a view to enhancing the development benefits of the Agreement.

This Chapter is not subject to the Dispute Settlement mechanism in Chapter 28.

5.24 Small and Medium Enterprises

Under this Chapter the Parties are obliged to establish or maintain a publicly accessible website with information (that must be kept up to date) about the Agreement. The Chapter sets out what

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

information should be provided - in particular, information relevant for SMEs doing business within or trading with the Party.

The Chapter establishes a Committee on SME Issues, which is to meet within one year after the Agreement enters into force, and after that as necessary.

This Chapter is not subject to the Dispute Settlement mechanism in Chapter 28.

5.25 Regulatory Coherence

For each Party, the obligations in the Regulatory Coherence Chapter only apply to those regulatory measures identified by that Party as being *covered regulatory measures*. In identifying what are covered regulatory measures for it, a Party must "aim to achieve significant coverage" (Article 25.3).

Each Party must endeavour to have processes or mechanisms to facilitate effective inter-agency coordination and review of proposed *covered regulatory measures*. A national coordinating body is suggested, along with the types of characteristics that a Party's processes and mechanisms should have (Article 25.4).

The Parties must cooperate to implement the Chapter and maximise its benefits (Article 25.7).

A process is set out in the Chapter under which Parties must notify, at specific intervals, the steps it has taken, or plans to take, to implement the provisions of this Chapter. The Committee may review these notifications, and may ask questions of or seek discussion with the Parties about their notifications (Article 25.9).

This Chapter is not subject to the Dispute Settlement mechanism in Chapter 28.

5.26 Transparency and Anticorruption

5.26.1 Transparency section

Article 26.2 requires Parties to ensure that laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by the Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them. Parties are required, to the extent possible, to publish these kinds of measures in advance of their adoption and to provide interested persons and other Parties with a reasonable opportunity to comment on them. The Article also sets out rules relating to how advance publication of proposed regulations and opportunity for comment on those proposals are to be provided.

The transparency section also imposes procedural requirements with a view to ensuring that Parties administer measures covered by the Agreement in a consistent, impartial, and reasonable manner. Article 26.3 imposes obligations on the Parties with respect to their domestic administrative

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

proceedings applying laws, regulations, procedures and administrative rulings to a particular person, good or service of another Party in specific cases. These obligations are to ensure that, in any such proceeding:

- ◊ Whenever possible, a person of another Party that is directly affected by a proceeding is provided with reasonable notice of when a proceeding is initiated.
- ◊ A person of another Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding and the public interest permit.
- ◊ The procedures are in accordance with its law.

Article 26.4 requires each Party to establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures in order to review final administrative actions regarding matters covered by the Agreement. Each Party must also ensure that, with respect to such tribunals or procedures, the Parties to a proceeding have the right to a reasonable opportunity to support or defend their respective positions; and a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant authority. Subject to appeal or further review as provided for in a Party's law, such decision must be implemented by, and govern the practice of, the office or authority with respect to the administrative action at issue.

Article 26.5 deals with provision of information. If a Party considers that any proposed or actual measure may materially affect the operation of the Agreement or otherwise substantially affect another Party's interests under the Agreement, it has an obligation, to the extent possible, to inform that other Party of the proposed or actual measure. If requested by another Party, a Party must promptly provide information and respond to questions pertaining to any proposed or actual measure that the requesting Party considers may affect the operation of the Agreement.

9.26.2 Anticorruption section

Measures to combat corruption: The central focus of the anticorruption section of Chapter 26 is Article 26.7 (Measures to Combat Corruption). Paragraph 1 requires Parties to adopt or maintain criminal offences with respect to various acts of bribery and corruption, including giving bribes to domestic and foreign public officials; the solicitation or acceptance of bribes by public official; and aiding, abetting, or conspiracy in the commission of the aforementioned offences. Those offences must be subject to sanctions that take into account the gravity of the offence (Article 26.7.2). Countries' laws must provide for the liability of both natural and legal persons (Article 26.7.3).

A Party may not allow a person subject to its jurisdiction to deduct from taxes expenses incurred in connection with the commission of an offence described in Article 26.7.1.

Article 26.7.5 requires Parties to adopt or maintain measures with respect to the maintenance of books and records, financial statement disclosures and accounting and auditing standards. These measures are required as necessary to prohibit specified acts (including establishment of off-the-

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

books accounts and the making of inadequately identified transactions) carried out for the purposes of acts of bribery and corruption.

A provision aimed at promoting whistle blowing laws requires Parties to consider adopting or maintaining measures to protect persons against any unjustified treatment where they report facts concerning bribery and corruption offences to the competent authorities (Article 26.6).

Promoting Integrity Among Public Officials: Article 26.8 requires Parties to endeavour to adopt or maintain a number of measures in order to promote integrity, honesty and responsibility among public officials; and to adopt or maintain measures to strengthen integrity, and to prevent opportunities for corruption, among members of the judiciary in matter affecting trade and investment. The latter obligation is without prejudice to judicial independence.

Application and Enforcement of Anti-corruption Laws: Pursuant to Article 26.9, a Party must not, as an encouragement for trade and investment, through a sustained or recurring course of action or inaction, fail to effectively enforce its laws or other measures adopted or maintained to comply with the obligation in Article 26.7. The text clarifies that each Party retains the right for its law enforcement, prosecutorial and judicial authorities to exercise their discretion with respect to the enforcement of its anticorruption laws; and that each Party retains the right to take legitimate decisions with regard to the allocation of resources.

Participation of Private Sector and Society: Each Party must take appropriate measures, within its means and in accordance with fundamental principles of its legal system, to promote the active participation of individuals and groups outside the public sector, such as enterprises, civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption in matters affecting international trade or investment, and to raise public awareness regarding the existence, causes and gravity of, and the threat posed by, corruption (Article 26.10).

In addition, each Party must endeavour to encourage private enterprises, taking into account their structure and size, to develop and adopt sufficient internal auditing controls to assist in preventing and detecting acts of corruption in matters affecting international trade or investment; and to ensure that their accounts and required financial statements are subject to appropriate auditing and certification procedures.

Each Party must take appropriate measures to ensure that its relevant anti-corruption bodies are known to the public and must provide access to those bodies, if appropriate, for the reporting, including anonymously, of any incident that may be considered to constitute an offence described in Article 26.7.1.

Dispute Settlement: The Dispute Settlement Chapter applies to the Transparency and Anticorruption Chapter, with the exception of Article 26.9. When a dispute is brought, there are some slight differences in procedure from other disputes under the TPP. In particular, Parties engaging in

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

consultation are required to involve officials of their relevant anticorruption authorities in the consultations.

5.26.3 Annex on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices

The obligations in the Annex on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices apply to a Party to the extent that the Party's national health care authorities operate or maintain procedures for listing new pharmaceutical products or medical devices for reimbursement purposes, or setting the amount of such reimbursement, under national health care programmes operated by the national health care authorities. The term "national health care authorities" is defined individually for each Party, and for New Zealand is defined as meaning "the Pharmaceutical Management Agency (PHARMAC), with respect to PHARMAC's role in the listing of a new pharmaceutical⁸⁵ for reimbursement on the *Pharmaceutical Schedule*, in relation to formal and duly formulated applications by suppliers in accordance with the *Guidelines for Funding Applications to PHARMAC*".

The following obligations would therefore apply with respect to New Zealand.

Timing for consideration of proposals: A Party must ensure that ensure that consideration of all formal and duly formulated proposals for listing of pharmaceutical products or medical devices for reimbursement is completed within a specified period of time. If a Party's national healthcare authority is unable to complete consideration of a proposal within a specified period of time, then the Party is required to disclose the reason for the delay to the applicant and provide for another specified period of time for completing consideration of the proposal.

Disclosure of rules etc: A Party must disclose procedural rules, methodologies, principles, and guidelines of general application used to assess proposals for listing of pharmaceutical products or medical devices for reimbursement.

Opportunities for applicants to comment: A Party must afford applicants, and where appropriate, the public, timely opportunities to provide comments at relevant points in the decision-making process.

Information for applicants: A Party must provide applicants with written information sufficient to comprehend the basis for recommendations or determinations regarding the listing of new pharmaceutical products or medical devices for reimbursement by its national healthcare authorities.

Review process: A Party must make available to applicants a review process which may be either independent or internal. An internal review may be conducted by the same expert or group of

⁸⁵ For the purposes of New Zealand, pharmaceutical means a "medicine" as defined in the Medicines Act 1981 as at the date of signature of this Agreement on behalf of New Zealand.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

experts that made the recommendation or determination, provided that such a review process includes, at a minimum, a substantive reconsideration of the application. Important clarifications that limit the scope of the review process have also been agreed.

Information for the public: A Party must provide written information to the public regarding its recommendations or determinations (subject to protection of confidential information).

Each Party must permit a pharmaceutical product manufacturer to disseminate to health professionals and consumers through the manufacturer's website registered in the territory of the Party (and on other websites registered in the Party's territory that are linked to that site), truthful and not misleading information regarding its pharmaceutical products that are approved for marketing in the Party's territory. This obligation only applies to information that is permitted to be disseminated under the Party's laws, regulations, and procedures.

Consultations: Each Party must give sympathetic consideration to, and afford adequate opportunity for, consultation regarding a written request by another Party to consult on any matter related to the Annex. Consultations have to take place within three months of the delivery of the request, except in exceptional circumstances or unless the consulting Parties otherwise agree. Consultations are to involve officials responsible for the oversight of the national healthcare authority or officials from each Party responsible for national healthcare programmes and other appropriate government officials.

This Annex is not subject to the Dispute Settlement mechanism in Chapter 28.

5.27 Administrative and Institutional Provisions

Having established the Trans-Pacific Partnership Commission (Commission), this Chapter sets out those functions of the Commission that are mandatory and those that are non-mandatory. Mandatory functions include to:

- Review the economic relationship and partnership among the Parties within three years of entry into force of the Agreement, and at least every five years thereafter. In doing so, the Commission must ensure that the disciplines contained in the Agreement remain relevant to the trade and investment issues and challenges confronting the Parties.
- Consider any proposal to modify or amend the Agreement.
- Supervise the work of committees and working groups established under the Agreement.

Non-mandatory functions include to:

- Establish, refer matters to, or consider matters raised by, any *ad hoc* or standing committee or working group.
- Consider and adopt any modifications of the tariff schedules, rules of origin, or the lists of entities and covered goods and services in the Government Procurement Chapter.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

- Issue interpretations of the Agreement.
- Seek the advice of non-governmental persons or groups on any matter falling within the Commission's functions.

Article 27.3 requires the Commission (and subsidiary bodies established under the Agreement) to take all decisions by consensus, except as otherwise provided in the Agreement, or as the Parties decide otherwise. Consensus will be deemed to exist where no Party present at any meeting when a decision is taken formally objects to the proposed decision.

The Commission is required to meet within one year of the date of entry into force of the Agreement and thereafter as the Parties may decide, and this may be in person or, if agreed, by technological means (Article 27.4).

The Chapter provides for each Party to designate a contact point or points to facilitate communications (Article 27.5); and, in Article 27.6, requires each Party to designate an office to provide administrative assistance to arbitral tribunals established under Chapter 28 (Dispute Settlement) for proceedings in which it is a disputing Party.

5.28 Dispute Settlement

The first step in bringing a state-to-state dispute under TPP is to request formal consultations as provided for in Article 28.5. If the disputing Parties are unable to resolve the matter through those consultations, the Party that requested consultations may request the establishment of a panel to make findings and determinations on the issue. The disputing Parties may also request that the panel make specific recommendations regarding resolution of the dispute (Article 28.8).

At any time during the dispute settlement process, the disputing Parties may agree to utilise an alternative method of dispute resolution such as good offices, conciliation or mediation to try and find a solution to their dispute (Article 28.6). The disputing Parties may agree to suspend or terminate the dispute settlement procedures as a result of using such alternative methods. Alternatively, they may operate alternative methods of dispute resolution in parallel with the procedures provided for in the Chapter. The availability of alternative methods of dispute settlement provides the broadest range of possibilities for resolving a dispute.

In order to ensure fairness and independence of the panel, each of the disputing Parties has the opportunity to appoint one panellist, with the third panellist (the chair) chosen by agreement of the Parties where possible. The chair cannot be a national of the disputing Parties. If the Parties cannot agree on appointment of the chair, there are a series of backup options in place to ensure that no Party can block composition of the panel. These include that the two panellists already appointed have an opportunity to appoint the chair, and that if they cannot agree, then selection can be made from the Roster (a list of highly qualified individuals of non-Parties whom all the TPP Parties will agree on in advance) (Article 28.9).

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

There are provisions in the Chapter that set out qualification and independence requirement for all panellists (Article 28.10). In addition, where disputes arise in certain areas, there are additional requirements that panellists have specific expertise in the area in question (Financial Services, Labour, Environment, Anticorruption) (Article 28.9).

When a panel makes findings and determinations that a measure is inconsistent with a Party's obligations under the Agreement, that a Party has otherwise failed to carry out its obligations under the Agreement, or a measure is causing nullification or impairment, the responding Party is required to, whenever possible, eliminate the non-conformity or nullification or impairment. The responding Party must do so within a reasonable period of time if it is not practicable for it to comply immediately (Article 28.19.2). The disputing Parties must endeavour to agree on a reasonable period of time, but if they are unable to do so, the matter may be referred to the panel chair to determine a reasonable period through arbitration (Article 28.18.4).

If there is disagreement as to whether the relevant Party has complied with the findings and determinations within a reasonable period of time, then the complaining Party may request negotiations with the responding Party to develop mutually acceptable compensation. If the disputing Parties cannot agree on such compensation, then steps are set out that allow a complaining Party to suspend benefits of equivalent effect (Article 28.19). If the responding Party is unable to bring its measures into compliance, it may, as an alternative to accepting retaliation, give notice that it intends to pay a monetary assessment. If the disputing Parties cannot agree on the amount of the assessment, then it will be set at a level, in US dollars, equal to 50 percent of the level of the benefits the panel has determined to be of equivalent effect or that the complaining Party has proposed to suspend. A monetary assessment may only be paid in lieu of accepting suspension of benefits for a maximum of twelve months.

There is provision for the panel to be reconvened if the responding Party considers that the level of benefits that the complaining Party is proposing to suspend is manifestly excessive, or if it considers that it has eliminated the non-conformity or nullification or impairment (Article 28.19.5).

5.29 Exceptions

The Exceptions chapter provides exceptions that allow TPP Parties to justify actions that would otherwise violate the obligations in the Agreement.

