TRANS-PACIFIC partnership

NEW ZEALAND
FOREIGN AFFAIRS & TRADE

Trans-Pacific Partnership

National Interest Analysis

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Table of Contents

Table of Contents

Frequently Used Acronyms and Terms

ANZCERTA	The Australia and New Zealand Closer Economic Relations Trade Agreement.
AANZFTA	The ASEAN-Australia-New Zealand Free Trade Area.
ANZTEC	The Economic Cooperation Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation.
ASEAN	The Association of Southeast Asian Nations.
AVE	Ad-valorem equivalent, a method of quantifying a barrier to trade by determining an equivalent barrier expressed in terms of a percentage of price (the ad valorem equivalent).
The Berne Convention	Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971.
The Budapest Treaty	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended on September 26, 1980.
CER	New Zealand-Australia Closer Economic Relations, a comprehensive set of trade and economic arrangements including the Australia and New Zealand Closer Economic Relations Trade Agreement which entered into force on 1 January 1983.
CGE	Computable General Equilibrium (CGE) models, used by economists to capture the effects of changing trade barriers on GDP, trade flows, national welfare and other variables.
Customs	The New Zealand Customs Service.
FDI	Foreign Direct Investment.
FTA	Free Trade Agreement.
GATS	Global Agreement on Trade in Services. (The WTO Agreement covering trade in services.)
GATT	Global Agreement on Tariffs and Trade 1994. (The WTO Agreement covering trade in goods.)
GDP	Gross Domestic Product.
GI	Geographical indications, a sign or name used in relation to goods that have a specific geographical origin and qualities essentially attributable to that origin, for example Champagne.
GPA	WTO Agreement on Government Procurement.
HS	The Harmonized Commodity Description and Coding System (Harmonised System, HS), a near-universal method for classifying international trade.
ICT	Information and communication technology.
ILO	International Labour Organization.
IP	Intellectual Property.
IPONZ	Intellectual Property Office of New Zealand, the government agency responsible for the granting and registration of intellectual property rights.
ISDS	Investor-State dispute settlement.

Frequently Used Acronyms and Terms

Medsafe	New Zealand Medicines and Medical Devices Safety Authority. Responsible for the regulation of medicines and medical devices in New Zealand, and ensuring that medicines and medical devices are acceptably safe.
MBIE	The Ministry of Business, Innovation and Employment.
MFAT	The Ministry of Foreign Affairs and Trade.
MPI	The Ministry for Primary Industries.
MFN	Most-favoured-nation, a requirement that preferential treatment extended to one country (the "most favoured") be extended to others (e.g. to other TPP Parties).
MNZFTA	Malaysia-New Zealand Free Trade Agreement.
National Treatment	A requirement that the same level of treatment extended to domestic entities be extended to others (e.g. to other TPP Parties).
NIA	National Interest Analysis.
NTM	Non-tariff measure.
NZTE	New Zealand Trade and Enterprise.
ODI	Outward Foreign Direct Investment
OECD	Organisation for Economic Co-operation and Development.
PHARMAC	Pharmaceutical Management Agency. The New Zealand government agency that decides which pharmaceuticals to publicly fund in New Zealand.
PVR	Plant variety rights, which provide the breeders of new varieties of plants with limited rights to control the commercial exploitation of their new varieties.
SDR	International Monetary Fund Special Drawing Rights, a unit of account used by the International Monetary Fund and based on a basket of international currencies.
SMEs	Small and medium-sized enterprises.
SOE	State-Owned Enterprise.
SPAM	Unsolicited commercial electronic messages.
SPS (Agreement)	Sanitary and Phytosanitary. (WTO Agreement on the Application of Sanitary and Phytosanitary Measures.)
TBT (Agreement)	Technical Barriers to Trade. (WTO Agreement on Technical Barriers to Trade.)
TNF	Trade Negotiations Fund. A New Zealand government inter-agency fund for the negotiation of Free Trade Agreements and to maximize the scope for New Zealand to enter and to gain from these agreements.
TPP	The Trans-Pacific Partnership.
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights.
UNCTAD	United Nations Conference on Trade and Development.
UPOV	The International Convention for the Protection of New Varieties of Plant.
WCT	WIPO Copyright Treaty, done at Geneva, December 20, 1996.
WIPO	World Intellectual Property Organization.
WPPT	WIPO Performances and Phonograms Treaty, done at Geneva, December 20, 1996.
WTO	World Trade Organization.

1 Executive summary

1.1 Background

The conclusion of negotiations of the Trans-Pacific Partnership (TPP) was announced on 6 October in Atlanta, Georgia by the twelve TPP Trade Ministers of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America (the US) and Viet Nam.

With the objective of building on the high-quality benchmarks set in 2005 by the P4 Agreement between New Zealand, Brunei, Chile and Singapore, TPP's foundations were set in September 2008 when the US announced its participation in comprehensive negotiations for an expanded P4 Agreement. This announcement was followed by Australia, Peru and Viet Nam. The first round of negotiations was held in Australia in March 2010. Malaysia joined the third round of negotiations in Brunei in October 2010, with Canada and Mexico joining the negotiation at the fifteenth round in December 2012 in Auckland. At the eighteenth round in 2013 Japan was welcomed as the newest TPP participant, bringing the TPP membership to twelve. A total of nineteen formal rounds were held, plus a number of informal negotiating meetings and meetings between Ministers and Leaders.

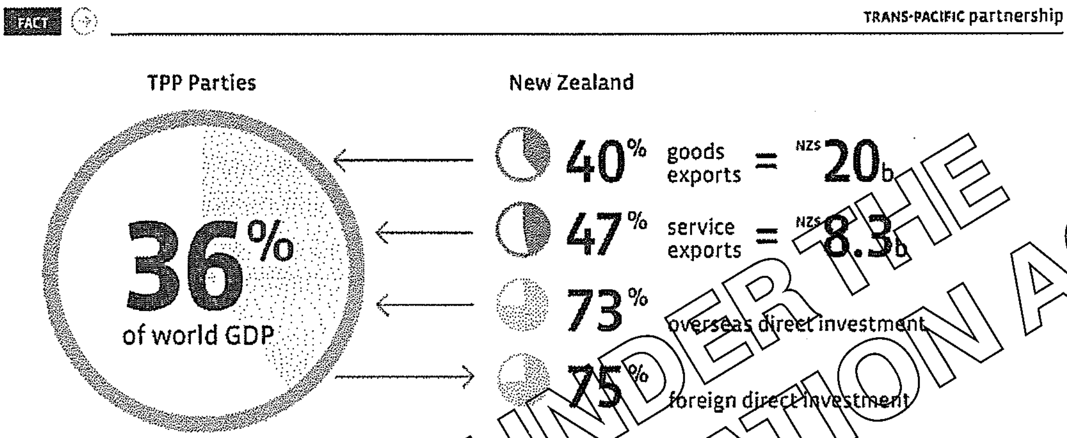
TPP includes 30 chapters and a number of Annexes. The final section of this National Impact Analysis (NIA) lists these chapters, and provides a guide to the topics they cover.

This NIA assesses the TPP from the perspective of its impact on New Zealand and New Zealanders. The NIA does not seek to address the impact of the TPP on other TPP Parties.

1.2 Reasons for New Zealand to become a Party to the Agreement

The reasons for New Zealand becoming a Party to TPP are both economic and strategic. Trade is critical to continued growth and prosperity, and the Government's Business Growth Agenda (BGA) identifies the high-level goal of growing exports to 40 percent of GDP by 2025. New Zealand's core objective in trade policy is to broaden and deepen the opportunities available to businesses. Key to this objective is removing and reducing barriers to trade and investment, as well as establishing frameworks through which trade and investment linkages can evolve and expand, thereby driving economic growth.

Free trade agreements (FTAs) with key trading partners, such as TPP, are an important means of achieving this. TPP would be New Zealand's first FTA with five countries, including our fourth and fifth largest trading partners (the US and Japan). TPP countries account for NZ$20 billion (40%) of New Zealand's global goods exports, NZ$8 billion (47%) of New Zealand's global services exports, and three quarters of New Zealand's outwards and inwards investment.



TPP would serve as a platform to support the integration of New Zealand business into regional supply chains and would provide consistency and certainty to traders and investors in TPP markets. TPP will continue to evolve and grow through future expansion. The agreement provides a platform for wider, regional economic integration, and supports the foundation for an FTA of the Asia Pacific.

The counterfactual scenario – New Zealand standing aside from the opportunities of TPP – risks marginalisation and decline for New Zealand in the region. New Zealand's competitiveness in TPP markets would be eroded, and trade and investment would be diverted away from New Zealand to other TPP members. The opportunity to shape future trade liberalisation in the region would also be lost.

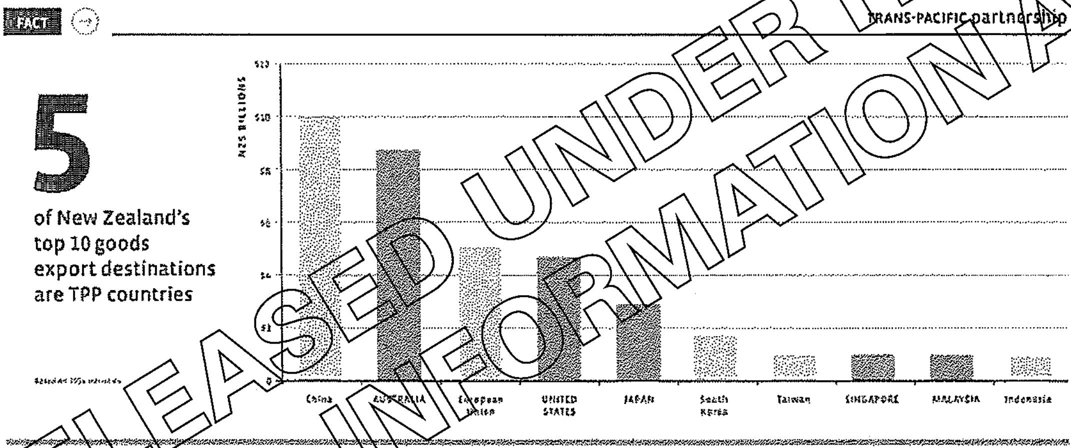
1.3 Advantages and disadvantages to New Zealand becoming a Party to the Agreement

Joining TPP would provide a significant net advantage for New Zealand, resulting from increased exports and greater regional economic integration.

1.3.1 Trade in Goods

Joining TPP would provide immediate economic benefit for New Zealand goods exporters on entry into force of the Agreement, particularly from reduced tariff rates in key markets with which New Zealand does not currently have an FTA. The TPP region is the destination for approximately 40% of NZ's goods exports (NZ$20 billion in 2014), and includes five of New Zealand's top ten goods export markets.

An estimated NZ$334 million is paid annually in duties on New Zealand exports to the five TPP countries with which we do not have existing FTAs (the US, Japan, Canada, Mexico and Peru).[1] While TPP has not delivered the full elimination of tariffs on our exports that New Zealand sought, it would deliver substantial benefits to exporters from the moment the Agreement enters into force, and the full elimination of tariffs on 95.4% of New Zealand exports when fully phased in, saving NZ$272 million in duties in these five new markets. In addition, all tariffs on products of trade interest with Malaysia and Viet Nam not eliminated in previous FTAs will also be eliminated in TPP providing additional tariff savings of NZ$2.4 million when fully implemented. This means that total savings on New Zealand exports to the TPP region, when the Agreement is fully phased in are estimated at NZ$274 million. In addition, TPP would provide new dairy market access into the US, Mexico, Canada and Japan through quotas, an improvement on existing access restricted by small quotas and prohibitive duties.[2]



There would also be significant benefits for exporters by ensuring that they are able to compete on a level playing field with their main competitors in the future.

Table 1.1: Estimated Tariff Savings per annum by Country[3]

Country	New Zealand exports	Estimated tariff savings at entry into force		Estimated tariff savings once fully implemented[B]	
	NZ$, millions	NZ$, millions	% of exports[A]	NZ$, millions	% of exports[A]
Parties where New Zealand has no existing FTA					
Japan	3,430	83	75.24%	207	90.63%
US	4,417	45	97.19%	52	99.61%

[1] Tariff and tariff saving figures are based on an average of trade from 2012-2014.

[2] Tariff quotas are where a certain volume of goods can be imported at a low duty. A higher (and often prohibitive) tariff is applicable to trade outside the quota.

[3] 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.

Country	New Zealand exports	Estimated tariff savings at entry into force		Estimated tariff savings once fully implemented[B]	
	NZ$, millions	NZ$, millions	% of exports[A]	NZ$, millions	% of exports[A]
Mexico	418	3.1	73.70%	6.6	81.42%
Canada	645	4.8	99.16%	5.2	99.89%
Peru	135	0.9	99.65%	0.9	100.00%
Parties with existing FTAs with New Zealand[C]					
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).

Table 1.2: Estimated Tariff Savings per annum by Sector[4]

Sector	New Zealand exports[A]	Estimated duties paid	Estimated tariff savings once fully implemented
	NZ$, millions	NZ$, millions	NZ$, millions
Dairy	2,141	132	96
Fisheries	347	9	9
Forestry	773	11	11
Horticulture	694	34	34
Industrials	2,274	9.6	9.6
Meat	1,923	101	84
Other Agriculture	352	19	12
Textiles	96	3.4	3.3
Wine	461	16	16
Overall	**9,060**	**334**	**274**

[A] "New Zealand exports" column does not include trade with Malaysia and Viet Nam that benefits from, or would benefit from, duty free access under New Zealand's existing FTAs.

Key benefits from tariff liberalisation would be:

- *At entry into force:* tariffs eliminated on NZ$3.8 billion of New Zealand exports currently subject to tariffs, including many horticultural and forestry goods, a number of dairy products, some wine, many manufactured products, and much fish and seafood. Specific product examples include such items as: the US (bottled still wine, sheepmeat, prepared meats, protein isolates); Japan (kiwifruit, squash); Canada (wine); Mexico (mussels, kiwifruit, milk

[4] 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.

albumin); and Peru (buttermilk powder). As a result, 87.9% of New Zealand exports to these new FTA markets would enter duty free on the day the Agreement enters into force, with estimated tariff savings of NZ$137 million.