General Exceptions: Article 29.1 applies the General Exceptions that are found in Article XX of GATT and Article XIV of GATS to those chapters in the TPP for which these exceptions are relevant. (Note that in the TPP this does not include the Investment Chapter, reflecting a different approach than New Zealand's existing trade agreements.) The effect of such incorporation is that provided such measures are not used for trade protectionist purposes, the TPP will not prevent any Party from taking measures (including environmental measures) necessary to protect human, animal or plant life or health, or public morals. The same applies with respect to measures to prevent deceptive

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

practices, protect national works, items or specific sites of historical or archaeological value, or to conserve living and non-living exhaustible natural resources (Article 29.1).

Security Exception: The security exception in Article 29.2 provides that a TPP Party cannot be required to provide or allow access to any information where it determines that to do so would be contrary to its essential security interests. In addition, the exception ensures that a TPP Party may apply any measure that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace and security, or the protection of its own essential security interests.

Temporary Safeguard Measures

Article 29.3 allows a Party to have restrictive measures with regard to:

- Transfers or payments for current account transactions, in the event of serious balance of payments and external financial difficulties (or the threat of such);
- Payments or transfers relating to the movements of capital;
 - In the event of serious balance of payments and external financial difficulties (or the threat of such); or
 - If, in exceptional circumstances, such payments or transfers cause or threaten to cause serious difficulties for macroeconomic management.

Such restrictive measures cannot be applied to payments or transfers relating to foreign direct investment.

The Article sets out a number of conditions that a Party must comply with in adopting or maintaining the types of restrictive measures set out above. Specifically, any such measure must:

- Not be discriminatory.
- Be consistent with the Articles of Agreement of the International Monetary Fund (IMF).
- Avoid unnecessary damage to other Parties' commercial, economic and financial interests.
- Not exceed what is necessary to deal with the circumstances.
- Not be inconsistent with the expropriation obligation in Chapter II (Investment).
- In the case of restrictions on capital outflows, not interfere with an investor's ability to earn a market rate of return on any restricted assets in the Party's territory.
- Not be used to avoid necessary macroeconomic adjustment.
- Be temporary and be phased out progressively as the situation improves – in practice this means that a measure cannot be in place for more than eighteen months, except in exceptional circumstances, and absent objections from more than half of the Parties.

A Party putting in place a restrictive measure as set out above must endeavour to provide that the measure is price-based. If the measure is not price-based then the Party must explain the rationale for using quantitative restrictions.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

Article 29.3 also incorporates Article XII and the *Understanding on the Balance of Payments* provisions of the GATT 1994.

Finally, a number of requirements are imposed on Parties with respect to notification and publication of any restrictive measures permitted under Article 29.3.

Taxation exception

The taxation exception in Article 29.4 works on the premise that nothing in the Agreement applies to taxation measures unless it is stated explicitly in Article 29.4 that it will apply.

Obligations that apply to direct taxes

The following obligations apply to *direct taxes* (referred to in the exception as taxation measures on income, capital gains, taxable capital of corporations, or the value of an investment or property):

- * Article 10.3 (National Treatment in the Cross-Border Trade in Services Chapter).
- * Article 11.6.1 (the Cross-Border Trade obligation in the Financial Services Chapter).
- * Article 14.4 (the Non-Discrimination obligation in the Electronic Commerce Chapter).

However, these obligations only apply if the taxation measure in question relates to the purchase or consumption of a particular service and, in the case of electronic commerce, to the purchase or consumption of a particular digital product.

Obligations that apply to indirect taxes

The following obligations apply to *indirect taxes* (referred to in the exception as taxation measures other than direct taxes, or taxes on estates, inheritances, gifts or generation-skipping transfers):

- * Articles 9.4, 10.3, and 11.3 (National Treatment in the Investment, Cross-Border Trade in Services, and Financial Services Chapters).
- * Articles 9.5, 10.4, and 11.4 (Most-Favoured Nation in the Investment, Cross-Border Trade in Services, and Financial Services Chapters).

There are a number of exceptions that apply to the obligations set out above. These include:

- * A grandfathering provision for any non-conforming taxation measure in place at the date of entry into force of TPP (or the continuation or prompt renewal of such a measure), or an amendment to such a non-conforming provision to the extent that the amendment does not decrease the measure's conformity with the relevant obligation; and
- * The adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes.

Obligations that apply to all taxes

The following obligations apply in respect of all taxation measures:

- * Article 2.3 (the National Treatment obligation in the Goods Chapter).
- * Article 2.16 (the Export Duties prohibition in the Goods Chapter).

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

- Article 9.9 (the Performance Requirements obligation in the Investment Chapter).
- Article 9.12 (the Expropriation Obligation in the Investment Chapter).

Tax conventions (aka Double Tax Agreements)

If there is a provision in a tax convention that conflicts with the TPP, the provision in the tax convention will prevail. If there is an issue as to whether there is an inconsistency, then the procedure in Article 29.4.4 must be followed which requires the Parties' respective taxation authorities to consult and make a determination as to the existence and extent of the inconsistency.

Tobacco

Article 29.5 allows any Party to elect to deny the benefits of the investor state dispute settlement section of the Investment Chapter with respect to claims challenging a tobacco control measure. If a Party elects to do so, then no claim can be submitted to arbitration under the investor state dispute settlement mechanism (or if it has been submitted, it has to be dismissed). A Party can make such an election at any time prior to a claim being submitted, or during proceedings if a claim is brought before a claim submitted.

A tobacco control measure is defined as being "a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labelling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well as enforcement measures such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure".

Treaty of Waitangi

The effect of the Treaty of Waitangi exception is that, provided measures are not used for trade protectionist purposes, TPP will not prevent New Zealand from taking measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by TPP, including in fulfilment of its obligations under the Treaty of Waitangi. The text also specifies that interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of the Agreement (Article 29.6).

Disclosure of information

Article 29.7 ensures that nothing in TPP requires a country to provide or allow access to information where to do so would be contrary to its domestic law, or would impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

5.30 Final Provisions

The Final Provisions Chapter provides for the following aspects of the Agreement. It:

- Clarifies that annexes, appendices, and footnotes constitute integral parts of the Agreement.

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

- Provides for the Parties to consult on whether to amend TPP if a provision of the WTO Agreement that has been incorporated into the TPP is itself amended.
- Makes provision for amendment of TPP, as well as for withdrawal by Parties (requires six months' notice).
- Provides that the English, Spanish, and French texts of the Agreement are all authentic, but that if there is a divergence between them, the English text will prevail.
- Establishes New Zealand as the Depository for the Agreement and sets out the functions of that role.

In addition, this Chapter sets out the procedures for Entry into Force of the Agreement.

There are various ways in which TPP may enter into force, provided for in Article 30.5. The first option is that if, within two years of the date of signature, all countries that signed the Agreement (the 'signatories') have notified the Depository that they have completed their applicable legal procedures (in other words, that they are 'ready') then the Agreement will enter into force 60 days after notification by all countries. However, if all signatories have not notified their readiness within two years, then the second option is that the Agreement will enter into force 26 months after signature if at least six of the signatories have notified the Depository that they are ready, provided that those six signatories account for at least 85 percent of the combined GDP of the original signatories in 2013. The third option will apply if the Agreement has not entered into force under either the first or second options. In those circumstances, it will enter into force 60 days after the date on which at least six of the original signatories have notified the Depository that they are ready. Again, these must be six signatories that together account for at least 85 percent of the combined GDP of the original signatories in 2013.

Once the Agreement has entered into force, there is a procedure for later entry into force for a signatory that was not ready earlier and for which the Agreement has therefore not already entered into force. Such a signatory is required to notify the Parties that it is ready to become a Party to the Agreement. The Commission then has 30 days to determine whether the Agreement will enter into force for that signatory and, if the Commission decides in the affirmative, then the Agreement will enter into force for them 30 days later.

5.31 Side Instruments to TPP

All Parties have also agreed a number of separate letters or other instruments alongside TPP. These are separate to TPP but some have 'agreement' status. A very limited number can be enforced through TPP's dispute settlement mechanism. For New Zealand, these instruments cover the following subject areas:

- Letters which confirm the relationship between TPP and existing New Zealand FTAs: with Australia (also see below), Brunei, Chile, Malaysia, Singapore and Viet Nam.
- An agreement with Australia covering: relationship between TPP and CER and the Australia-ASEAN-New Zealand FTA; agreement that TPP's investor-state dispute settlement and trade

Section 5: Legal obligations which would be imposed on New Zealand by the treaty action,
the position in respect of reservations to the treaty, and an outline of any dispute
settlement mechanisms

remedies provisions will not apply between New Zealand and Australia; and agreement limiting the circumstances in which New Zealand can subsidise an SOE for air services in the Trans-Tasman market.

- ◊ Agreements with Canada, Mexico and the US – at their request – to protect certain ‘distinctive products’⁸⁶ to the extent already provided for under the Australia New Zealand Food Standards Code.
- ◊ An understanding with Japan on the interaction between the copyright term provisions of TPP and the concessions it agreed under the World War II peace treaty (Article 15, Treaty of Peace 1951).
- ◊ Understandings, agreed at their request and appropriately high-level in nature, with Malaysia and Peru on biodiversity and traditional knowledge.
- ◊ An agreement that provides Viet Nam with some flexibility in how it implements a TPP obligation which requires Parties to allow the cross-border provision of electronic payment services (a provision of the financial services chapter). The content reflects flexibility Viet Nam has negotiated with large exporters of financial services exporters (e.g. the US, Australia, Japan). Conditions set out in this letter can be enforced through TPP’s dispute settlement provisions.
- ◊ An agreement with Chile that provides greater flexibility in the rules of origin for textiles and apparel trade between New Zealand and Chile.

⁸⁶ Canada: Canadian Whisky, Canadian Rye Whisky; Mexico: Mezcal, Tequila, Bacanora, Charanda and Sotol; US: Bourbon Whiskey, and Tennessee Whiskey.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

Most of the obligations in TPP would be met by New Zealand's existing domestic legal and policy regime. In summary, this is because New Zealand already has an open economy that places few barriers in the way of trade and investment. Additionally, New Zealand's independent, fair and effective judicial system and efficient administrative system together provide the kinds of procedural guarantees for foreign businesses that are required under some of the chapters in TPP. This is evidenced by the fact that New Zealand consistently ranks as one of the easiest countries in the world to do business in.

However, a number of legislative and regulatory amendments would be required to align New Zealand's domestic legal regime with certain obligations under TPP, and thereby enable New Zealand to ratify the Agreement.

6.1 Changes Required

The following changes have been identified as being required (unless otherwise stated, all legislative changes would be enacted by passage of a Trans-Pacific Partnership Agreement Bill):

6.1.1 National Treatment and Market Access for Goods Chapter

New Zealand would implement an export license allocation system for the country specific quota access received for dairy products in TPP for the US market. Depending on the mechanism decided, this may require an amendment to the Dairy Industry Restructuring Act 2001 (including Schedules 5A and 5B) and the Dairy Industry Restructuring (Transfer of Export Licences) Regulations 2007.

An amendment to the Tariff Act 1988 to enable Orders in Council to be made to: identify the TPP countries for the purposes of the Tariff Act; and amend the 'Tariff' (as defined in that Act) to enable the application of the preferential tariff rates agreed in TPP. Those Orders in Council would then be made. This is the same process used for New Zealand's previous plurilateral FTAs.

6.1.2 Rules of Origin and Origin Procedures Chapter

- An amendment to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules for goods imported from TPP countries. These amendments would include the rules of origin for textile and apparel goods under the Textile and Apparel Goods Chapter, along with a variation in treatment for textile and apparel goods from Chile, provided for in a side letter to the Agreement between New Zealand and Chile.

6.1.3 Textile and Apparel Goods Chapter

- As noted above, an amendment to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules for goods imported from TPP countries will include textile and apparel goods.
- An amendment to the Tariff Act 1988 to provide for the emergency action (safeguards) mechanisms and associated timeframes under the Textile and Apparel Goods Chapter.

6.1.4 Customs Administration and Trade Facilitation Chapter

- An amendment to the Customs and Excise Act 1996 to provide for the provision of advance rulings on valuation under the Customs Administration and Trade Facilitation Chapter.

6.1.5 Trade Remedies Chapter

- An amendment to the Tariff Act 1988 to provide for the transitional safeguard mechanism under the Trade Remedies Chapter.

6.1.6 Technical Barriers to Trade Chapter

An amendment to the Hazardous Substances and New Organisms Act 1996 to provide that the 30 day time period for receipt of submissions, referred to in section 59(1)(c) of that Act, may be extended by the 'Authority' (as referred to in section 59) as and when necessary. This amendment is necessary to give the 'Authority' the flexibility necessary to comply with the requirements of the TBT Chapter of TPP which requires Parties to provide a 60 day comment period on a proposed technical regulation that has been notified to the WTO TBT Committee.

- The introduction of a standard requiring that exports designated as 'ice wine' be made from grapes naturally frozen on the vine (as opposed to wine made from grapes frozen using modern technology), as provided by Annex 8-A (Wine and Distilled Spirits) of TPP. This is an export standard only and the footnote in the Annex gives New Zealand three years from entry into force of TPP to comply with the standard. Currently the standard is expected to be implemented through changes either to regulations under the Wine Act 2003, or to the Wine Act itself.

6.1.7 Investment Chapter

- Amendments to the Overseas Investment screening regime to increase, for non-government investors from a TPP Party, the threshold above which approval must be obtained to invest in

Section 6: Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

“significant business assets” in New Zealand from NZ\$100 million to NZ\$200 million, as provided for by Annex I (Non-Conforming Measures, Schedule of New Zealand).

- This change will engage MFN commitments under certain existing agreements (including China, Hong Kong, Chinese Taipei and Korea) that would also be reflected in the Overseas Investment screening regime.

6.1.8 Intellectual Property Chapter

- Amendments to the Plant Variety Rights Act 1987 to enable New Zealand to comply with its obligation under Article 18.7.2 and Annex 18-A, within three years of entry into force of TPP, to either:

- Accede to the most recent 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 91); or
- Under a New Zealand specific approach, implement a plant variety rights system that gives effect to UPOV 91.

When implementing this obligation, New Zealand would be able to adopt any measure that it deemed necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi (and this is not subject to the dispute settlement provisions in TPP). The amendments to the Plant Variety Rights Act 1987 would be enacted by passage of implementing legislation after New Zealand brings TPP into force (i.e. separate legislation to the Trans-Pacific Partnership Agreement Bill)

- Amendments to the Copyright Act 1994 to provide for:

- New rights for performers (such as musicians) to comply with Section H of the Intellectual Property Chapter and the World Intellectual Property Organization Performances and Phonograms Treaty (New Zealand would be required to accede to that treaty under Article 18.7.2). This would give performers new economic and moral rights in their performances, similar to those of other copyright owners, including the right to authorise any copying of the sound recording of their performance, the selling of the sound recordings, the communication of their performance to the public, as well as the right to be identified as the performer and to object to derogatory treatment of their performances and sound recordings of their performances.
- Extension of the copyright term from 50 to 70 years as referred to in Article 18.63 and Article 18.83(4)(d)⁸⁷. The extension applies to new works created in the future, and existing works that are still within their current 50 year term of protection, but not existing works for which the 50 year term of protection has already expired (i.e. works already in the public domain).