- *By the 5th year after entry into force:* tariffs eliminated on an additional NZ$199 million of New Zealand exports currently subject to tariffs, including: the US (beef, fish sticks, asparagus); Canada (beef); Japan (hoki and other frozen fish, carrot juice, sausages and mandarins); Mexico (wine). This constitutes 2.2% of total current New Zealand exports to the US, Japan, Canada, Mexico and Peru. This means that 90.1% of New Zealand exports to these markets would enter duty free within five years after entry into force of the TPP. Estimated total tariff savings in the fifth year after entry into force are NZ$197 million.
- *By the 10th year after entry into force:* tariffs eliminated on an additional NZ$184 million of New Zealand exports currently subject to tariffs, including in the US (infant formula, ice-cream, tableware and sugar); Mexico (apples, sheepmeat and beef); Japan (tongues, hides, bluefin tuna and apples) and Viet Nam (wine). This constitutes 2.0% of total current exports to the US, Japan, Canada, Mexico and Peru. This means that 92.1% of New Zealand exports to these markets would enter duty free within ten years after entry into force of the TPP. Estimated total tariff savings in the tenth year after entry into force are NZ$236 million.
- *By the 15th year after entry into force:* tariffs eliminated on an additional NZ$242 million of New Zealand exports currently subject to tariffs, including in Japan (cheese, sawn wood and offals); and Malaysia (liquid milk and wine). This constitutes 2.7% of total current exports to the US, Japan, Canada, Mexico and Peru. This means that 94.8% of New Zealand exports to these markets would enter duty free within fifteen years after entry into force of the TPP. Estimated total tariff savings in the fifteenth year after entry into force are NZ$273 million.
- *When fully phased in:* tariffs eliminated on an additional NZ$57 million of New Zealand exports currently subject to tariffs. Tariffs on one of New Zealand's highest traded cheese tariff lines in the US would be eliminated over twenty years (with a transitional safeguard lasting a further five years). Tariffs are also eliminated on milk powder exports to the US, with skim milk powder eliminated over twenty years, and whole milk powder eliminated over 30 years with a transitional safeguard lasting a further five years. There are estimated total tariff savings of NZ$274 million per year at full implementation, not taking account of dynamic impacts.

Products Receiving Less than Full Tariff Liberalisation: For a small number of agricultural products with New Zealand's key affected export interests being dairy in some countries and beef in Japan it was not possible to achieve complete tariff elimination. Instead, TPP access would provide improved access through tariff reductions or tariff quota access.

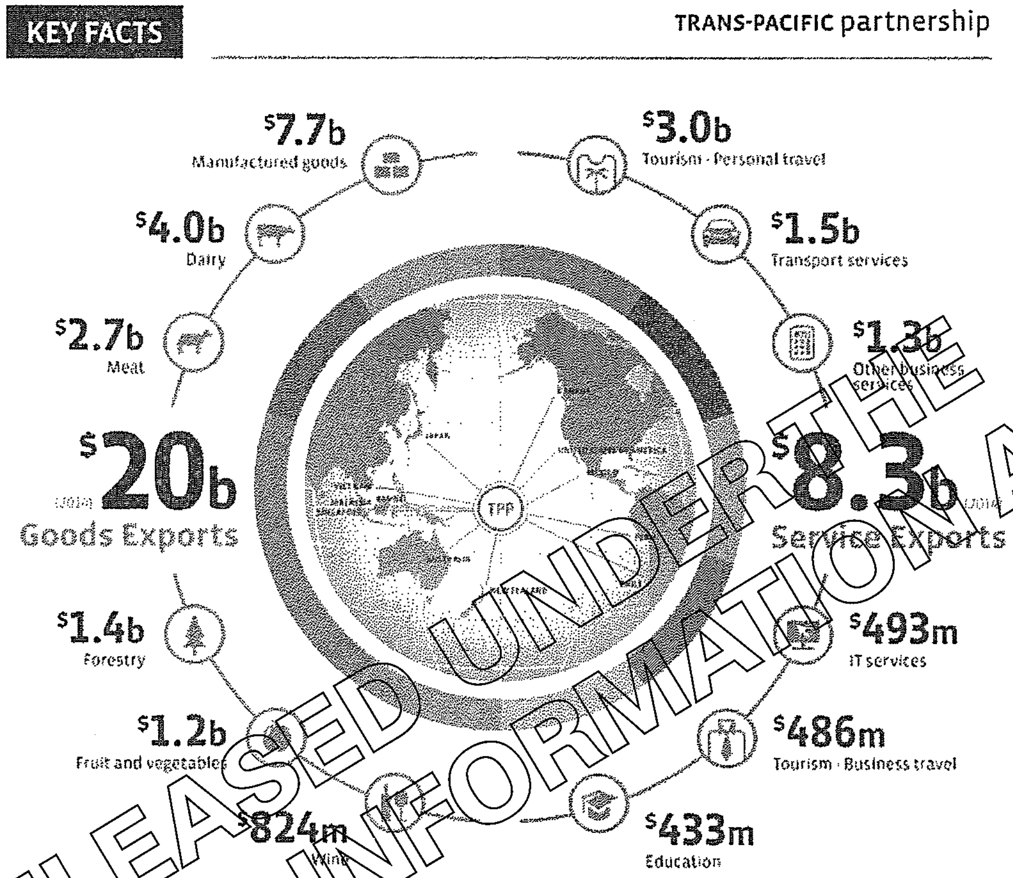
- *Tariff reductions:* Tariffs on an additional NZ$239 million of goods would be significantly reduced, but not eliminated, allowing for improved market access. Beef exporters would benefit from a 77% reduction in Japan's tariff for beef. This would be reduced from the current 38.5% (with the potential to 'snap-back' to a 50% duty if a WTO volume safeguard level is exceeded) to 9% over sixteen years, with an initial sharp cut at entry into force. There will be a transitional volume-based safeguard applying to all TPP beef imports into Japan, set above current trade levels, with a growth rate.[5] The safeguard will be abolished by Year 20 at the earliest. This outcome is the best outcome that Japan has agreed in a FTA to date, and immediately re-establishes a level playing field with Japan's largest beef supplier, Australia, after the Japan-Australia Economic Partnership Agreement entered into force in early 2015. Japan will also reduce the tariff for ice-cream by two-thirds, from 21% today to 7% over six years, opening up new export opportunities given the significantly reduced tariff.

- *Tariff Quota Access:* For dairy, a portion of the overall benefits would come from improved market access through tariff quota access. New quota access for butter, cheese and milk powders (where tariffs are not eliminated) would have a market value (at current world prices as of October 2015) of approximately NZ$310 million at entry into force of the Agreement, growing to NZ$670 million over fifteen years. This access, spread across TPP importing countries, would be shared amongst exporters from the TPP countries.
- *Peru Price Band:* While Peru will eliminate all tariffs it has not committed to eliminate the price-band mechanism for a range of products including dairy. The Price Band acts as an additional duty if imported prices fall below a reference price.

TPP includes a number of other outcomes that would improve access for New Zealand goods exports to the region, as well as creating a framework to further reduce barriers to trade in the future:

- Elimination of the use of agricultural export subsidies within the TPP region. Taken together with the decision on agricultural export subsidies at the Tenth WTO Ministerial Conference (MC10) in Nairobi in December 2015, this is a significant development in terms of New Zealand's long-standing aim to eliminate agricultural export subsidies globally.
- The most detailed rules of any New Zealand FTA on quota administration should result in transparent timely and predictable administration conditions, while imposing minimal additional administrative burdens on exporters.
- Rules of origin (for accessing preferential tariffs under TPP), primarily based on a specified change in tariff classification approach, that would allow processing undertaken in TPP Parties to be counted towards achieving the origin threshold ("cumulation"); give options to business when calculating regional value content; and provide for simple documentation (self-declaration).
- Customs commitments that would benefit exporters through increased efficiency at the border and expedite the release of goods. This includes advance valuation rulings for imports which would provide certainty and predictability for New Zealand exporters.
- Mechanisms to minimise negative trade effects of Sanitary and Phytosanitary (SPS) measures and Technical Barriers to Trade (TBT). This would contribute to the reduction over time of non-tariff measures faced by New Zealand exporters.
- A Wine and Distilled Spirits Annex to simplify the sale and export of New Zealand wines in TPP markets and reduce costs for New Zealand wine producers.

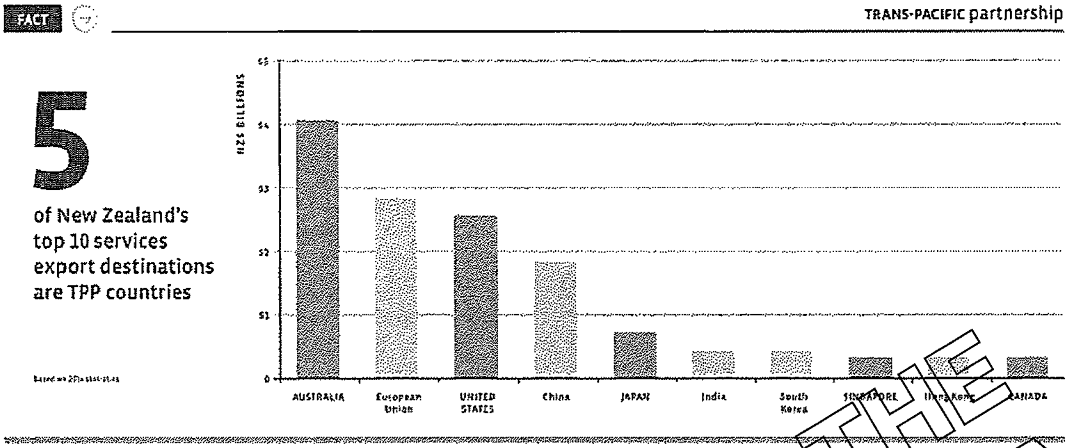
[5] Under a volume-based safeguard, a higher duty is applied if the volume of imports exceeds a pre-set level.



1.3.2 Trade in Services

Joining TPP would make it easier for New Zealand service exporters – such as providers of professional, business, education, environmental, transportation and distribution services – to exploit new trade opportunities and increase their competitiveness and profitability. Services are critical to New Zealand's international competitiveness, accounting for 64 percent of GDP (NZ$140 billion in 2014), with exports worth NZ$17.7 billion (around a quarter of total exports). Nearly half these exports (NZ$8.3 billion) go to TPP countries.

Improved commitments under TPP for services (and investment) would also be important for many New Zealand goods exporters, which increasingly look to undertake services related activities to support their international business (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service).



In addition to the Investment Chapter discussed below, TPP includes four chapters that relate specifically to trade in services:

- *Cross-Border Trade in Services*: Commitments are designed to ensure New Zealand exporters are not discriminated against in TPP markets (subject to limited exceptions) and that domestic regulation in TPP countries does not operate as a barrier to services trade, including sectors such as accountancy, construction, engineering and architecture services. This would benefit New Zealand exporters including in transport services (NZ$1.5 billion exported to TPP countries in 2014), other business services (NZ$1.3 billion to TPP countries in 2014), and IT services (NZ$500 million exported to TPP countries in 2014). It would also support education and tourism exporters, for example making it easier to establish in-market presence for marketing or sales. For New Zealand, these obligations would be low-cost to fulfil, as our domestic regulatory regime already operates in an open and non-trade restrictive way. Like existing New Zealand FTAs, public services provided in the exercise of governmental authority, and social services such as healthcare and public education, are also excluded from the scope of New Zealand's services market access commitments in TPP.
- *Financial Services*: TPP is the first time that New Zealand has included a separate chapter of provisions and commitments on financial services in a FTA. New Zealand sold NZ$136 million of financial services to the TPP region in 2014, the majority of which was NZ$99 million to Australia. These exports were a relatively small proportion of the total NZ$621 million of financial services New Zealand exported in 2014, indicating potential for increased exports under TPP. New Zealand already has an open and transparent financial services policy regime. This, together with the policy space preserved under TPP to impose prudential regulation, means there would be little policy risk and minimal disadvantage for New Zealand to enter TPP with respect to Financial Services.
- *Temporary Entry:* TPP will commit Parties to provide streamlined and transparent procedures for temporary entry applications, including a requirement to publish explanatory information on the requirements for temporary entry and the typical timeframes for application in each country. Increased information would assist New Zealand business people when doing

business in all TPP countries. New Zealand's commitments do not apply to people seeking employment in New Zealand or to immigration matters, such as citizenship or permanent residency applications.

- *Telecommunications:* TPP includes additional commitments that would apply to telecommunication services, aimed to underpin effective market access and competitive markets in telecommunications services in the TPP area. All the disciplines in the Chapter are assessed as consistent with current New Zealand regulatory settings.

1.3.3 Investment and Investor-State Disputes Settlement

Joining TPP would benefit New Zealand investors, providing improved conditions when making investments in other TPP Parties for many sectors, including our agricultural, manufacturing and natural resource industries. Improved conditions for investment are also important for many New Zealand goods and services exporters, who increasingly look to undertake investment activities to support their international business (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service). New Zealand's outward foreign direct investment (ODI) in TPP countries represents about 73% of total investment abroad, and TPP will reduce barriers to investment and facilitate the navigation of complex regulatory systems.

TPP would be the first time New Zealand has entered into FTA investment commitments with Canada, Japan, Mexico, Peru and the US, and will also improve on the partial investment arrangements with several other TPP Parties including Brunei, Chile, Malaysia, Singapore and Viet Nam.

Foreign Direct Investment (FDI) from TPP countries totals 75 percent of all FDI into New Zealand. This is an important source of capital to keep building New Zealand's competitive and productive economy. Membership in TPP would also send a signal to investors in TPP Parties about the investment environment into New Zealand by generating increased confidence and knowledge in New Zealand's stable and transparent investment regime, which would be expected to encourage inward investment flows in New Zealand.

Under TPP, New Zealand would increase the threshold above which a non-government investor from a TPP Party must get approval to invest in significant business assets from NZ$100 million to NZ$200 million. (Note that non-government investors from Australia are already screened at a higher threshold, currently NZ$497 million, under ANZCERTA.) Other than this specific threshold, TPP would not have any further implications for the investments currently screened under the Overseas Investment Act 2005. No changes would be required to the way New Zealand currently approves foreign investment in sensitive land (including farm land over five hectares) or fishing quotas. TPP rules do not provide the ability for a government to ban TPP nationals from buying property in New Zealand. Under TPP, however, New Zealand would be able to impose some types of new, discriminatory taxes on property and, as noted above, continue to require approval to require approval for foreign investments in sensitive land. New Zealand would also retain the flexibility to make the approval criteria under the Overseas Investment Act more or less restrictive.

As with many of New Zealand's existing FTAs (with Korea, China, and ASEAN members), the provisions of the TPP Investment Chapter are supported by recourse to investor State dispute settlement (ISDS). ISDS is a dispute resolution mechanism that allows foreign investors to pursue remedies directly against a TPP Party in relation to breaches of TPP's investment provisions.

The ISDS mechanism would provide positive recourse for New Zealand investors in TPP countries, but also has the reciprocal potential consequence of an increased exposure of the New Zealand Government to ISDS claims. While ISDS has been included in many of New Zealand's existing trade and investment agreements, it has never been utilised. However, the size of the TPP region and the potential number of new investors in New Zealand could increase the risk that New Zealand may face an ISDS claim (and the actual cost of responding to such a claim) in the future. This increased risk has been suggested by some commentators as potentially preventing future governments from taking regulatory action in areas of importance to New Zealand, such as for environmental objectives.

There are several aspects of ISDS in TPP that are considered to provide sufficient mitigation to balance the advantages and disadvantages of ISDS as acceptable for the New Zealand Government. For example:

- There are safeguards, reservations (non-conforming measures) and exceptions that ensure New Zealand retains the ability to regulate for public health, the environment and other important regulatory objectives.
- A specific provision allows the Government to rule out ISDS challenges over tobacco control measures. The Government intends to exercise this provision.
- The investment obligations in TPP have been drafted in a way that would impose a high burden of proof on investors to establish that a TPP government had breached obligations such as 'expropriation' or 'minimum standard of treatment'.
- Limiting the types of monetary awards and damages that can be made against the Government.
- Provisions that mean hearings will be open to the public, and which allow tribunals to accept submissions from experts and the public.
- A number of provisions that allow TPP governments to issue binding interpretations on ISDS tribunals.
- ISDS provisions would not apply between New Zealand and Australia. This means that three-quarters of all FDI from TPP countries in New Zealand would not have recourse to ISDS under TPP.
- There are a number of other mitigating features (outlined in detail in this NIA).