⁸⁷ Annex 18.83(4)(d) would enable New Zealand to transition to a 60 year term before moving to a 70 year term within eight years after entry into force.

Section 6: Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

- Additional protections for technological protection measures (TPMs, digital 'locks' that protect copyright works) as referred to in Article 18.68, including protection for technological protection measures used in relation to performances. The main change would be to provide new civil and criminal remedies against people circumventing TPMs. During implementation TPP Parties are able to determine exceptions to ensure people can circumvent TPMs for legitimate purposes, such as those that do not infringe copyright.
- Additional protection for rights management information (referred to as copyright management information under the Act) as referred to in Article 18.62. This would require expanding the definition of copyright management information to include any numbers or codes that represented ownership information or licensing terms and conditions. It would also require amendment of prohibitions on commercial dealing in works subject to copyright management information interference to include communicating such works to the public.
- Border protection measures against the export of suspected pirated copyright works and to provide the New Zealand Customs Service with ex officio powers, to allow it to act on its own initiative to temporarily detain suspected pirated copyright works without having first received a notice from copyright owners under Article 18.76.5.
- Extending the protection of encrypted program-carrying satellite and cable signals as required by Article 18.79, including providing criminal offences for manufacturing or trafficking devices or systems knowing they are intended to be used to decode such signals and for knowingly assisting a person to fraudulently receive such signals.

Amendments to the Trade Marks Act 2002 to provide for:

- Authority of Courts to award additional damages for trade mark infringement referred to in Article 18.74.7. This would align damages provisions for infringement of registered trade marks with those for copyright infringement.
- Requiring the Courts, in trade mark infringement cases, to order the destruction of counterfeit trade mark goods, except in exceptional circumstances.
- Border protection measures against the export of suspected trade mark infringing goods and to provide the New Zealand Customs Service with ex officio powers to allow it to act on its own initiative to temporarily detain suspected infringing goods without first having received a notice from a trade mark owner under Article 18.76.5.

Amendments to the Patents Act 2013 to provide for:

- The twelve month 'grace period' referred to in Article 18.38. This would mean that if inventors make or consent to public disclosures of their invention, that disclosure would not result in their patent application for that invention being declined provided the application is filed within twelve months of the disclosure. Under current New Zealand law, such a disclosure would result in the patent application being declined (on the grounds the invention is not novel).

Section 6: Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

- Patent term extension referred to in Articles 18.46 and 18.48. New Zealand would be required to extend the term of a patent to compensate if there were unreasonable delays (as prescribed in TPP) in the Intellectual Property Office of New Zealand (IPONZ) granting the patent. Similarly, New Zealand would need to extend the term of a patented pharmaceutical product to compensate if there were an unreasonable curtailment of the term as a result of Medsafe's marketing approval process for pharmaceutical products. These obligations would only apply to patent applications made after entry into force of TPP.
- Amendments to the Agricultural Compounds and Veterinary Medicines Act 1997 to extend current data protection from five to ten years, for data provided in support of an application for marketing approval for a new agricultural chemical product, as required by Article 18.47.

(Note that in the following areas no change would be required to legislation or regulations:

- The TPP outcome on data protection for pharmaceuticals (including biological pharmaceuticals) can be met within New Zealand's current policy settings and practice. Article 18.52 provides two avenues for a TPP Party to meet the obligation to provide "effective market protection" for biologic pharmaceuticals. One, a government could provide at least eight years data protection. Two, a government could provide at least five years of data protection, together with other measures, to provide effective market protection (these other measures could include the patent protection period available to biologics and the time associated with completing other regulatory requirements). New Zealand would implement TPP through this second approach. New Zealand already provides five years data protection. This, together with measures like patent protection for biologics and the processing time for Medsafe's regulatory approval process for biosimilars, as well as other market circumstances, provide effective market protection for biologic pharmaceuticals in New Zealand.

New Zealand would be required to provide a 'patent linkage' system that notifies the holder of a pharmaceutical patent previously approved by Medsafe, that a generic version of that patented product has been submitted to Medsafe for regulatory approval, as provided by Article 18.51. Implementing this obligation would not require any change to current law or practice. The obligation can be met by Medsafe's existing practice of publishing the details of all new generic applications (including the applicant and active ingredient) on its website soon after receipt.)

6.1.9 Labour Chapter

- New Zealand would promote initiatives, focussed on the provision of information to importers, in order to discourage the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour, as provided by Article 19.6 of the Labour Chapter. Any initiatives would be likely to be administrative or procedural in nature.

6.1.10 Environment Chapter

- New Zealand would provide information, possibly in the form of a gazetted notice, to importers in order to deter the trade of wild fauna and flora taken or traded in violation of New Zealand's law or "another applicable law" (as defined by the Agreement), as provided by Article 20.17.5 of the Environment Chapter.

6.1.11 Transparency and Anti-corruption Chapter

- New Zealand may be required to take certain steps in order to fully comply with the obligations in the Transparency and Anti-corruption Chapter to promptly publish, in a single website or official journal of national circulation, regulations of general application concerning any matter covered by the Agreement and, where appropriate, include with the publication an explanation of the purpose of and rationale for the regulations. Existing mechanisms already provide for the prompt publication of regulations. Implementation will therefore likely be limited to extending existing practices (with changes where necessary to the statutory publication requirements contained in the Legislation Act 2012) to ensure that all covered regulations are published and, where appropriate, accompanied by an explanation of their purpose and rationale.
- The Organised Crime and Anti-corruption Legislation Bill is currently passing through the legislative process. The Bill contains several amendments that will enable New Zealand to ratify the United Nations Convention against Corruption (UNCAC). These amendments will introduce new offences to strengthen New Zealand's anti-corruption framework, increase the penalties for private sector bribery and corruption, and clarify that no bribes are tax deductible. Passage of the Bill and subsequent ratification of UNCAC will take place irrespective of TPP, but will have the effect of ensuring New Zealand complies with the obligation contained in the Transparency and Anti-corruption Chapter of TPP to ratify UNCAC.

6.1.12 Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices Annex (annex to Transparency and Anti-corruption Chapter)

- An administrative change to PHARMAC's practice and procedure to introduce a "specified period of time" within which funding applications must be considered as provided by the Transparency Annex of TPP. PHARMAC would be able to determine this timeframe, and would have flexibility to extend the period so long as it provided a reason for doing so to the applicant.
- An administrative change to PHARMAC's practice and procedure to establish a review mechanism as provided by the Transparency Annex of TPP. The mechanism may be independent (from the decision-maker) or internal (run by the decision-maker), with the Government intending to choose the latter option. The review process does not need to change a decision, can be limited in scope (the reviewer does not need to consider assessments related to other proposals for funding), and can be implemented in a cost-

Section 6: Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

efficient way (e.g. an amendment could be made to the Public Health and Disability Act 2000 allowing PHARMAC to recover its costs in relation to such reviews).

6.2 Trans-Pacific Partnership Agreement Bill

The Ministry of Foreign Affairs and Trade (MFAT) would seek Cabinet approval to include the Trans-Pacific Partnership Agreement Bill in the 2016 and if necessary the 2017 legislative programme. Cabinet had previously agreed that the Trans-Pacific Partnership Agreement Bill be included in the 2015 legislative programme as a Category 5 Bill (to be referred to a Select Committee in 2015), but TPP negotiations concluded towards the end of that period in October 2015.

The Trans-Pacific Partnership Agreement Bill would be drafted in compliance with the Cabinet Manual and go through normal Parliamentary procedures before it is passed, including debate in Parliament, Select Committee scrutiny, public submissions, and a series of votes by Parliament. Any changes to, or new, regulations would also be made in compliance with the Cabinet Manual. All legislative instruments will be printed, published, and notified in the New Zealand Gazette.

The Trans-Pacific Partnership Agreement Bill and the regulatory changes outlined above would be expected to be passed within two years of signature of TPP to allow entry into force of TPP. Any changes to New Zealand's domestic legal regime to implement its obligations in relation to UPOV 91 (Annex to Article 18.7.2) would be implemented within three years of TPP entering into force for New Zealand.

7 Economic, social, cultural and environmental costs and effects of the treaty action

This section of the NIA assesses the overall costs and effects of entering TPP for New Zealand. It draws on the advantages and disadvantages outlined in Section 4 above, costs identified in Section 8 below, as well as economic modelling of the impact of TPP.

7.1 Economic effects

7.1.1 Introduction, economic effects of TPP

The overall impact of TPP on the New Zealand economy will be the result of a complicated interaction of the different aspects of the Agreement (as outlined in Section 4 of this NIA). Section 7.1 of this NIA finds that the overall economic costs and effects of joining TPP are as follows:

- Economic modelling commissioned by the New Zealand Government estimates that once fully in effect, TPP would result in New Zealand's GDP being about one percent larger than if TPP had not existed, adding NZ\$2.7 billion to New Zealand's GDP (in 2007 dollars) by 2030.

TPP would also carry some costs for New Zealand, estimated at up to NZ\$79 million each year. This cost includes two components: fiscal costs (e.g. foregone tariff revenue for the Government, and costs associated with the implementation of TPP) estimated at up to NZ\$24 million (outlined below in Section 8), and the wider net economic effect of extending copyright period conservatively estimated at an average of NZ\$55 million a year (outlined below in Section 7.1.4).

From the first year of entry into force, TPP would almost certainly be of net benefit to New Zealand⁸⁸. This net benefit would grow substantially as the benefits from TPP come on line. Total benefits after three years are predicted to be ten times larger than costs, with the gap continuing to widen as the economic benefits of greater export opportunities were made available to New Zealand businesses.

⁸⁸ While not appropriate for a direct comparison, the costs listed here would be less than for example the NZ\$137 million of tariffs that would be eliminated from New Zealand goods exports at TPP's entry into force (in addition to which New Zealand would see improved market access from removal of NTMs in goods, services and investment).

Table 7.1: Summary of Benefits and Costs

Area	Annual Net Cost / Benefit (NZ\$)	Description	Reference
Reductions in tariffs and quota barriers on goods trade. (Economic benefit.)	\$624 million	Additional GDP for the New Zealand economy by 2030 (CGE modelling). Around half of tariff elimination for New Zealand exports is from entry into force.	Section 7.1.3
Reductions in non-tariff measures (NTMs) on goods trade. (Economic benefit.)	\$1.46 billion	Additional GDP for the New Zealand economy by 2030 (CGE modelling).	Section 7.1.3
Improved trade facilitation measures. (Economic benefit.)	\$374 million	Additional GDP for the New Zealand economy by 2030 (CGE modelling).	Section 7.1.3
Reductions in barriers on services trade. (Economic benefit.)	\$250 million	Additional GDP for the New Zealand economy by 2030 (CGE modelling).	Section 7.1.3
Copyright term extension. (Economic cost.)	-\$55 million	Net cost over long term, based on economic modelling. Actual cost will increase gradually over first twenty years.	Section 7.1.4
Foregone tariff revenue. (Fiscal cost.)	-\$20 million	This maximum is reached after seven years.	Section 8.2
TPP Institutional arrangements and outreach activities. (Fiscal costs.)	-\$1 million	Participation in on-going TPP committees etc. and public engagement.	Sections 8.3.1 and 8.3.3
Administrative costs. (Largely fiscal cost.)	-\$3.2 million	Costs for implementing certain TPP obligations (primarily, the fiscal cost in relation to new administrative procedures PHARMAC would implement, and impact of any extensions to pharmaceutical patents). Note also one-off costs to PHARMAC of NZ\$4.5 million, and Customs of NZ\$0.4 million.	Section 8.3.2

7.1.2 Background: General impact of trade on economic performance

Trade makes a significant contribution to New Zealand's economic performance. Exports of goods and services account for around 29 percent of New Zealand's GDP, and imports for around 30 percent. Exporting allows New Zealand businesses to access larger markets, benefit from economies of scale, and to specialise in areas they have an advantage in. Connections to international markets, including importing goods and services, also allow New Zealand to access resources, knowledge and ideas that can boost our productivity and stimulate innovation.

Extensive economic research has demonstrated that trade and growth are positively related. The long-term evidence from a wide range of OECD countries suggests that a 10% increase in trade openness – the share of exports plus imports to GDP - was associated with a 4% increase in output

per working-age person⁸⁹. In New Zealand's case, this is particularly true – as a smaller economy, trade openness allows a focus on areas of comparative advantage, encouraging for example greater participation in global value chains.

Improved market access for goods, services and investment under an FTA, such as the lowering of tariffs and non-tariff measures and removal of barriers to services exports and investment, can enable existing New Zealand exporters to achieve net increases in the value of their exports. Lower costs and new opportunities can also result in new businesses entering export markets. It would be extremely unusual for these increases not to translate directly into higher GDP, job growth and income. Moreover, the opportunity for local companies to increase market size through greater exports can increase productivity and efficiency through economies of scale. This may be achieved, for example, by the introduction of new processing technologies to service the larger market. These effects – particularly for trade in goods following the removal of tariff and non-tariff measures – are often described as “static gains” or “first-order effects”.

A second source of economic benefit from FTAs is “dynamic productivity gains” or “second-order effects”. These effects are harder to quantify. They accumulate over time and may be attributable to the downstream effects of trade agreements, rather than the immediate impacts driven by tariff removal and improvements in market access alone. Trade and investment may be stimulated through improvements in the regulatory framework brought about by the FTAs, which increase transparency, fairness and predictability for businesses. As a result of the facilitation of increased trade and investment flows, companies are more exposed to competition, innovation, international benchmarking and develop stronger links with international business partners. Such exposure helps drive production and maintain New Zealand companies at the leading-edge in terms of best-practice across a range of issues (innovation, technology, knowledge, research and product/service development, etc). Spillovers from this process into the domestic economy can include the generation of ongoing productivity improvements (dynamic productivity gains) across the wider economy.

In the short term, it is possible for the sudden removal of import barriers – such as tariffs – to lead to adjustment costs as resources are diverted from that particular sector to other areas of the economy. This can be accentuated in sectors where a country has maintained particularly high barriers, although there are ways to minimise sudden changes in an FTA (e.g. through phase-in periods). These effects tend to be minimal for New Zealand, however, given our already largely open economy. On the whole, domestic liberalisation of tariffs and other trade and investment barriers leads to economic gains – for example as lower domestic prices benefit consumers and producers. An increase in openness to trade helps spur productivity increases and growth within a country through more efficient allocation of resources, the stimulation of innovation and the transfer of knowledge and technology between countries.