ISDS does not change New Zealand's obligations under TPP, it simply provides an avenue for TPP investors to pursue a claim in the case a government has not met certain obligations. Similar resources would be involved defending a case if, for example, a TPP Government was asked by one of its investors and decided to pursue a remedy via State-to-State dispute settlement, or pursue the issue through the domestic avenues (such as the New Zealand courts).

1.3.4 Intellectual Property

The TPP Intellectual Property Chapter contains the most extensive set of intellectual property obligations in a FTA negotiated by New Zealand. Most provisions of the chapter are consistent with New Zealand's existing intellectual property regime. But some provisions require New Zealand to make changes to law or practice before we can ratify the Agreement, most notably in the areas of copyright and related rights, and patents. New Zealand will also need to amend its plant variety rights regime within three years of TPP entering into force. In many cases New Zealand has negotiated flexible approaches to these obligations, as well as exceptions and limitations. Overall, however, the obligations in the Intellectual Property Chapter would involve a net cost to New Zealand (primarily the net cost due to copyright term extension, conservatively estimated at NZ$55 million, and the loss of future policy flexibility in other areas).

Some of these obligations regard copyright and related law:

- The most significant impact for New Zealand would be a requirement under TPP to extend the copyright term to 70 years. New Zealand law currently protects copyright for 50 years.[6] New Zealand negotiated an eight-year transition period in TPP, during which time works that would originally have fallen into the public domain would have their copyright term extended to 60 years (rather than 70). While some New Zealand copyright owners would benefit from copyright extension, overall it would impose a significant net cost – due to New Zealand consumers foregoing savings from works falling into the public domain earlier. Over the very long term, the average annual cost to New Zealand is conservatively estimated to be NZ$55 million.
- TPP would require Parties to prohibit the circumvention of technological protection measures (TPMs)[7] without permission of the rights owner, as well as some related obligations. While New Zealand law is already consistent with many of these requirements, TPP would require are new civil and criminal sanctions against a person who circumvents a TPM directly. The TPM provisions would not require New Zealand to prohibit uses of copyright works that are currently legitimate under New Zealand law.
- TPP would require New Zealand to 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

[6] The copyright term for films and sound recordings (including recorded music) currently expires 50 years after the end of the calendar year in which they were made or published. The copyright term for books, screenplays, music, lyrics and artistic works currently expires 50 years after the end of the calendar year in which the author died.

[7] TPMs include digital locks on copyright works or services that distribute copyright works.

of their performances. This may benefit some New Zealand performers, but is also expected to incur some transaction costs for New Zealand.

Some provisions in TPP relating to pharmaceuticals are assessed to be a net disadvantage to New Zealand, but not to the extent of posing a significant cost or risk:

- TPP would require New Zealand to provide extensions to the patent term for pharmaceuticals for delays in regulatory approval processes in certain circumstances. If these circumstances arise, a patent term extension would delay entry to the market of cheaper generic versions of that pharmaceutical. Given the efficiency of New Zealand's processing times, very few unreasonable delays are expected to occur in New Zealand, and only in exceptional circumstances. While the cost of any delays would depend on the case, the average cost is estimated at NZ$1 million a year.
- TPP would require a Party to provide either eight years' data protection for biologic pharmaceuticals, or five years along with other measures to provide additional effective market protection (a period of protection before which competition from generic pharmaceuticals was allowed). The second option can be met by current New Zealand policy settings and practice.
- TPP would require New Zealand to provide a form of patent linkage for pharmaceutical products. But the obligation in TPP has been limited to requiring patent owners to be notified when a person sought approval to market a generic version of their product, and making available remedies to enable the resolution of disputes about a pharmaceutical patent. These measures would not require any change to New Zealand practice, and as a result would not result in any disadvantage to New Zealand.

Under TPP, New Zealand would need to adopt a plant variety rights system that gave effect to the most recent 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 91). (This is a New Zealand-specific alternative to an obligation in TPP to accede to UPOV 91.) While New Zealand has acceded to UPOV 78 (the 1978 version of the Convention), accession to the more prescriptive UPOV 91 had been seen as potentially reducing some of the options available to the Government when deciding how to respond to the recommendations of the Waitangi Tribunal report Ko Aotearoa Tēnei (WAI 262) in respect of indigenous plant varieties. Under TPP, the Government would have flexibility to decide, in consultation with the relevant partners and stakeholders, how best to meet New Zealand's obligations while taking into account the recommendations in WAI 262. New Zealand would have three years from TPP's entry into force to meet this obligation. New Zealand would also be able to adopt any measure necessary to fulfil Treaty of Waitangi obligations in meeting this plant varieties obligation under TPP.

TPP would also require New Zealand to accede to or ratify six further international conventions and treaties related to intellectual property, none of which are expected to bring significant advantage or disadvantage.

There would be some advantages for New Zealand in joining TPP from the Intellectual Property provisions. Requirements for due process regarding the protection of geographical indications (a sign or name used in relation to goods that have a specific geographical origin and qualities essentially attributable to its origin). Exporters would be able to seek to ensure that they can continue to use common names for goods by objecting to proposals in export markets to protect them as geographical indications. Consistent enforcement procedures for intellectual property would also benefit exporters that rely on protecting intellectual property overseas. Provisions on traditional knowledge provide a framework within which TPP Parties can cooperate to improve understanding of issues related to traditional knowledge and genetic resources, including mātauranga Māori and taonga species.

1.3.5 Other Areas of the Agreement

There are a number of other areas of potential significance for New Zealand in TPP:

- TPP would be the first time New Zealand entered Government Procurement commitments with Malaysia, Mexico, Peru and Viet Nam. This would provide New Zealand exporters new government contracting opportunities, without requiring changes to New Zealand's procurement practice or regulatory framework. In most developed countries, government procurement typically represents 14-20 percent of GDP (OECD estimates).
- TPP would require the Pharmaceutical Management Agency (PHARMAC) to meet requirements aimed at promoting transparency and good process in decisions to fund pharmaceuticals and medical devices – for example, introducing a review mechanism. While it was not New Zealand's preference to include this issue in TPP, most provisions reflect existing PHARMAC practices. The total estimated impact of these rules for PHARMAC is NZ$4.5 million in one-off establishment costs, plus NZ$2.2 million ongoing per year costs. There would be no change to the fundamentals of PHARMAC's model. PHARMAC's ability to prioritise and decide what pharmaceuticals are funded in New Zealand, and the negotiating model it uses to achieve the best health outcomes from the funding available, would not be affected by TPP.
- TPP contains provisions on State-Owned Enterprises (SOEs) that recognise each Party's right to establish and maintain SOEs while aiming to establish a level playing field between state-owned or controlled companies and their competitors. The provisions do not apply to SOEs which operate principally on a not-for-profit or cost-recovery basis, and include an exception for SOEs with annual revenue below around NZ$400 million (thus excluding the majority of New Zealand entities from TPP's commitments). Services that are provided in New Zealand by New Zealand SOEs are also excluded from key obligations in the Chapter. The Chapter would support New Zealand exporters and investors operating in TPP markets, and would entail no real disadvantage for New Zealand, primarily because New Zealand state-owned commercial companies are set up to operate on a level playing field with privately-owned companies and are subject to competition laws.
- TPP's labour and environment outcomes are the most comprehensive included in any of New Zealand's FTAs. TPP will promote sustainable development and higher standards of environmental and labour protection in the TPP region. Key outcomes for New Zealand include commitments by Parties to adopt and enforce strong domestic labour and environmental laws, and obligations to address forced and child labour, the illegal take of and

trade in wild flora and fauna, subsidies for overfished fish stocks, and illegal, unreported and unregulated (IUU) fishing.