⁸⁹ OECD. 2003. *The Sources of Growth in OECD Countries*, Paris.

7.1.3 Estimated gains from trade and investment

The overall impact of TPP on the New Zealand economy would be the result of an interaction of the different aspects of the Agreement (as outlined in Section 4 of this NIA). Economists seek to capture the effects of changing trade barriers on GDP, trade flows, national welfare and other variables with sophisticated Computable General Equilibrium (CGE) models. CGE models link different sectors in different countries together using, in this case, the Global Analysis Trade Project (GTAP) trade data and input output tables. CGE modelling estimates changes to variables within the TPP group of countries, and for almost all countries outside of the TPP. CGE models rely on assumptions and data limitations, and hence are better suited to indicating the size and direction of effects rather than providing precise estimates. We are confident that the CGE modelling reported on here is of the highest standard possible. This modelling does not, however, capture the full potential economic impact of TPP in New Zealand – for example, in relation to the Intellectual Property Chapter. These further effects are considered separately below.

CGE modelling can potentially underestimate change in trade following an FTA. For New Zealand's FTA with China, GTAP modelling predicted that after twenty years New Zealand's exports to China would be 20 to 39 percent greater than they would have been without the FTA. In the event, New Zealand's exports had nearly quadrupled by 2015, after just seven years, with the FTA coinciding with China's dramatic economic rise.

The Ministry of Foreign Affairs and Trade (MFAT) commissioned a comprehensive study into the impact of TPP, focussed on New Zealand. In this study, Strutt et al⁹⁰ looked at the impact of TPP on trade in goods and services. The study estimated how New Zealand's economy would evolve under TPP compared to how it would grow in a world without TPP (the "baseline"). Based on the model by Strutt et al, the New Zealand Government assesses that the overall impact of TPP on New Zealand's economy, once all trade liberalising measures were assessed to have come into place by 2030, would be an increase of about one percent to New Zealand's GDP (corresponding to at least an additional NZ\$2.7 billion of GDP in 2007 dollars)⁹¹.

These predicted gains to New Zealand's GDP compare the impact of TPP against the scenario where there is no TPP. In reality, TPP will almost certainly enter into force regardless of whether New Zealand joins, so it can be more appropriate to compare the difference between TPP with and TPP without New Zealand.

New Zealand exporters have direct experience of this kind of competitive displacement caused by being on the outside of preferential access enjoyed by competitors. For example:

⁹⁰ Anna Strutt, Peter Minor and Allan Rae, "A Dynamic Computable General Equilibrium (CGE) Analysis of the Trans-Pacific Partnership Agreement: Potential Impacts on the New Zealand Economy", 28 September 2015. Available at www.tpp.mfat.govt.nz.

⁹¹ Strutt et al reported a 1.4% increase, corresponding to an additional NZ\$4.1 billion to GDP. As outlined below, for the purposes of this NIA the contribution of the removal of non-tariff measures reported by Strutt et al has been halved.

Section 7: Economic, social, cultural and environmental costs and effects of the treaty action

- Since the entry into force of the Australia-Japan FTA, New Zealand beef exports to Japan have dropped by over 25 percent, with New Zealand exporters losing market share to their Australian competitors who are only beginning to enjoy tariff preferences under the FTA.
- Following the entry into force of the Korea-US FTA, US beef exports increased 25%. New Zealand exports declined by almost NZ\$50 million. The US' share of the Korean cheese import market has also grown from 41% to 74%.
- Until the entry in force of the New Zealand-Korea FTA, kiwifruit exporters paid a 45% tariff on kiwifruit. Their Chilean competitors enjoy duty-free access.
- Prior to the NAFTA agreement being signed by Canada, Mexico and the US in the 1990s, New Zealand was a significant supplier of dairy products to Mexico. Since Mexico eliminated tariffs for US dairy products, New Zealand's share of Mexico's cheese imports declined from 20% to 4%, and our share of milk powder imports from 25% to less than 10%.

Strutt et al modelled the economic impact of TPP by first estimating how New Zealand's economy would be expected to develop as part of the global economy in the absence of TPP, and comparing this to the case where TPP liberalised trade in goods and services in four areas. The result of the CGE model takes account of the complicated adjustments that might take place in an economy following new trade flows and resource allocation. The four ways in which TPP was assumed to liberalise trade were:

- Reductions in tariffs and quota barriers on goods trade.
- Reductions in non-tariff measures on goods trade.
- Improved trade facilitation measures.
- Reductions in barriers on services trade.

Each of these four areas is considered below.

Modelled gains: Reductions in tariffs and quota barriers

New Zealand exported NZ\$20 billion of goods to the TPP region in 2014, NZ\$8.7 billion of which went to countries for which TPP would be New Zealand's first FTA. These countries account for a significant proportion of the new market access for New Zealand under TPP (as outlined in Section 4 of this NIA), particularly in terms of the removal of tariff barriers. Increased goods export earnings would be of direct economic benefit for New Zealand, including revenue for export businesses and increased employment that would flow to the wider economy.

Strutt et al found that the effect of the lowering of tariff and quota barriers was predicted to result in 15% of the estimated GDP gains for New Zealand under TPP once fully implemented, corresponding to an additional GDP of NZ\$624 million for the New Zealand economy by 2030. This figure corresponds to the economic benefit that would accrue to New Zealand from improved market access into TPP markets due to lower tariffs. The model captures gains from allocative efficiency as relative prices adjust encouraging a shift in New Zealand towards areas where we have the greatest competitive advantages. It would also account for increased value for the New Zealand

economy from lower domestic tariffs, although this effect would likely be relatively low given New Zealand's already low tariff structure.

The magnitude of these estimated GDP gains due to lowering of tariff and quota barriers corresponds well with the proportion of tariff savings that would take place under TPP. As outlined in Section 4.1, based on 2014 exports to the region, NZ\$274 million of tariffs would be eliminated on New Zealand products. The removal of these tariffs allow New Zealand exporters to improve their competitiveness within a TPP market and thereby grow market share, and/or return a proportion of the tariff savings to New Zealand as profits. The net economic impact of greater competitiveness, increased exports, and improved profit margins for goods exports would be expected to flow on to the New Zealand economy as a whole.

Table 7.2: Estimated Tariff Savings per annum by Country (Table 4.1)⁹²

Country	New Zealand exports	Estimated tariff savings at entry into force		Estimated tariff savings once fully implemented ^a	
	NZ\$, millions	NZ\$, millions	% of exports ^a	NZ\$, millions	% of exports ^a
<i>Parties where New Zealand has no existing FTA</i>					
Japan	3,430	83	75.24%	207	90.63%
US	4,417	45	97.19%	52	99.61%
Mexico	418	3.1	73.70%	6.6	81.42%
Canada	645	2.8	99.16%	5.2	99.89%
Peru	135	0.9	99.65%	0.9	100.00%
<i>Parties with existing FTAs with New Zealand^c</i>					
Malaysia	1,035	0.1		1.6	
Vietnam	468	0.6		0.8	
Overall	10,550	137		274	

^a Percentage of exports that would benefit from tariff elimination. Where New Zealand exports are not subject to elimination, most would benefit from new quota access.

^b Almost all (99.5%) tariff savings would be realised within sixteen years. The remaining tariff savings would be realised over 20 or 30 years.

^c Tariffs that would be eliminated under TPP that were excluded from the ASEAN-Australia-New Zealand and Malaysia-New Zealand FTAs (e.g. wine, liquid milk etc).

Modelled gains: Non-tariff measures on goods trade

The lowering of tariffs is the simplest mechanism by which countries agree under an FTA to improve market access for trade in goods. TPP also includes comprehensive coverage of other areas of trade, for example through the obligations to address the simplification of rules, sector-specific annexes, disciplines on import licensing systems, etc. Collectively, these are known as "non-tariff measures" (NTMs). The removal or lessening of NTMs can represent the most significant outcomes of an FTA,

⁹² The table shows total annual tariff savings from TPP, including the elimination/reduction of in-quota tariffs for trade under existing WTO tariff quotas, as applicable. Values are in NZ\$, representing average exports over the period 2012-2014.

and the impact of NTMs on global trade is well-documented. Numerous attempts have been made in institutions such as the WTO, World Bank, EU, OECD, United Nations Conference on Trade and Development (UNCTAD) and ASEAN to mitigate their effects. In general, the use of NTMs to achieve legitimate objectives is recognised, but they should not be implemented in such a way to pose unnecessary obstacles to trade or have specific protectionist measures.

A number of studies have found substantial economic gains from significant reduction or elimination of the incidence of NTMs. A 2012 review of existing studies by the WTO (reviewed by the APEC Secretariat in 2013) cited one study that found that reducing ad-valorem equivalents (AVE)⁹³ of NTMs from 10% to 5% would increase trade by 2% to 3%. Another study cited by the WTO found that behind-the-border measures, including NTMs, implemented during the global financial crisis, reduced trade flows by 7%. A separate study by 2012 UNCTAD found that NTMs contribute more than twice as much as tariffs to overall market access trade restrictiveness.

Strutt et al's model included an analysis of the extent to which the liberalisation of these NTMs would influence trade-flows within the TPP region. The model used the World Bank Overall Trade Restrictiveness Indexes for each TPP country in two areas, "agriculture and food" and "manufactures". Strutt et al assumed that TPP would "equalise" higher than average NTMs, so that countries with indexes higher than the TPP average would reduce their NTMs to the TPP mean for the two areas. While a high-level assumption, this reflects the general approach taken in an FTA like TPP to apply a consistent level of commitments to different countries.

As would be expected given their significant impact on goods trade, Strutt et al found that the reduction of NTMs under TPP would have a significant impact on trade flows, and hence significant economic gains for New Zealand. TPP was predicted to result in steady contributions to New Zealand's economy based on the reduction of NTMs on goods trade, cumulating in an additional NZ\$2.91 billion to GDP after fifteen years. For the purposes of evaluating the costs and effects of TPP for New Zealand, we have taken a cautious approach and assumed that gains from addressing NTMs on goods would be at least half of this predicted value, i.e. NZ\$1.46 billion. Based on international studies of NTMs and New Zealand's experience under previous FTAs, it is quite possible that the actual outcome could exceed this modelled result for NTMs.

TPP goes further than any other New Zealand FTA in seeking to tackle NTMs. The following all represent specific outcomes that should reduce compliance costs for business: elimination of export duties; rules around the administration of tariff quotas; rules of origin procedures that allow for transshipment and streamlined procedures for traders to claim tariff preferences; science and risk-based sanitary and phyto-sanitary (SPS) provisions, including new rules for audits and import checks; and specific technical barriers to trade (TBT) regulatory provisions that should benefit New Zealand wine, pharmaceutical, medical device and cosmetic exporters. The Agreement's prohibition on the

⁹³ AVE is a method for quantifying the impact of an NTM on trade, by estimating what level of tariff on that product would have the same trade-restricting effect.

use of agricultural export subsidies on TPP trade will also consolidate the competitiveness of New Zealand products in the region.

These specific outcomes are supplemented by new regulatory coherence disciplines in TPP that should, over time, lead to more consistent and transparent approaches to regulation when trade and investment liberalisation is taken into account.

Modelled gains: Improved trade facilitation

Strutt et al further considered the additional impact of TPP on trade facilitation, namely commitments aimed at facilitating the flow of goods across borders, including through ensuring customs procedures and practices are transparent and consistent, and expediting certain forms of trade. Strutt et al modelled the impact of a 25% reduction in the average time for goods to clear customs, run through the model for individual sectors. This was found to add NZ\$374 million to New Zealand's GDP after fifteen years.

Several of the outcomes in relation to NTMs listed above also have the potential to streamline border processes, for example SPS and TBT provisions relating to import checks. In addition, the Customs Chapter requires each Party to ensure its customs procedures are applied in a way that is predictable, consistent and transparent. This should lead to a lower cost of trade, simplified customs procedures for traders, and the expeditious clearance of goods.

Modelled gains: Trade in services and investment

TPP is of particular economic importance for New Zealand's trade in services and investment – nearly half our services exports (NZ\$8.3 billion in 2014) and about three quarters of both inwards and outwards direct investment are from or to TPP member countries. As outlined in Section 4, TPP would further liberalise trade and investment flows across a range of areas that would be expected to benefit New Zealand (as outlined in Section 4 of this NIA – see particularly, the Investment, Cross-Border Trade in Services, Financial Services, Temporary Entry, and Telecommunications Chapters). Estimating the impact of TPP on these areas is difficult, particularly given the multi-faceted relationship of domestic regulation and law, and differences in practice and culture between countries, as related to services sectors and investment.

As with goods NTMs, Strutt et al recognised that while lowering barriers to services trade could result in large economic effects, the modelling itself is difficult. The model took a published assessment of the level of barriers to trade in a number of services sectors for each TPP country, and assumed that countries with high NTMs in a service sector would reduce to the TPP-mean for that sector.⁹⁴ The model found that after fifteen years, this level of liberalisation in services would contribute an additional NZ\$250 million to New Zealand GDP by 2030.

New services market access, over and above existing WTO commitments, has been secured from Canada, Japan, Malaysia, Mexico, Peru, Viet Nam and the US, including in sectors where

⁹⁴ Again, this was done by representing Services NTMs as AVE barriers.

New Zealand services exporters have capability and expertise (education, professional services, agricultural-related services, environmental services and auxiliary air services). In making these commitments, some Parties have agreed to relax laws, regulations or policies to make it easier to export services to those markets. Others have agreed to bind existing laws or open access.

Strutt et al did not undertake specific modelling on the impact of a number of individual chapters in TPP that would be expected to contribute to further export growth and hence economic benefit for New Zealand. (For example, the Government Procurement, SOEs, Competition and Electronic Commerce obligations, all of which are anticipated to be of significant net benefit for New Zealand exporters, as outlined in Section 4 of this NIA).

Economic effects of investment liberalisation

As outlined in Section 4 of this NIA, the investment provisions in TPP are considered to be to New Zealand's net advantage. Joining TPP would benefit New Zealand investors, by providing improved conditions when making investments and doing business in other TPP countries for many sectors, and encourage inward investment flows into New Zealand within a robust policy framework. These commitments would be the first time New Zealand had entered into investment commitments with Canada, Japan, Mexico, Peru and the US, and also improve on the partial investment arrangements with several other TPP Parties including Brunei, Chile, Malaysia, Singapore and Viet Nam. Quantifying the impact of this improved access is difficult and requires assuming returns to capital, so quantified benefits from investment are not separately captured by Strutt et al, or in the cost benefit analysis in this NIA. The empirical literature suggests that FDI boosts productivity, however.

7.1.4 Estimated impact of copyright provisions

As outlined in Section 4 of this NIA, TPP would require a number of changes to New Zealand's intellectual property regime that would diverge from our preferred approach, and introduce some on-going costs. This included costs associated with changes to New Zealand's copyright law that would be expected in theory to incur to the wider economy as a whole.

In the context of launching TPP negotiations, the Government commissioned a study on the effect to New Zealand of raising a number of IP protections in New Zealand⁹⁵. This included a quantification of the impact of raising New Zealand's copyright term from 50 to 70 years, an outcome that was ultimately reflected in TPP. Ergas et al found that New Zealand was a "very substantial net importer of IP protected goods (e.g. books, recorded music, films, software, pharmaceuticals)". The study looked at the potential costs of term extension in terms of its effect on the price and usage of copyright-protected content in New Zealand, as well as the potential benefits on New Zealand exports in this area. The study estimated that the cost of copyright term extension for books and

⁹⁵ Jennifer Orr, Jason Soon, Henry Ergas. "Economic Impact of Potential Changes to New Zealand's IP Laws as a Result of Trade Negotiations", September 2009 (copyright term extension results available at www.tpp.mfat.govt.nz).

recorded music,⁹⁶ corresponding to an average annual real cost of NZ\$21 million and NZ\$17 million respectively. The resulting costs therefore reflect the net cost to New Zealand of an extension to copyright term under TPP (although creative markets have changed during this time, as a result of digitisation and consumer trends).

While not included in the Ergas et al model, copyright extension would also have an important effect for audio-visual works, including films and television. The net economic impact for audio-visual works is estimated to be roughly equivalent to the annual cost of recorded music. The real annual cost of TPP on these three areas of copyright has been conservatively estimated to be NZ\$55 million annually.

Note that this figure of NZ\$55 million is the average cost over the very long term, including the initial 20-year period. Ergas et al assumed transitioning immediately from a 50 to 70 year copyright term. In fact, TPP would allow New Zealand to provide a 60 year term for works that would otherwise have fallen into the public domain during the first eight years after TPP entered into force, and a 70 year term for all other works after that. The result of this would be lower net costs, particularly in the first twenty years.

7.1.5 Fiscal compliance costs (from NIA Section 8)

There would be some additional costs associated with joining TPP that could be seen as operational costs for the New Zealand Government. Many of these would enable New Zealand to derive expected further benefit from the Agreement. For example, funding New Zealand's participation in the institutional arrangements (such as Committees) that will oversee the trade and economic framework envisaged under TPP. Others will be additional costs for New Zealand. These fiscal costs are outlined in Section 8 of this NIA, and are estimated to total a maximum of NZ\$24 million annually (see Table 7.3 below).

The majority of this figure comes from foregone annual tariff revenue of NZ\$20 million, once New Zealand's tariff commitments are fully implemented seven years after TPP enters into force. This cost represents foregone revenue for the Government. From an economic perspective, however, it is in New Zealand's interests to move towards a tariff-free structure. This would lead to more efficient allocation of the economy's resources. While this foregone tariff revenue is treated as a cost, the net economic effect for New Zealand is likely to be positive as a result of cheaper goods for consumers and businesses, and flow on effects due to increased competition.

The institutional and outreach costs identified here also represent a cost for the Government that would be expected to result in a net economic benefit for New Zealand, in this case as an investment in activities that would allow New Zealand to realise greater benefit from TPP.

⁹⁶ The study also sought to quantify the impact of patent term extension for pharmaceuticals, an outcome that was not ultimately reflected in TPP. The Government undertook separate analysis of the impact of TPP's more likely outcome on pharmaceuticals separately, see Section 8 of this NIA.

Table 7.3: Fiscal Costs of TPP, New Zealand dollars

Area	Annual cost	Description
Foregone tariff revenue	\$20 million	This maximum is reached after seven years.
TPP Institutional arrangements	\$0.5 million	Participation in on-going TPP committees etc.
Administrative costs	Estimated at NZ\$3.2 million	Largely on-going, includes a number of transparency-related obligations including for PHARMAC.
Outreach activities	\$0.495 million	Likely be around this level until the entry into force of TPP, then lessen
Total	NZ\$24 million	

Administrative costs include a range of obligations that New Zealand would be required to implement under TPP. Some of these would result in net economic benefit for New Zealand, while others would represent a net cost. Most significant amongst these is the estimated NZ\$2.2 million of on-going operational costs for PHARMAC.

These fiscal costs are all assessed in greater detail in Section 8 below.

7.2 Social effects

The net economic benefit of TPP for New Zealand would be expected to translate into a corresponding net benefit to New Zealand society, for example through improved employment and wages, and greater resource to spend on health, welfare and cultural outcomes.

TPP would have few implications for New Zealand's ability to develop social policy – as noted in the preamble to the Agreement, and analysed throughout Section 4 to this NIA, TPP resolves to "maintain each Party's right to regulate to meet domestic public policy objectives, including to safeguard public welfare". TPP's labour commitments are the strongest contained in any of New Zealand's FTAs, and are consistent with New Zealand's existing domestic approach. TPP would have minimal impact on immigration. While closer economic ties with other TPP members may result in new patterns of movement of people, TPP does not affect New Zealand's immigration policy framework. TPP would have no effect on human rights in New Zealand.

7.2.1 Employment

The economic effect of an FTA like TPP is expected to have a corresponding effect on employment, for example changes to overall wage and employment levels, or changes in relative levels of employment between sectors that experience expansion or contraction due to the FTA.

TPP is estimated to result in a net benefit for New Zealand employment, reflecting the net economic benefit for New Zealand outlined in Section 7.1. There may be, however, a degree of variance between different sectors of the economy. For sectors where New Zealand has a comparative

advantage over its trading partners, new export opportunities or cheaper inputs following TPP's entry into force would be expected to result in increased productivity and positive employment effects for that sector. Export-oriented industries receiving the greatest economic benefit under TPP (such as new access to an export market) would be expected to see improved employment opportunities (such as higher wages or number of jobs) that could, in turn, attract workers from other parts of the economy.

While some individual sectors may be expected to see longer-term employment shifts to other sectors, no sectors in New Zealand are expected to experience sudden declines in average wages or job numbers as a consequence of TPP. As outlined in Section 7.1, while in theory highly-protected sectors can experience increased competition following the sudden liberalisation of protective barriers (such as tariffs or other restrictions on imports), New Zealand has very few if any such protected sectors.

7.2.2 Health impacts

TPP will set rules to address a significantly broader range of 'behind-the-border' regulatory and administrative practices than New Zealand's previous FTAs, some of which would have some small impact on the health system. TPP seeks to address this by balancing these rules with the need to ensure that such rules do not constrain a jurisdiction's ability to regulate for legitimate public policy purposes, particularly in the health sector.

The TPP will require changes to some domestic health policy and operational settings but, importantly for New Zealand, the outcomes relating to pharmaceuticals in the Intellectual Property (IP) Chapter and the pharmaceutical transparency provisions (Transparency and Anti-corruption Chapter) represent a balance that would not undermine New Zealand's prerogative to manage its health system in New Zealand's best interests. TPP also preserves the applicability of Article 31 of the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which permits compulsory licensing for pharmaceuticals as well as the flexibilities on public health under the Doha Declaration.

There were a number of areas that could potentially have had an impact on health outcomes for New Zealand, but that were not raised or were knocked back in negotiations. For example:

- TPP Parties would not be obliged to extend patent protection to cover methods of medical treatment of humans under TPP, which could have imposed significant costs for New Zealand. (See Section 4.16.)
- TPP countries would not be obliged to offer data protection for new uses of existing products. Instead, TPP would require New Zealand to provide five years' data protection to new small molecule (but not biologic) pharmaceutical products that contain both a new and a previously approved active ingredient. (See Section 4.16.)
- TPP's requirements for "effective market protection" for biologic pharmaceuticals can be met within New Zealand's existing policy settings and practice by providing at least five years of data protection together with other measures. (See Section 4.16.)

- * The TPP outcome for 'patent linkage' would impose no additional costs or delay access to generic medicines for New Zealand, given that as a matter of practice Medsafe already publishes on its website the details (including the applicant) of all new medicine applications it receives. (See Section 4.16.)
- * The TPP State Owned Enterprises (SOEs) Chapter would not affect future Governments' choices about the design of the health system. The scope of disciplines on commercial activities would not apply to public health institutions and service delivery models. (See Section 4.16.)
- * The commitments in the TPP sectoral annex to the Technical Barriers to Trade (TBT) Chapter covering the regulation of medicines and medical devices are consistent with international good practice and would not require changes to how New Zealand regulates these products (See Section 4.7.)

During negotiations, concerns were raised by some stakeholders about the potential implications for the health system of dispute settlement provisions in TRP, particularly Investor State Dispute Settlement (ISDS). As outlined in Section 4.8, TPP would not change the Government's existing ability to regulate for legitimate public policy purposes, including public health objectives, in the way that it considers best for all New Zealanders. Importantly, ISDS has only limited application (as outlined in Section 4.8). It would not apply to any of the obligations discussed in this section that could potentially impact on the health system. The pharmaceutical transparency provisions (Transparency and Anti-Corruption Chapter) are additionally not subject to the Government-to-Government dispute settlement provisions in the agreement. The Investment Chapter also expressly recognises that non-discriminatory actions of the Government that are designed and applied to protect public health, are very unlikely to be covered by the TPP obligations on expropriation. Further exceptions and safeguards are also provided for in the Agreement to ensure this, including New Zealand specifically listing health as a social service to fall outside of core cross border trade in services and investment obligations. The wording of these exceptions in TPP differs from previous New Zealand FTAs, which have incorporated the WTO exceptions. The overall implication for health policy, however, is that TPP accords an equivalent level of protection.

Additionally, tobacco control measures are covered in Article 29.5 of the Exceptions chapter, under a provision that allows the Government to elect to rule out ISDS challenges over tobacco control measures. The Government intends to exercise this provision. This would offer additional protection for New Zealand's proposed introduction of plain packing measures as it would make it clear that an investor could not submit a claim to arbitration in respect of such measures. (See Section 4.8.)

Costs related to health

The provisions regarding patent term extension for delays in marketing approval under the Agreement could conceivably result in additional costs to the health system. However, as outlined in Section 4.16, based on Medsafe and IPONZ's track record of processing times for marketing approvals and patents very few unreasonable delays are expected to occur in New Zealand, and only in exceptional circumstances. Based on the time taken to process pharmaceutical marketing approval applications in New Zealand over the past five years, the annual cost to New Zealand

(averaged over the long term) is estimated to be NZ\$1 million. The risk of this cost occurring will need to be managed by ensuring that New Zealand's patent and regulatory approval processes remain efficient thereby not exposing New Zealand to claims that support compensatory patent term extensions.

The PHARMAC model would remain unchanged if New Zealand entered TPP, including PHARMAC's ability to prioritise what pharmaceuticals get listed for reimbursement (subsidisation) and its negotiating practices. As outlined in Section 4.27, there would, however, be some additional transparency requirements associated with PHARMAC's processes and these would involve additional costs.

First, PHARMAC would be required to make a decision on every application within a set timeframe that PHARMAC can determine. The timeframe may be extended – an exception that was specifically included in the Agreement at New Zealand's request to ensure more flexibility. Nevertheless, this requirement is likely to mean that PHARMAC would be required to formally decline some applications rather than the current practice of keeping them on the books for possible consideration when funding becomes available.

PHARMAC would also have to provide, at the applicant's request, for a review of a 'decline' decision. This could be an internal review conducted by PHARMAC. The review would not require PHARMAC to remake its original decision on priorities for listing and reimbursement, nor would it require consideration of assessments related to other proposals for funding. These changes would not undermine the PHARMAC model.

The total cost to the Government of these requirements is estimated in Section 8 (up to NZ\$4.5 million in one-off establishment costs for PHARMAC, and NZ\$2.2 million per year in operating costs).

The relatively small magnitude of the health-related costs associated with TPP and their mostly operational nature means that the distributional impacts of these costs on the community would be minimal.

Health benefits

There are no quantifiable direct economic benefits to the health portfolio from TPP. The Agreement would, however, be expected to deliver economically significant benefits and support accelerated economic growth, enabling New Zealand to continue to invest in the health system.

Some stakeholders had suggested a more transparent regime under TPP would promote investment and research and development in the New Zealand pharmaceutical sector. These benefits are assessed to be marginal, as the commitments in TPP would be unlikely to change the key factors that influence these decisions (i.e. the speed with which a company can have clinical trials completed so that the medicine gets to market faster and the population size and cost of doing the trials etc.). Furthermore, there was no evidence of increased investment when Australia made changes similar to those required under TPP.

7.2.3 Social regulation

New Zealand's social regulation frameworks would not be affected by TPP. In the first instance, the obligations and chapters in TPP were each negotiated so as not to impair the ability of countries to regulate and make legitimate public policy. New Zealand sought appropriate flexibility in key areas and obligations. However, in the unusual situation where government action (or inaction) would breach an obligation, then the Exceptions Chapter provides a further safety net of exceptions to ensure legitimate public policy would be allowed (as outlined in Section 4.28). If a country is shown to have violated an obligation, then that government may seek to demonstrate that a relevant exception applies. The exceptions cover a range of areas including national security, health, environment, national treasures of artistic, historic or archaeological value, and situations involving serious balance of payments difficulties.

TPP would not affect New Zealand's ability to continue to form robust labour law and regulations, and the TPP labour commitments are consistent with New Zealand's existing domestic legal settings and international legal commitments. TPP would set enforceable bottom lines on labour obligations in TPP countries, as outlined in Section 4.20. The inclusion of binding dispute settlement applicable to labour commitments, with the potential of trade sanctions or monetary compensation for breaches, would in theory reduce policy space and create some risks for the Government in potentially dealing with unfounded actions. The public submissions and procedural matters commitments also provide opportunities for external parties to raise concerns about domestic implementation issues. However, New Zealand's practice in this area, and the design of the relevant disciplines and dispute settlement mechanism, means these risks are very low.

7.2.4 Immigration

TPP would not require any changes in New Zealand's immigration policy or legislation. The only specific commitments related to the movement of people are the short-term commitments for business travel in the Temporary Entry Chapter, as outlined in Section 4.11 of this NIA. This Chapter would result in no substantial change to people flows in New Zealand, as it falls within commitments New Zealand has already made to other FTA partners, and because the Chapter does not apply to categories of visitors related to immigration (for example people seeking employment in New Zealand or to immigration matters, such as citizenship or permanent residency applications).

The promotion of trade and investment opportunities under TPP and subsequent rise in New Zealand's profile in the region may, however, encourage interest in immigration to New Zealand (including by skilled migrants) and vice versa. This would take place within the immigration policy settings determined by the Government, which would not be affected by TPP.

7.2.5 Human Rights

TPP includes no inconsistencies with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Its implementation would have no effect on human rights in New Zealand. As outlined in Section 4.20, the strong labour obligations in TPP could result in improved human rights situations in other TPP countries (for example, given obligations to address forced and child labour).