- A number of chapters will contribute to facilitating economic efficiency, consumer welfare, and the ease of doing business, for example chapters covering Competition, Competitiveness and Business Facilitation, Small and Medium Enterprises, and Regulatory Coherence.
- TPP's Electronic Commerce Chapter aims at promoting the adoption of domestic frameworks capable of building confidence among e-commerce users, while avoiding the imposition of unnecessary barriers to the use and development of e-commerce.

Some obligations in TPP would constitute new obligations for New Zealand but would not require any changes to our law or practice. These new obligations would not therefore directly disadvantage New Zealand. The new obligations would, however, place new limitations on the Government's ability to modify New Zealand's policy settings to ensure they are appropriate for our domestic circumstances. Whether locking in current policy settings materially disadvantages New Zealand depends principally on how prescriptive the relevant obligation is and the availability of other policy tools to achieve the relevant future policy objectives. For example, some obligations in the Intellectual Property Chapter could place new limitations on the Government's ability to adopt certain intellectual property settings in response to new circumstances or technological change, and the SOEs Chapter could prevent the Government from subsidising SOEs to specifically undertake commercial activities in other TPP countries.

1.4 Measures required in New Zealand to implement TPP

Most of the obligations in TPP are already 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. Also, we have an independent, fair and effective judicial system and an efficient administrative system that 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 are required to align New Zealand's domestic legal regime with certain of the rights and obligations created under TPP and thereby enable New Zealand to ratify TPP. These include:

- Changes to the Tariff Act 1988 to implement TPP's preferential tariff rates and transitional safeguard mechanisms (and may include emergency action measures for textiles and apparel), to the Customs and Excise Act 1996 to implement advance rulings for valuation, and to the Customs and Excise Regulations 1996 to implement rules of origin. TPP would also require an export license allocation system for quota-controlled dairy products to the US market.
- Some amendments to various Acts to give effect to notification, comment, and transparency requirements under TPP.

- Within three years of TPP entering into force, a change to the Wine Act 2003, or regulations under the Act, defining the type of wine permitted to be exported as "ice wine".
- Amendments to the Overseas Investment Act to increase the screening threshold for non-government investments in significant business assets from TPP Parties to NZ$200 million.
- Within three years of TPP entering into force, amendments to the Plant Variety Rights Act 1987 to give effect to the International Convention for the Protection of New Varieties of Plants (UPOV 91), while adopting any measure necessary to protect indigenous plants in fulfilment of any related obligations under the Treaty of Waitangi.
- Amendments to the Copyright Act 1994 to give new exclusive rights to performers, extend the copyright term from 50 to 70 years (with a delayed transition), provide new civil and criminal remedies against the circumventing of TPMs (while determining exceptions to allow legitimate circumvention), providing additional protection for rights management information, providing the New Zealand Customs Service *ex officio* powers to temporarily detain suspected copyright-infringing goods, and broadening the existing protection of encrypted program-carrying signals.
- Amendments to the Patents Act 2013 to provide a grace period for public disclosures of an invention before a patent application has been filed, and to provide for patent term extension in the case of certain unreasonable delays.
- Amendments to the Trade Marks Act 2002 to provide authority to Courts to award additional damages for trade mark infringement, introduce measures to prevent the export of infringing trade mark goods, introduce measures to provide the New Zealand Customs Service *ex officio* powers to temporarily detain suspected trade mark infringing goods, and require the Courts to order the destruction of counterfeit goods in infringement proceedings except in exceptional cases.
- Amendments to the Agricultural Compounds and Veterinary Medicines Act 1997 to extend current data protection for new agricultural chemicals from five to ten years.

1.5 Economic, social, cultural and environmental effects

1.5.1 Economic effects

The overall impact of TPP on the New Zealand economy would be the result of the complex interaction of the different aspects of the Agreement.

- Economic modelling commissioned by the New Zealand Government estimates that once fully in effect, TPP would result in New Zealand's GDP being about 1% larger than if TPP had not existed, adding NZ$2.7 billion to GDP (in 2007 dollars) in 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$24million.

- The net economic effect of extending copyright period, conservatively estimated at an average of NZ$55 million a year.

From the first year of entry into force, TPP would be of net benefit to New Zealand[8]. This net benefit would grow substantially as the benefits from TPP come on line (e.g. tariffs phased out over longer periods). 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.

Table 1.3: Summary of Benefits and Costs

Area	Annual Net Cost / Benefit (NZ$)	Description
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.
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).
Improved trade facilitation measures. (Economic benefit.)	$374 million	Additional GDP for the New Zealand economy by 2030 (CGE modelling).
Reductions in barriers on services trade. (Economic benefit.)	$250 million	Additional GDP for the New Zealand economy by 2030 (CGE modelling).
Copyright term extension. (Economic cost.)	- $55 million	Net cost over long term, based on economic modelling. Actual cost would increase gradually over first 20 years.
Foregone tariff revenue. (Fiscal cost.)	- $20 million	This maximum is reached after seven years.
TPP institutional arrangements and outreach activities. (Fiscal costs.)	- $1 million	Participation in on-going TPP committees etc. and public engagement.
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 patent) Note also one-off costs to PHARMAC of NZ$4.5 million, and Customs of NZ$0.4 million.

[8] While not appropriate for a direct comparison, the $79 million in annual costs listed here (which is an over-estimate of the costs in the first year of TPP's entry into force), would be less for example than 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).

Economic modelling

The economic modelling commissioned by the Ministry of Foreign Affairs and Trade (MFAT)[9] estimated the overall impact of TPP on New Zealand's economy, once all trade liberalising measures were assessed to have come into place by 2030. The four ways in which the modelling assumed TPP would liberalise trade were:

- *Reductions in tariffs and quota barriers on goods trade*, corresponding to New Zealand GDP being NZ$624 million larger 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 production into areas where we have better competitive advantages. It would also account for increased value from lower tariffs on imports into New Zealand, although this effect would likely be relatively low given New Zealand's already low tariff structure.
- *Reductions in non-tariff measures (NTMs) on goods trade* cumulating in an additional NZ$2.91 billion to GDP after fifteen years. While the removal or lessening of NTMs can represent one of the most significant outcomes from trade agreements, and the impact of NTMs on global trade is well-documented, available data and approaches to modelling NTMs are not as developed as for, say, the liberalisation of tariff barriers. For this reason the Government took a conservative approach to considering the benefits of reductions of NTMs on goods under TPP, and assumed that estimated gains from addressing NTMs on goods would be only half of this predicted value, i.e. NZ$1.46 billion.
- *Improved trade facilitation measures*, estimated to add NZ$374 million to New Zealand's GDP after fifteen years. These gains were estimated to come from faster times for goods to clear borders, for example resulting from TPP's outcomes on trade facilitation such as 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.
- *Reductions in barriers on services trade*, estimated to contribute an additional NZ$250 million to New Zealand GDP by 2030. TPP would liberalise trade flows across a range of areas that would be expected to benefit New Zealand in these areas (for example in Cross-Border Trade in Services, Financial Services, Temporary Entry, and Telecommunications).

These estimated gains to New Zealand's GDP in 2030 compare the impact of TPP against the scenario where TPP never enters into force. In reality, TPP will almost certainly enter into force regardless of whether New Zealand joins. If TPP goes ahead without New Zealand, New Zealand would be placed at a competitive disadvantage in the region, incurring a significant net cost to the economy.

[9] 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.