7.3 Cultural effects

7.3.1 Treaty of Waitangi

As the founding document of New Zealand, the Treaty of Waitangi is fundamental to the on-going relationship between the Government and Māori. All of New Zealand's FTAs have ensured that the unique relationship between the Crown and Māori is provided for. This outcome has been achieved by ensuring that the obligations in New Zealand's FTAs do not impede the Crown's ability to fulfil its obligations under the Treaty of Waitangi and, since 2001, by including a Treaty of Waitangi exception in all FTAs.

The Treaty of Waitangi exception in New Zealand's FTAs provides additional clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi. It is designed to ensure that successive governments retain flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities. New Zealand's approach of including the Treaty of Waitangi exception in its FTAs is unique, and reflects the constitutional significance of the Treaty of Waitangi to New Zealand.

New Zealand continued this approach with TPP, securing the same outcome as with previous FTAs. New Zealand also secured provisions on traditional knowledge that have not been included in any previous New Zealand FTAs. With respect to an obligation in TPP regarding plant variety rights, New Zealand secured a New Zealand-specific outcome that will give the Government sufficient time to undertake consultations on implementation of this obligation and sufficient flexibility to fulfil any obligations under the Treaty of Waitangi.

As a result of these outcomes, nothing in the TPP prevents the Crown from meeting its obligations to Māori, including under the Treaty of Waitangi. These outcomes were achieved in line with long-standing Government positions in FTA negotiations, and after consultations with Māori and other stakeholders (outlined in Section 9 of this NIA).

Specific obligations and General Exceptions

The specific obligations contained in TPP have been designed so as not to impair the ability of governments to make legitimate public policy and to take measures to implement that policy, as outlined elsewhere in this NIA. This general flexibility afforded to the Government will also help ensure that it is able to take measures that are in the interests of Māori. New Zealand's TPP obligations are addressed at Sections 4 and 5 of this NIA.

The TPP Exceptions Chapter sets out a number of exceptions that describe the areas where governments maintain the ability to adopt or retain policies and to regulate regardless of the obligations contained in the TPP (see Sections 4.28 and 5.29). Those exceptions cover a range of areas including national security, public order, safety, health, environment, non-renewable resources, national treasures of artistic, historic or archaeological value, and situations involving serious balance of payments difficulties. Some of these areas are likely to be of specific relevance to Māori interests.

Treaty of Waitangi exception

Article 29.6 contains New Zealand's Treaty of Waitangi exception. This exception specifically refers to the Treaty of Waitangi, and applies to the entire Agreement. It allows New Zealand to adopt any measure that it deems necessary to accord more favourable treatment to Māori in respect of the matters covered by the Agreement. This includes trade in goods and services, investment, environment, labour, intellectual property and all other matters dealt with in the Agreement. This is the principal explicit means (though as discussed above, not the sole means) by which the Treaty of Waitangi is recognised in TPP. In addition to the policy flexibility retained in TPP, the exception removes any doubt that New Zealand will be able to meet its obligations to Māori, including under the Treaty of Waitangi. The legal effect of this exception is addressed at Section 5.29.

The chapeau contained in Article 29.6 requires New Zealand to avoid adopting measures that are "arbitrary or unjustifiable discrimination" or "disguised restriction[s] on trade". WTO jurisprudence narrowly construes the nature of unjustifiable discrimination to mean measures where the discrimination cannot be reconciled with, or where there is no rational connection to, the policy objective of the measure. New Zealand is confident that any measures which are carefully designed to fulfil obligations to Māori are unlikely to be found to be an "unjustified discrimination" against persons of a Party to the TPP.

The chapeau contained in Article 29.6 provides an important reassurance to our trading partners that New Zealand will only seek to invoke this exception for legitimate purposes related to Māori and the Treaty of Waitangi. To date, none of our FTA partners has brought a formal claim against New Zealand for arbitrary or unjustifiably discriminatory behaviour with respect to the Treaty of Waitangi exception, i.e. no country has felt aggrieved over any of the measures that the Government has taken since 2001 to uphold Treaty of Waitangi obligations, including in relation to Treaty settlements.

In addition to the Treaty of Waitangi exception, Article 29.6.2 and Annex 18-A to Article 18.7.2 ensure that the interpretation of the Treaty of Waitangi will remain the exclusive domain of New Zealand Courts and Tribunals, by providing that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of the TPP. TPP dispute settlement panels and ISDS tribunals may interpret the Treaty of Waitangi exception provision, but not the Treaty of Waitangi itself.

Intellectual property and the Treaty of Waitangi

Under Article 18.16, TPP Parties recognise the relevance of traditional knowledge to intellectual property systems, and commit to work together on traditional knowledge issues. Article 29.8 allows the TPP Parties, subject to their international obligations, to take measures to respect, preserve and promote traditional knowledge and traditional cultural expressions. This Article preserves New Zealand's policy flexibility when considering the extent to which traditional knowledge and traditional cultural expressions should be protected.

Under Article 18.16.3, the Parties also agree to pursue quality patent examination, which may include taking into account information related to traditional knowledge, providing an opportunity to inform patent offices of TPP Parties that a claimed invention is not new and therefore not patentable, using databases or digital libraries containing information on traditional knowledge and cooperating in the training of patent examiners on how to deal with applications related to traditional knowledge. Formal recognition of the relationship between the intellectual property system (in particular the patent system) and traditional knowledge associated with genetic resources is an important step forward for the protection of traditional knowledge, including Māori traditional knowledge.

As outlined in Section 4.18, Annex 18-A to Article 18.7.2 of the Intellectual Property Chapter gives New Zealand the option of, within three years of entry into force of TPP, either acceding to the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 91), or alternatively, under a New Zealand specific approach, adopting a plant variety rights system that gives effect to UPOV 91 (Section 4.17 of this NIA addresses UPOV 91). The scope of plant variety rights in New Zealand was considered in Waitangi Tribunal report to Aotearoa Tēnei (WAI 262), and the Tribunal's recommendations are under consideration by the Government.⁹⁷ Annex 18-A preserves flexibility in this area by providing that when implementing this obligation, New Zealand is able to adopt any measure that it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi (and this is not subject to the dispute settlement provisions in TPP). The Annex also provides New Zealand with an additional three year period from the date of entry into force of the Agreement for New Zealand, and therefore gives the Government time to undertake consultations on implementation of the obligations.

In areas where change is required to New Zealand law to implement its TPP obligations (as summarised in Section 6 of this NIA), consultation will be undertaken. This will include consultation with Māori (for example, on implementation of New Zealand's obligation concerning UPOV 91). In this way, consultation will inform the implementation of New Zealand's TPP obligations.

7.3.2 Cultural

TPP is not expected to have any effect on the Government's ability to pursue cultural policy objectives, such as supporting the creative arts, and in relation to cultural activities. As outlined in Section 4.28, TPP incorporates the relevant WTO general exceptions (from GATT and GATS). For clarity, TPP incorporates the WTO General Agreement on Tariffs and Trade (GATT) Article XX exception (GATT Article XX (f)) that Parties may take measures necessary to protect national treasures of artistic, historic or archaeological value, providing that such measures are not used for trade protectionist purposes.

The only significant cultural impact of TPP would be potentially due to the extension of copyright terms, delaying the point at which creative works would enter the public domain from 50 to 70

⁹⁷ An inter-departmental task force has reviewed the recommendations of the report but the Government's response is still being developed.

years⁹⁸ (as outlined in Section 4.17). This would have two key cultural effects: consumers and second-generation creators would need to wait longer before works were freely available (i.e. in the public domain), while copyright holders would be able to derive benefit from works for longer. For most consumers, this will be of significance primarily in delaying by twenty years the point at which works still popular long after they were made enter the public domain. Note that TPP includes an exceptions framework, which the Government intends to use to provide exceptions for situations where use of a copyright work either does not infringe copyright in the first place, or is otherwise permitted because there is a copyright exception under New Zealand law. The overall effects are likely to be felt more keenly by institutions that hold large quantities of works that would have entered the public domain without the term extension, such as libraries and universities. (Although TPP would not affect the copyright exceptions that currently exist in New Zealand for these kinds of institutions.) Some of these institutions may respond to the extension by reducing the number of works they hold or by passing on the higher overall costs of retaining them.

The extension of copyright terms is estimated to have tangible implications. Not taking account of New Zealand's eight-year transition period, this is estimated to be an average net economic cost of NZ\$55 million annually (see Section 7.1.4), but would be expected to have a minimum effect on New Zealand's culture – TPP would not mean works could not be accessed at all, but only affect the point at which they could be accessed from the public domain with certainty.

7.3.3 Digital economy and culture

The digital economy increasingly affects the way New Zealanders connect economically and socially to the world – connectivity is also a crucial driver of New Zealand's economic growth, and can also have significant cultural effects. TPP could potentially influence New Zealand's digital culture and digital economy, particularly given the increasing consumption of cultural products online and TPP's intention to establish a regional framework of all areas of trade. The preamble to TPP resolves to "promote trade and investment in innovative products and services, including in those relating to the digital economy and green technologies", and the Electronic Commerce Chapter in particular seeks to establish a regional framework in this area.

As outlined in Section 4, TPP's Electronic Commerce Chapter could be expected to foster e-commerce in a way that would deliver economic benefit for New Zealand exporters and consumers, through creating an environment capable of making it easier to sell and purchase goods and services online, and facilitating the growth of new products. TPP also includes provisions that relate to the regulation of aspects of the way New Zealanders interact with particular online or electronic products. As outlined in Section 4, these include consumer protection, privacy, SPAM, information flows, source code, location of computer facilities, and measures to promote e-commerce (in the Electronic Commerce Chapter).

⁹⁸ The copyright term for films and sound recordings (including recorded music) is calculated from the date on which they were made or published. The copyright term for books, screenplays, music, lyrics and artistic works is calculated from the death of the author.

The overall effect of the Electronic Commerce Chapter is expected to support New Zealand's digital culture – helping create an environment conducive to the growth of weightless exports and other forms of e-commerce, and increasing the uptake of new online products and services (for example through promoting protection of personal information for New Zealand users of e-commerce based in other TPP countries, supporting security and confidentiality safeguards, and helping address SPAM). Across the Electronic Commerce Chapter, New Zealand has ensured that TPP would enable New Zealand to continue current policy settings designed to support the growth of New Zealand's digital culture and connectivity. Importantly, New Zealand also ensured the obligations of the Chapter would not cut across New Zealand's current policy settings to encourage creativity and cultural expression – including an exception in the Electronic Commerce Chapter that government subsidies or grants to support digital cultural works would not be affected, enabling New Zealand to continue its targeted use of government grants to encourage New Zealand creative content.

Aspects of the Intellectual Property Chapter could also have a potential impact on New Zealand's digital culture. The internet has led to much greater accessibility of music and audio-visual products, for example, but the extension to copyright outlined above would delay by twenty years the point at which New Zealand works were able to be freely utilised (note that 70 year copyright already applies to many overseas works, especially from the US). Enhanced technological protection measures (TPMs) would enable copyright owners to better enforce digital locks or usage restrictions put on copyright works, to the extent that a civil or criminal prohibition is a deterrent to circumvention. While this could potentially result in reduced accessibility for legitimate use of works, as outlined in Section 4.17, New Zealand will be able to provide exceptions to enable TPMs to be circumvented to enable legitimate uses of copyright work. TPP would also allow the Government to ensure non-profit libraries, museums, archives, educational institutions, and public non-commercial broadcasters can also be exempted from criminal liability, and from civil liability if the relevant act was done in good faith without knowing the conduct was prohibited.

7.4 Environmental effects

New Zealand has long recognised the links between trade and the environment. One of the aims of New Zealand's trade agreements is to ensure that the outcomes contribute to sustainable development and environmental objectives. TPP includes provisions that recognise the important role that trade liberalisation can play in supporting environmental improvements and the role that improved environmental performance can play in underpinning economic development. TPP is New Zealand's third trade agreement to include a substantive chapter on the environment (the others being ANZTEC and the New Zealand-Korea FTA), and is the most comprehensive of these. TPP aims to promote sustainable development and higher standards of environmental protection in the TPP region.

TPP contains legally binding commitments on trade and environment, requiring Parties to effectively enforce their environmental laws, and not to derogate from them in order to encourage trade or investment. TPP also contains specific commitments intended to help address global environmental

issues such as trade in illegally harvested wild fauna and flora, IUU (illegal, unregulated and unreported) fishing and harmful fisheries subsidies.

7.4.1 Regulatory effects

TPP would not inhibit the New Zealand Government's ability to regulate for environmental protection. Its general exceptions are consistent with those provided for in existing international agreements (GATT and GATS) that are designed to provide policy space for Governments for public interest purposes, such as protection of natural resources. As outlined in Section 4.27, TPP incorporates the relevant WTO general exceptions (from GATT and GATS). The core obligations in the Environment Chapter put some limitations on Parties' ability to reduce environmental protection through derogation from existing environmental measures, or non-enforcement of them. The TPP provisions on cooperation provide an avenue for enhanced dialogue and engagement on environmental matters, which could potentially provide value to New Zealand environmental policy development.

TPP would not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in a manner which would constitute a disguised restriction on trade. New Zealand has a suite of relevant existing legislation that is designed to address potential adverse environmental outcomes of economic activity, including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Ozone Layer Protection Act 1996, the Soil Conservation and Rivers Control Act 1941, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Aquaculture Reform (Repeals and transitional Provisions) Act 2004, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1949 (amended 1993), the Forests Act 1949 (amended 1993), and the Wildlife Act 1953. New Zealand also encourages multinational firms to promote environmental management systems through its support of the OECD's Guidelines on Multinational Enterprises.

TPP breaks new ground in relation to several environmental issues, which could support New Zealand's environmental policy priorities. It includes an obligation that requires each Party to adopt measures to address the trade of wild flora and fauna taken or traded in violation of that Party's law or another applicable law. In meeting this requirement, each Party has the right to exercise discretion in relation to the investigation of suspected violations and the allocation of enforcement resources. The Chapter includes disciplines and transparency requirements in relation to fish subsidies that contribute to overfishing and overcapacity and illegal, unreported and unregulated (IUU) fishing.

7.4.2 Product effects

Trade liberalisation under TPP is likely to lead to some changes in the mix of products that New Zealand exports and imports. More generally, trade liberalisation results in a more efficient use of resources, and the additional income that is generated by trade liberalisation can also be used – at least in part – to invest in new technology and production processes that can have positive environmental outcomes.

At the same time, changes in the composition of New Zealand's imports that arise from TPP's trade liberalisation provisions may present a possible increase in biosecurity risk. There could potentially be an increase in the amount of environmentally sensitive or hazardous items brought into New Zealand. These risks will need to be carefully monitored, but New Zealand's existing framework of environmental laws, regulations policies and practices are designed to address any such change in the risk profile of imported goods.