Estimation of costs

In the context of launching TPP negotiations, the Government also commissioned a study on the effect on New Zealand of raising a number of intellectual property (IP) protections in New Zealand at that time[10]. This included a quantification of the impact of extending New Zealand's copyright term from 50 to 70 years, an obligation that eventuated in TPP. Ergas et al. (2009) found that New Zealand was a "very substantial net importer of IP protected goods (e.g. books, recorded music, films, software, pharmaceuticals)", meaning the greater benefit of any additional IP protection in New Zealand would accrue to foreign IP owners.

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 the cost of copyright extension for books and recorded music, corresponding to an average annual real cost of NZ$21 million and NZ$17 million respectively. These costs constitute the most recent estimation of 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. As a result, the real annual cost of TPP on these three areas of copyright, is estimated to be NZ$55 million annually.

There would be some additional costs associated with joining TPP that could be seen as operational costs for the New Zealand Government – the most significant of which would be NZ$20 million in foregone tariff revenue (on imports from new FTA partners). Other costs include additional administration costs for PHARMAC (NZ$4.5 million in one-off costs, with an on-going annual cost of NZ$2.2 million), and associated with the possibility of granting patent term extension (estimated to average NZ$1 million annually). Many of the other costs associated with TPP would be considered an investment in realising the full benefits of 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. These fiscal costs are estimated to total a maximum of NZ$24 million annually.

1.5.2 Social, cultural and environmental 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. Nevertheless, there would be some costs for the health sector that would need to be managed (noting that those costs associated with new administrative requirements for PHARMAC would met by increased funding from the Crown).

[10] 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).

TPP would have few implications for New Zealand's ability to develop social policy. As noted in the preamble to the Agreement, TPP Parties resolve to "maintain each Party's right to regulate to meet domestic public policy objectives, including to safeguard public welfare". TPP's labour and environment 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 would not affect New Zealand's immigration policy framework. TPP would have no effect on human rights in New Zealand.

All of New Zealand's FTAs have ensured that the unique relationship between the Crown and Māori is observed. This outcome has been achieved by ensuring the obligations in New Zealand's FTAs do not impede the Crown's ability to fulfil its obligations under the Treaty of Waitangi, through including a Treaty of Waitangi exception in all FTAs since 2001.

The Treaty of Waitangi exception in New Zealand's FTAs provides additional clarity that the Crown would 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. TPP countries also secured provisions on traditional knowledge that have not been included in any previous New Zealand FTAs as well as a New Zealand-specific outcome on plant variety rights. The plant variety rights outcome would give the Government sufficient time to undertake consultations on implementation of this obligation and sufficient flexibility to adopt any measures it deems necessary to protect indigenous plant species in fulfilment of any related 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 reflect New Zealand's established practice in FTAs, and were obtained after consultations with Māori and other stakeholders.

TPP is not expected to have a significant effect on the Government's ability to pursue cultural policy objectives, such as supporting the creative arts, and in relation to cultural activities. 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 years. 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),[11] while copyright holders would be able to derive benefit from works for longer. The overall effects are likely to be felt more keenly

[11] This would affect projects that use copyright works once that have fallen into the public domain, like the National Library's *Papers Past* project.

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.)

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 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.

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. TPP is not expected to have any negative effects on the environment in New Zealand that cannot be managed using existing policy frameworks.

1.6 Consultations

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 Ministry of Foreign Affairs and Trade (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 sessions with domestic stakeholders 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.

1.7 Subsequent changes to TPP

TPP makes provision for the Parties to amend the Agreement. An amendment can only be made if all 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.

In addition, the TPP Commission would be able 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.

Any Party may withdraw from TPP by providing written notice of withdrawal to the Depositary. The withdrawal takes effect six months after notice is provided unless Parties agree on a different period. If a Party were to withdraw, TPP would remain in force for the remaining Parties.

Any decision by New Zealand to terminate TPP would be subject to the usual domestic approvals and procedures.

1.8 Conclusion

This NIA finds that entering TPP would be in New Zealand's national interest.

2 Nature and timing of proposed treaty action

The Trans-Pacific Partnership (TPP) Agreement is a plurilateral treaty level agreement negotiated between twelve countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Mexico, Malaysia, New Zealand, Peru, Singapore, the United States of America (US) and Viet Nam.

The TPP negotiations concluded on 5 October 2015 in Atlanta, Georgia, followed by legal verification and translation into French and Spanish. Signature is expected to take place in February 2016.

Entry-into-force of TPP is subject to the completion of the necessary domestic procedures of Parties. There are various ways in which TPP may enter into force:

- The first option is that if, within two years of the date of signature, all countries that signed TPP (the "signatories") have notified the Depositary that they have completed their applicable legal procedures then TPP will enter into force 60 days after notification by all countries.
- If all signatories have not notified their readiness within two years, then the second option is that TPP will enter into force 26 months after signature if at least six of the signatories have notified the Depositary that they are ready, provided that those six signatories account for at least 85 percent of the combined GDP (as of 2013) of the original signatories.
- The third option will apply if TPP 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 Depositary that they have completed their applicable legal procedures. Again, these must be six signatories that together account for at least 85 percent of the combined GDP (as of 2013) of the original signatories.

TPP includes a mechanism that allows signatories who did not notify their readiness under the above options to become a Party to TPP when they are ready to do so.

It is New Zealand's strong preference that New Zealand notifies its completion of its domestic processes within two years of signature. The Agreement is not expected to enter into force until early 2018.

New Zealand has also concluded a number of separate side letters and instruments with other Parties, alongside TPP. These are separate to TPP, with some being of treaty status. For New Zealand, these instruments cover the following subject areas:

- Letters, both legally binding and less-than-treaty status, that confirm the relationship between TPP and existing New Zealand FTAs: with Australia (also see below), Brunei, Chile, Malaysia, Singapore and Viet Nam.

- A legally binding agreement with Australia covering: the relationship between TPP and New Zealand-Australia Closer Economic Relations (CER) and the Australia-ASEAN-New Zealand Free Trade Area (AANZFTA); agreement that TPP's investor-state dispute settlement and trade remedies provisions would 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.
- Legally binding agreements with Canada, Mexico and the US – at their request – to protect certain 'distinctive products'[12] to the extent already provided for under the Australia New Zealand Food Standards Code.
- A less-than-treaty level 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).
- Less-than-treaty level understandings, agreed at their request and appropriately high-level in nature, with Malaysia and Peru on biodiversity and traditional knowledge.
- A legally binding 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.

Article 18 requires that New Zealand accede to or ratify the following treaty level agreements prior to the date of entry into force of TPP for New Zealand:

- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended on September 26, 1980 (the Budapest Treaty).
- WIPO Copyright Treaty, done at Geneva, December 20, 1996 (the WIPO Copyright Treaty, WCT).
- Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971 (the Berne Convention).[13]
- WIPO Performances and Phonograms Treaty, done at Geneva, December 20, 1996 (the WIPO Performances and Phongrams Treaty, WPPT).

The legal obligations that would be imposed on New Zealand by acceding to or ratifying these treaties will be considered in a separate National Interest Analysis (NIAs) for each treaty, but the impact on New Zealand from joining each of those treaties is considered as part of this NIA. These NIAs will be presented to Parliament at the same time as this NIA.

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

[13] New Zealand is already a member of a previous version of the Berne convention and is already required to comply with the 1971 version under Article 9 of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights.

The TPP Intellectual Property Chapter would also require New Zealand to accede to the International Convention for the Protection of New Varieties of Plants, as revised at Geneva, March 19, 1991 (UPOV 91), or alternatively to give effect to UPOV 91 (see Section 4.18 below).

New Zealand would also be required to remove its reservation to Articles 1-12 of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967 (the Paris Convention).

TPP and the accompanying side letters would not apply to Tokelau. Consultation is required with Tokelau as to the territorial applicability of the multilateral treaties ratified or acceded to under Article 18 of TPP.