The liberalisation of trade in environmental goods and services under TPP – a rapidly growing export sector for New Zealand – will deliver both economic and sustainable development benefits.

7.4.3 Structural effects

Structural effects relate to the ways in which trade liberalisation can affect the production of goods and services that have environmental effects. If trade liberalisation leads to a shift in resources away from environmentally-damaging production processes or techniques (such as over-production or land degradation associated with primary production), these structural effects are likely to be a net positive for the environment. Negative structural effects can occur if domestic policy settings are not sufficiently robust to deal with a potential increase in the production of goods and services resulting from trade liberalisation that may damage the environment.

TPP is unlikely to have any discernible negative structural effects, given the degree of structural reform that New Zealand has experienced over the past four decades, natural resource and capacity constraints, the open nature of the New Zealand economy, and the environmental management legislation and systems already in place.

7.4.4 Scale effects

As economies expand as a result of trade liberalisation, there may be a risk of increasing pollution levels and other environmental impacts. This risk stems largely from the potential product and structural effects outlined above. However, this risk may be offset by the productivity improvements (and hence income gains) that are also associated with liberalisation. As a result of allocative efficiency gains, it may in fact be possible to produce more goods and services using the same amount of aggregate resources. Also, over time, technological improvements, which can be hastened by trade liberalisation and broader economic integration, are also likely to contribute to a more efficient use of natural resources.

Given New Zealand's existing environmental and resource management policy frameworks, and the provisions in TPP to promote capacity building on environmental issues, it is unlikely that scale effects resulting from TPP would result in a net increase in environmental degradation. The FTA is therefore not expected to have any negative effects on the environment in New Zealand that cannot be managed using existing policy frameworks. Its provisions may encourage improved productivity in the use of natural resources.

8 The costs to New Zealand of compliance with the treaty

8.1 Summary of Costs

The following costs to the Government (fiscal costs) of entering into TPP have been identified, and are described in more detail in this Section of the NIA. These costs are considered against the overall effect of TPP on New Zealand in Section 7 of this NIA.

Table 8.1: Fiscal Costs of TPP, New Zealand dollars⁹⁹

Area	Annual cost	Description	Reference
Foregone tariff revenue	\$20 million	This maximum is reached after seven years. (See Table 8.2.)	Section 8.2.
TPP Institutional arrangements	\$0.5 million	Participation in on-going TPP committees etc.	Section 8.3.1.
Outreach activities	\$0.495 million	This is the estimated annual cost for the initial period leading to entry into force (which is expected to happen within two years). Ongoing costs expected are to be significantly smaller.	Section 8.3.2.
Administrative costs (see Table 8.3)	NZ\$3.2 million	Costs for implementing certain TPP obligations (primarily, the fiscal cost in relation to new administrative procedures PHARMAC would implement, and impact of any extensions to pharmaceutical patents). Note also one-off costs to PHARMAC of NZ\$4.5 million, and Customs of NZ\$0.4 million.	Section 8.3.3.
Total	NZ\$24 million		

8.2 Tariff revenue

The elimination of tariff revenue on imports from other TPP members, according to New Zealand's TPP Schedule of Tariff Commitments, would result in a maximum amount of annual foregone tariff revenue of

⁹⁹ Note the cost of copyright term extension is an economic cost, and addressed in Section 7.

NZ\$20 million from the seventh year after TPP enters into force. Over half of this (NZ\$12 million) would be eliminated from the first year after entry force. These figures are based on dutiable imports in 2014.

Table 8.2: Foregone Tariff Revenue, by Year

Year	Foregone tariff revenue (NZ\$, millions)						
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7 and out years
Foregone tariff revenue	12.0	14.8	16.2	17.5	18.9	19.2	19.5

New Zealand already has an FTA with six of the eleven other members of TPP, under each of which New Zealand eliminates tariffs on all tariff lines (for qualifying goods). The amount of duties that could potentially be foregone on imports therefore come entirely from imports from new FTA partners (i.e. the US, Japan, Mexico, Canada and Peru). This is a maximum figure, based on 2014 figures – in practice, the actual amount of duty foregone would be lower taking into account imports that were not originating (under the TPP rules of origin) or for which the importer did not seek preference.

Table 8.3: Foregone Tariff Revenue under TPP, by Country (based on 2014 imports)

Country of Origin	Total duty (excluding excise paid on excisable goods, NZ\$)
Canada	\$0.5 million
Japan	\$2.2 million
Mexico	\$0.8 million
Peru	\$0.5 million
US	\$15.8 million
Total	\$19.9 million

8.3 Costs to government agencies of implementing and complying with the FTA

8.3.1 TPP institutional arrangements

TPP establishes a framework for on-going consultations between Parties, comprised of a Joint Commission to oversee the implementation of the Agreement, under which eighteen committees and working groups would be responsible for specific Chapters of the Agreement. Such institutional arrangements are common practice for a large FTA, and are seen by New Zealand as an essential mechanism for delivering the intended benefit of the Agreement. It would allow Parties, for example, to enforce compliance of commitments under the Agreement, undertake the on-going work envisaged in the FTA, address any emergent issues, and manage future developments (such as new members). This can be of particular importance for smaller countries like New Zealand, as it provides a forum for advancing market access priorities under the framework of the Agreement – particularly in areas such as SPS, TBT, and Customs. Undertaking these activities has fiscal implications for the government departments involved.

The Agreement envisages that the many of the committees would meet annually, unless agreed otherwise. Other committees are likely to meet less frequently, and several provide for video- or tele-conferencing. New Zealand is likely to seek to engage substantially in TPP's institutional arrangements to maximise economic opportunities under the Agreement. Based on previous FTAs and other international meetings, it

is almost certain that TPP Parties would seek to hold many of these committees simultaneously, which can allow for reduced costs particularly for smaller countries like New Zealand (for example, where one official is able to cover more than one committee). On this basis, the likely annual cost of attending TPP implementation committees to the New Zealand Government is estimated to be NZ\$400,000¹⁰⁰. (This estimate includes the costs associated with attending committee meetings for the IP-related treaties to which New Zealand would need to accede under TPP; see Section 4.19.)

New Zealand may, on occasion, need to host implementation meetings following TPP's entry into force. The annualised cost of hosting the TPP Joint Commission or related committees is estimated to be NZ\$100,000, based on the assumption that the twelve TPP Parties would rotate in hosting a full annual meeting of the Joint Commission and all related committees¹⁰¹ (or the equivalent annual cost of hosting a smaller number of committees more frequently). The source of funding for such hosting would be considered on a case-by-case base.

Fulfilling TPP's institutional arrangements may in some cases require increased resource for agencies, such as time commitments for participation in committees, as well as time for preparation. Based on New Zealand's experience in other FTAs, many TPP committees would provide a useful forum for progressing New Zealand's core objectives – for example, a regular TPP committee meeting between technical experts could allow New Zealand to bolster efforts to engage trade partners on outstanding market access or regulatory issues. In these situations, TPP's institutional arrangements would provide a leveraging opportunity, or multiplier, for existing work by agencies. In other areas, however, attending TPP committees could introduce an additional requirement beyond an agency's core business. This would represent an additional cost for that agency.

Future negotiations relating to the expansion or amendment of TPP are not considered as part of this NIA – for example, with respect to a new member joining TPP, or the agreement to undertake further negotiations on government procurement. Such future negotiations would be considered by the Government of the day, and the cost of undertaking negotiations most likely be met from the Government's Trade Negotiations Fund

(TNE).

8.3.2 TPP outreach costs

In the lead up to, and following, the entry into force of TPP, government agencies would work with the private sector and others to implement strategies to best leverage the opportunities arising from the FTA. This would include ensuring businesses are positioned to utilise opportunities presented by TPP, meeting the public interest in further information about particular areas of the agreement and its likely impact on New Zealand, and engaging with Māori and Māori business. Such activities are considered to represent an investment in the FTA, rather than a compliance cost.

¹⁰⁰ This assumes an annual meeting in the region, and is based on the historical costs associated with attending a TPP negotiating round.

¹⁰¹ Based on the historical costs of hosting similar meetings in New Zealand.

The inter-agency Trade Negotiations Fund (TNF) has a funding pool available to provide departments with funding for “bedding-in” activities associated with the FTA, for a period up to eighteen months after the entry into force of the FTA. An initial NZ\$495,000 from the TNF has been allocated for initial implementation activities, which would likely include public communications of TPP’s outcomes, roadshows and public events, and work to identify opportunities for New Zealand in TPP. This initial utilisation period is likely to run longer for TPP than New Zealand’s previous FTAs, given the significance of TPP markets for New Zealand, the scope and complexity of the Agreement, and the fact that there will likely be at least two years following signature before TPP enters into force. Annual costs for outreach once activities settle into business as usual following TPP’s entry into force are likely to be considerably less than for this initial period.

8.3.3 Administrative costs

A number of the obligations in TPP (as outlined in Sections 4 and 5) would require additional resource to implement. Many of these obligations come with reciprocal benefit for New Zealand – for example many obligations that will also be implemented by other TPP countries will benefit New Zealand exporters. Other obligations (particularly in relation to the Intellectual Property Chapter) represent a net cost to New Zealand. These administrative costs are summarised below. Each of these is analysed in more detail in Sections 4 and 5 above.

Table 8.4: Administrative Costs of TPP, New Zealand Government Agencies

Administrative Requirement	One-off cost	Annual cost	Net cost/benefit to New Zealand
<i>Transparency Chapter: PHARMAS</i> Administrative processes (transparency requirements, set timeframes, review process)	NZ\$4.5million (one-off establishment costs)	NZ\$2.2million.	No reciprocal benefit to New Zealand.
<i>Intellectual Property Chapter</i> possibility of granting patent term extension		NZ\$1 million.	Little reciprocal benefit to New Zealand.
<i>Customs Chapter: Advance Rulings</i>	NZ\$400,000 (One-off implementation cost.)	On-going costs to be met from baseline funding or cost recovered.	Advance Customs Rulings in other TPP markets are expected to be of significant benefit to New Zealand exporters.
<i>Technical Barriers to Trade, State Owned Enterprises and Designated Monopolies, Regulatory Coherence, Temporary Entry Chapters:</i> Notification and publication requirements		Where additional requirements exist, these are unlikely to be burdensome and would be met within agency baseline funding.	As a whole, the reciprocal practice in other TPP markets will be of benefit to New Zealand exporters.
<i>Environment Chapter: Environmental activities (monitoring and reporting; facilitating greater public participation; voluntary market mechanisms)</i>		Obligatory activities would be met within baseline funding, and additional implementation activities would be considered against associated costs on a case-by-case basis.	This annual cost would likely be small in the initial period, but has the potential to grow (assuming that New Zealand looks to engage in best endeavours as well as obligatory activities).

Section 8: The costs to New Zealand of compliance with the treaty

Administrative Requirement	One-off cost	Annual cost	Net cost/benefit to New Zealand
<i>Final Provisions Chapter: TPP</i> Depository		Depository functions as currently proposed will be able to be met within agency baseline funding.	On-going cost for New Zealand, but with reputational benefit.
Total annual		NZ\$3.2 million	

In negotiating TPP, New Zealand sought outcomes that could be implemented in the most appropriate way in the domestic context. This was taken into account in developing New Zealand's mandate and negotiation position. As a result, in a large number of areas (and except where indicated otherwise in this NIA), relevant agencies have planned to fund work within existing departmental baselines. In cases where this is not possible, Cabinet approval for additional funding may be sought by the relevant department.

The three costs in Table 8.3 are:

- As outlined in Section 4.27, TPP provisions intended to promote transparency in listing and funding processes for government programmes that subsidise pharmaceuticals will apply to PHARMAC. The outcomes reflect many existing PHARMAC practices that support transparency, but will require PHARMAC to do some new things. Implementing these provisions is expected to involve up to NZ\$4.5 million in one-off establishment costs for PHARMAC, and NZ\$2.2 million per year in operating costs.
- As outlined in Section 4.16, the provisions regarding patent term extension for delays in marketing approval are associated with cost to the health system of approximately NZ\$1 million per annum (averaged over many years).
- The requirement on Customs valuation rulings is outlined in Section 4.4.

8.4 Costs to businesses of complying with the FTA

As outlined in Sections 4 and 8, the expected effect of TPP would be to reduce compliance and at the border costs for New Zealand businesses through trade facilitating outcomes in areas such as customs procedures, TBT and SPS issues. These outcomes will help reduce transaction costs from the outset of the FTA. Other outcomes are expected to develop and increase over time from the platform the FTA provides in areas such as TBT and SPS for enhanced regulatory co-operation to facilitate trade.

The only areas in which TPP would be expected to increase costs for New Zealand businesses would follow from changes in New Zealand's Intellectual Property regime, as outlined in Section 4. These include a likely net increase in patent and copyright costs (as New Zealand is a net importer of intellectual property), a one-off transaction costs for the recording industry in negotiating new contracts to cover rights under the new regime, a likely marginal increase in the cost of some agricultural chemicals, and possible limited increased costs for plant growers who use protected varieties.

9 Completed or proposed consultation with the community and parties interested in the treaty action

9.1 Inter-departmental consultation process

The negotiation of TPP (and associated side letters) was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade (MFAT). The inter-agency team comprised officials from the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Health, the New Zealand Customs Service and the Ministry for the Environment.

Other relevant departments and agencies (including the Treasury) were also regularly consulted during the negotiations in the preparation of New Zealand's position.

The Department of the Prime Minister and Cabinet was regularly notified of developments on the negotiations and New Zealand's position.

9.2 Public consultation process

The consultation process for TPP has been among the most extensive a New Zealand Government has undertaken for any trade negotiation. Throughout the negotiation process the MFAT, together with other government agencies, has been active in engaging with a wide spectrum of stakeholders on TPP.

The objective of ongoing consultations on the TPP has been to provide the opportunity for stakeholders to seek information and offer their views so that their interests are taken into account. Regular stakeholder sessions have provided a forum to share information about the progress of negotiations and to seek stakeholder input on negotiating goals and approaches. The "TPP Talk" internet column (on MFAT's website) encouraged feedback on TPP from the public at any stage.

In undertaking consultations for TPP, the Government drew on an existing foundation of information from engagement with stakeholders over the course of previous FTA negotiations.

9.2.1 Submissions process

Throughout the negotiation there were two public calls for submissions. MFAT invited initial public submissions in October 2008 on entering into negotiations with the US to expand the P4 agreement. A second invitation for public comment was made in 2011 following the expressions of interest from

other countries to join the TPP negotiations (Canada, Japan and Mexico) to better understand the views and interests of New Zealanders with regards to these three economies.

MFAT received 65 responses to the initial invitation for submissions, which expressed a diverse range of views on the TPP:

- Strong support for the potential benefits of the negotiations was expressed by various industry associations such as Dairy NZ, Meat Industry Association and Federated Farmers NZ, as well as regional chambers of commerce.
- Submissions from some stakeholders, such as the Council of Trade Unions, highlighted perceived risks from negotiations with the US, for example through investor-state dispute settlement provisions. Other submissions, for example from the Library and Information Advisory Commission, flagged the need to defend the balance between intellectual property owners and users.
- Many submissions received, including from iwi, indicated the need to reference the Treaty of Waitangi, for Māori to be meaningfully involved in the negotiation process and for ongoing consultation throughout the process.

Following the second invitation for public comment in 2011, MFAT received fifteen responses. Thirteen were from business (including business councils) and industry organisations. Two were from other governments – Canada and Mexico.

- All of these submissions indicated 'in principle' support for one or more of the candidate countries joining TPP. The importance of Japan as New Zealand's fourth largest trading partner received particular emphasis, while the potential to grow our trade with Canada and Mexico was also noted.

A number of specific issues of particular interest to certain sectors or individual businesses were raised in the submissions. These included: elimination of agricultural tariffs, liberalisation in services and investment, removal of import quota systems, regulatory coherence, labelling practices, intellectual property, government procurement, and movement of business persons.

- The majority of submissions indicated that they would not want to see any expansion of the TPP membership result in a lowering of quality standards or slow the progress of negotiations between the existing nine. Several submissions advocated that TPP should remain open to expansion in order to fulfil its potential as a platform for an APEC-wide FTA.

9.2.2 Consultation programme

Extensive public outreach and consultation took place throughout the negotiation of TPP, using printed, emailed and website information, supported by extensive briefings, discussions and correspondence with key stakeholders on New Zealand's negotiating objectives and process.

A primary portal of information on the negotiations was the MFAT website, and dedicated internet column, "TPP Talk". TPP Talk was regularly updated with the status of negotiations. Both the website

and column encouraged feedback on TPP from the public. In seeking views on TPP, the Government sought to encourage debate on the issues, including links to groups holding a range of views on the MFAT website.

Stakeholder briefing sessions

Hundreds of meetings took place, including with business groups, iwi, local councils, health sector representatives, unions, NGOs, Members of Parliament and individuals to seek input on the TPP and to help ensure a high quality outcome that reflects stakeholders' interests.

The Government held regular presentations and briefing sessions on the negotiations with interested parties. These include meetings in Auckland and Wellington in May 2015 in order to provide an opportunity for stakeholders to meet with the Chief Negotiator, to receive an update on the negotiation and to ask questions about their areas of interest. Similar meetings have also been held in Hamilton and Tauranga in October 2012 and Wellington in November 2012; Wellington and Christchurch in July 2013, Nelson in March 2014, Dunedin in April 2014 and in Christchurch in June 2014. The Ministry also updated Members of Parliament from a range of parties on the negotiation, including prior to the conclusion of negotiations.

In a new initiative that reflected the level of public interest in TPP, MFAT also made provision for stakeholder engagement with regard to the two TPP negotiating rounds held in New Zealand. With regard to the round of negotiations held in Auckland in December 2012, the Ministry organised a stakeholder programme attended by 72 New Zealand participants as well as other stakeholders from overseas. The programme included a briefing from New Zealand's Chief Negotiator and other participants' Chief Negotiators, and presentations from other stakeholders on specific topics, including intellectual property, labour, environment, market access, and investment. Auckland also hosted a round of negotiations in 2010 and the Ministry ran a similar stakeholder outreach programme.

Other government agencies also undertook engagement in the areas for which they have the policy lead. For example, in November 2011 the Ministry of Business, Innovation and Employment (MBIE) updated its TPP intellectual property stakeholders, including Māori business organisations, on the progress of the TPP negotiations concerning intellectual property. In addition, the Ministry of Health, together with the MFAT and MBIE, met with clinician groups on health policy-related issues in TPP in November 2012 and April 2015.

Stakeholder meetings were supported by email correspondence with interested individuals, companies and sectoral organisations, as well as regular ad hoc meetings between negotiators and interested stakeholders on intellectual property issues.

Consultation with Māori

Māori consultation was undertaken in accordance with MFAT's Strategy for Engagement with Māori on International Treaties. This Strategy aims to ensure that issues of relevance to Māori in

international treaties are identified early, and that engagement with Māori on a particular treaty is appropriately tailored according to the nature, extent and relative strength of the Māori interest.¹⁰²

For TPP, MFAT engaged with Māori through a number of mechanisms in addition to the wider stakeholder activities. The Ministry engaged with the Māori Business Facilitation Service at Te Puni Kōkiri to confirm an approach for stakeholder engagement concerning FTAs, and applied this approach for TPP outreach. The Ministry has also reached out to the Federation of Māori Authorities to engage in consultation as well as to individual Maori business enterprises and specific iwi.

The Ministry of Foreign Affairs and Trade also distributed to iwi and Māori organisations a six monthly report on international treaties under negotiation as a means of ensuring that Māori were kept informed of developments in the various negotiations (this has recently been made available as an online database, 'New Zealand Treaties Online'). This list of international treaties contains information on TPP, including specific areas of the agreement of interest to Māori, like the Treaty of Waitangi exception. This distribution provided contact details for feedback on the negotiation from Māori addressees.

9.3 Issues covered in the consultation process

A wide variety of issues were covered in the consultation process, reflecting the broad spectrum of interests held by stakeholders and recognising the strong interest many New Zealanders have had in the TPP negotiation.

Amongst other areas, stakeholders have been consulted on the phase-out of tariffs, rules of origin, services and investment commitments, intellectual property provisions, labour and environment outcomes, rules governing state-owned enterprises and government procurement commitments. Areas of particular public interest raised by those consulted in the course of negotiations concerned issues such as the transparency of the negotiating process, recognition of the Treaty of Waitangi, the Investor-State Dispute Settlement (ISDS) provisions, and impacts on the health sector, including on the operation of PHARMAC.

Feedback from those consulted has informed New Zealand's negotiating objectives and, in many instances, has been taken directly into account though specific provisions negotiated in the text of the agreement. For example:

- *Specific Export Interests:* New Zealand's negotiating stance for outcomes in goods, services and investment reflected the areas of priority identified by various industry associations (for example, elimination of agricultural tariffs, prohibition on agricultural export subsidies, liberalisation in services and investment, removal of import quota systems, regulatory coherence, labelling practices, intellectual property, government procurement, and movement of business persons).

¹⁰² See: <http://mfat.govt.nz/Treaties-and-International-Law/03-Treaty-making-process/3--Engagement-with-Maori/index.php>

Section 9: Completed or proposed consultation with the community and parties interested in the treaty action

- * *Transparency:* All TPP countries agreed to keep the draft text and related documents confidential while the negotiation process was ongoing. While this approach was consistent with the process followed by New Zealand Governments in past FTA negotiations, the Government sought to undertake an extensive public consultation process to enhance the transparency of the process and has been open to discussion of the issues under negotiation with stakeholders.
- * *The Treaty of Waitangi:* New Zealand prioritised achieving a specific Treaty of Waitangi exception in TPP that would allow New Zealand to take measures that it deems necessary to accord more favourable treatment to Māori in respect of matters covered by TPP, including in fulfilment of its obligations under the Treaty of Waitangi. For more information on the Treaty of Waitangi exception, see Section 7.3.1.
- * *Investor-State Dispute Settlement (ISDS):* TPP's Investment chapter contains a number of different safeguards to protect the New Zealand Government's right to regulate. One of the important safeguards for the New Zealand Government include, among others, protection of discriminatory regulatory actions taken by the New Zealand Government that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment. Except in rare circumstances, the Government's action will be protected from the ISDS mechanism in the case of any alleged expropriation of an investment.
- * *Health and PHARMAC:* The provisions of the Annex on pharmaceutical and medical device purchasing will apply to PHARMAC's consideration of applications to fund pharmaceuticals but will not impact on fundamentals of New Zealand's health system. Flexibilities have been included in a number of other provisions that accommodate current PHARMAC practice. The obligations will have no substantive impact on how PHARMAC funds, prioritises pharmaceuticals for listing for reimbursement, or how PHARMAC approves pharmaceutical funding. PHARMAC will continue to prioritise its funding options and negotiate with suppliers to ensure New Zealanders get the best possible health outcomes from the money the Government allocates for medicines funding.
- * *Intellectual Property:* To take account of concerns on the potential negative impact of many of the changes to New Zealand's intellectual property regime, New Zealand has negotiated flexible approaches to implementation which mitigate these impacts. Many issues stakeholders raised concerns about during consultations were not included in the final Agreement. There are also provisions for exceptions and limitations. However, these changes will still entail costs for New Zealand. These need to be considered against the benefits of the Agreement as whole.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

Article 30.2 in the Final Provisions Chapter makes provision for the Parties to amend the Agreement. An amendment can only be made if the Parties agree in writing, and would only enter into force after each Party had approved the amendment in accordance with its applicable domestic legal procedures. New Zealand would consider any proposed amendment on a case by case basis, and, as reflected in the text, any decision to accept an amendment would be subject to the usual domestic approvals and procedures for entering into a multilateral treaty.

A proposal for an amendment may come about as a result of work done by the Commission, or by a Committee or other subsidiary body established under the Agreement. The Commission itself has review functions which could lead to consideration of amendments, while the various committees established under the Agreement in some cases have specific functions related to amendments and in other cases have general functions that could lead to consideration of amendments. An example of the former is Article 8.12 of the Technical Barriers to Trade (TBT) chapter which envisages possible amendments to the Annexes to that chapter, or development of further Annexes.

In addition, the Administrative and Institutional Provisions Chapter includes a specific provision that allows the Commission to consider and adopt modifications of:

- The tariff elimination schedules, where this is due to a Party accelerating its tariff elimination.

- The rules of origin established in Annex 3-D (product-specific rules).

- The lists of entities and covered goods and services and thresholds contained in each Party's Annex to Chapter 15 (Government Procurement).

As with any other amendments, such modifications would only take effect once each Party had completed any applicable domestic legal procedures.

11 Withdrawal or denunciation provision in the treaty

Any Party may withdraw from TPP by providing written notice of withdrawal to the Depository (Article 30.1.6). The withdrawal would take effect six months after notice is provided unless the Parties agreed on a different period. If a Party withdraws, the Agreement would remain in force for the remaining Parties (Article 30.6.2).

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12 Agency Disclosure Statement

This extended NIA has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. The extended NIA identifies all the substantive legal obligations in the Trans-Pacific Partnership Agreement, some of which will require legislative implementation, and analyses the advantages and disadvantages to New Zealand in becoming a Party to the FTA.

Implementation of the obligations arising under TPP would not be expected to impose additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.

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Guide to TPP Chapters

TPP comprises thirty Chapters. In addition, there are four separate Annexes to the Agreement (I-IV). Many of the Chapters also have their own Annexes, which are identified by that Chapter number and a letter, e.g. "2-D". These Chapter-specific Annexes are either included in the Chapter text (i.e. appear in the same document as the Chapter text), or are separate to the Chapter (i.e. are separate documents). The difference is presentational.

Below is a summary of the TPP Chapters and TPP Annexes, with a general guide to the area to which they apply. For specific information on the applicability of each Chapter, see the relevant sub-section in Sections 4 and 5 of this NIA.

Subject-Matter	TPP Chapter	Chapter-specific Annexes	TPP Annexes
<p>LEGAL AND INSTITUTIONAL</p> <p>Chapters 0, 1, and 27-30 relate primarily to legal and institutional arrangements.</p>	0. Preamble	The Chapter includes one Annex.	
	1. Initial Provisions and General Definitions		
<p>GOODS</p> <p>Chapters 2-8 relate primarily to trade in goods.</p>	2. National Treatment and Market Access for Goods	<p>The Chapter includes three Annexes.</p> <p>Separately, Annex 2-D includes a Tariff Schedule for each TPP Party, each of which is accompanied with further explanatory documents for that Party.</p>	
	3. Rules of Origin and Origin Procedures	<p>The Chapter includes three Annexes.</p> <p>A separate fourth Annex (3-D) covers Product Specific Rules (to which, there is a separate Appendix).</p>	
	4. Textile and Apparel Goods	The Chapter includes one Annex, to which there is one Appendix.	

Subject-Matter	TPP Chapter	Chapter-specific Annexes	TPP Annexes
	5. Customs Administration and Trade Facilitation		
	6. Trade Remedies	The Chapter includes one Annex.	
	7. Sanitary and Phytosanitary Measures		
	8. Technical Barriers to Trade	The Chapter includes seven Annexes.	
SERVICES AND INVESTMENT Chapters 9-13 relate primarily to trade in services and investment.	9. Investment	The Chapter includes twelve Annexes.	TPP Annexes I and II apply in particular to the Services and Investment Chapters of TPP.
	10. Cross-Border Trade in Services	The Chapter includes three Annexes.	Each TPP Party has separate schedules for both Annexes I and II ("Cross-Border Trade in Services and Investment Non-Conforming Measures").
	11. Financial Services	The Chapter includes five Annexes.	Each TPP Party also has a separate schedule for Annex III ("Financial Services Non-Conforming Measures").
	12. Temporary Entry for Business Persons	Annex 12-A, separate to the Chapter, includes a specific schedule for each Party.	
	13. Telecommunications	The Chapter includes two Annexes.	
	14. Electronic Commerce		
GOVERNMENT PROCUREMENT	15. Government Procurement	Annex 15-A, separate to the Chapter, includes a specific schedule for each Party.	
	16. Competition Policy	The Chapter includes one Annex.	
STATE-OWNED ENTERPRISES	17. State-Owned Enterprises and Designated Monopolies	The Chapter includes six Annexes.	Each TPP Party, except Japan and Singapore, has a separate schedule for Annex IV ("State-Owned Enterprises and Designated Monopolies Non-Conforming Measures").
INTELLECTUAL PROPERTY	18. Intellectual Property	The Chapter includes six Annexes.	
LABOUR AND	19. Labour		

Subject-Matter	TPP Chapter	Chapter-specific Annexes	TPP Annexes
ENVIRONMENT	20. Environment	The Chapter includes two Annexes.	
	21. Cooperation and Capacity Building		
	22. Competitiveness and Business Facilitation		
	23. Development		
	24. Small and Medium-Sized Enterprises		
	25. Regulatory Coherence		
(The Annex to this Chapter applies to PHARMAC)	26. Transparency and Anti-corruption	The Chapter includes one Annex.	
LEGAL AND INSTITUTIONAL Chapters 0, 1, and 27-30 relate primarily to legal and institutional arrangements	27. Administrative and Institutional Provisions		
	28. Dispute Settlement		
	29. Exceptions		
	30. Final Provisions		

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