3 Reasons for New Zealand becoming a Party to the Treaty

The reasons for New Zealand becoming a Party to TPP are both economic and strategic. New Zealand is an export dependant country. Trade is critical to continued growth and prosperity, and the Business Growth Agenda (BGA) identifies the high-level goal of growing exports to 40 percent of GDP by 2025. New Zealand's core objective in trade policy, in support of the BGA, is to broaden and deepen the opportunities available to businesses. Key to this is removing and reducing barriers to trade and investment, as well as establishing frameworks through which trade and investment linkages can evolve and expand, thereby driving economic growth. FTAs with key trading partners, such as TPP, are an important means of achieving this. TPP would be New Zealand's first FTA with five countries, including our third and fifth most important trading partners (the US and Japan).

TPP is a 21st Century, comprehensive, living agreement in the Asia Pacific – a region that is a driving force of global economic growth. Roughly half of international trade, and more than 70 percent of New Zealand's trade and investment, flows through the region. New Zealand's future depends on its trading relationships with Asia Pacific countries and TPP provides New Zealand with the opportunity to harness and grow these linkages.

TPP would serve as a platform to support the integration of New Zealand business into regional supply chains and would provide consistency and certainty to traders and investors in TPP markets. TPP will continue to evolve and grow through future expansion. The Agreement provides a platform for wider, regional economic integration, and supports the foundation for a FTA of the Asia Pacific.

The counterfactual scenario – New Zealand standing aside from the opportunities of TPP – risks marginalisation and decline for New Zealand in the region. New Zealand's competitiveness in TPP markets would be eroded, and trade and investment would be diverted away from New Zealand to TPP members. The opportunity to shape future trade liberalisation in the region would also be lost.

3.1 Benefits from enhanced trade and economic links under TPP

The Agreement will deepen economic ties between its diverse members by opening up trade in goods and services, boosting investment flows, and promoting closer links across a range of economic policy and regulatory issues. A greater degree of coherence in the regulations that govern regional supply chains will streamline international trade, providing benefits for businesses and consumers. Over time, TPP will remove unnecessary duplication, reduce costs, and foster greater business opportunities.

Among TPP's central benefits to New Zealand is that it guarantees preferential market access, and improved quality of access, for New Zealand goods, services and investment in the eleven other markets in the TPP region. Taken together, these markets jointly account for approximately US$28 trillion, equivalent to about 36 percent of global GDP. TPP would open up new market opportunities, and restore a level playing field for our exporters in markets where competitors have enjoyed tariff preference.

TPP also offers the chance to further diversify New Zealand's export profile, giving New Zealand exporters a significantly expanded range of markets where they would be able to do business on the same terms as their competitors. Improved access to such large and dynamic markets provides substantial new export growth opportunities to New Zealand businesses. Strategically, diversification reduces the risk for New Zealand associated with being over-reliant on particular export markets or sectors. A growing export sector will contribute to increased productivity, job creation, higher wages and improved standards of living across New Zealand.

Beyond market access for goods the FTA would provide more opportunities, and greater certainty and transparency, for New Zealand businesses wishing to operate in the region. TPP contains a range of mechanisms which provide a platform for enhanced regulatory cooperation to facilitate trade and reduce associated transactions costs in both goods and services trade and for cooperating on a range of other trade-related issues such as customs procedures.

FTAs have played an important role in building strong trading relationships between New Zealand and our neighbours and have delivered tangible benefits for New Zealand exporters and consumers. The Ministry of Foreign Affairs and Trade and New Zealand Trade and Enterprise surveyed 854 New Zealand export businesses in 2009. Of the 236 respondents, 77 percent perceived a modest or substantial increase in business profit from the removal of barriers to trade and investment in their export markets, while only 16 percent saw no effect or a decrease (7 percent didn't know). Data from Statistics New Zealand show that between 2008 and 2014 New Zealand goods exports to countries with which we have FTAs grew by 10.3 percent on a cumulative compounded annual growth rate ("CAGR") basis, while exports to countries with which we do not have a FTA declined 2.6 percent.

3.1.1 TPP economies

Taken together, New Zealand's trade and investment relationships with TPP countries are crucial to this country's long-term prosperity. Up until now, however, New Zealand has not had FTAs in place with five TPP countries (the US, Japan, Canada, Mexico and Peru). Among other disadvantages, this means New Zealand goods exporters to these countries can be liable for significant tariff payments, with a third of a billion dollars paid on duties on New Zealand exports to TPP countries per year.

- The Asia-Pacific region is a key driver of global economic growth. Roughly half of international trade, and more than 70 percent of New Zealand's trade and investment, flows through the region. New Zealand's future depends on its economic relationships with Asia Pacific countries.
- The twelve TPP Parties collectively constitute approximately 36 percent of world GDP – worth a total of US$28 trillion.
- The TPP region is the destination for approximately 40 percent of New Zealand's goods exports (worth NZ$20 billion in 2014) and approximately 47 percent of New Zealand's services exports (worth NZ$8.3 billion in 2014).
- In 2014, around 73 percent of New Zealand's total overseas direct investment (ODI) was invested in TPP countries, and 75 percent of the total foreign direct investment (FDI) in New Zealand was sourced from TPP countries.
- Five of New Zealand's top ten trading partners are included in TPP (1st – Australia, 4th – US, 5th – Japan, 7th – Singapore, and 9th – Malaysia).
- TPP is New Zealand's first FTA with the US, Japan, Canada, Mexico and Peru. These five countries were the destination for New Zealand goods exports totalling approximately NZ$8.7 billion, and New Zealand services exports totalling approximately NZ$3.6 billion in 2014. TPP builds on existing FTAs with the other TPP countries.

The twelve TPP economies are collectively home to 11 percent of the world's population, and represent more than US$28 trillion in GDP (2014) comprising some of the wealthiest economies in the world. The TPP Parties together account for 44 percent of New Zealand's total trade in goods and services. This would make TPP New Zealand's largest FTA to-date by trade value.

TPP's importance is further reflected in the relatively high rate of growth in trade between New Zealand and the TPP economies. New Zealand goods exports to TPP countries have increased by 24% since 2004, and stood at NZ$20 billion in 2014. Over the same period, goods imports from the TPP countries have increased by 19% to NZ$21 billion. Dairy is by far New Zealand's most significant export commodity to TPP members, followed by meat and mineral fuels (mostly crude oil). The main products sourced by New Zealand from TPP members are mineral fuels, vehicles and machinery.

New Zealand's services trade with TPP economies has also expanded in recent years. Nearly half of New Zealand's services exports are to TPP economies, having grown by 11% from NZ$7.5 billion in 2007 to NZ$8.3 billion in 2014. In 2014, over 1.6 million tourists from TPP member countries visited New Zealand, about 60% of total tourist arrivals into New Zealand. This number has grown by 21% since 2007. Over 17,000 students from TPP countries studied in New Zealand in 2014.[14] New Zealand also imports a significant amount of services from TPP member economies (mostly commercial

[14] Note that Australians are not counted as international students and are therefore not reflected in New Zealand's international education statistics.

services and tourism related travel services). This has grown by 25% over the past seven years, and was valued at NZ$8.9 billion in 2014.

New Zealand's overseas direct investment (ODI) in TPP members has grown by 27% since 2004 and totalled NZ$19 billion in 2014. This represents 73% of total New Zealand investment abroad with Australia and the US New Zealand's ranking as first and second largest destinations for New Zealand ODI. Foreign direct investment (FDI) from TPP countries to New Zealand totalled NZ$73.6 billion, accounting for just over three quarters of total FDI in New Zealand in 2014.

3.1.2 Expanding New Zealand's network of FTAs

The TPP negotiations had their genesis in the Trans Pacific Strategic Economic Partnership Agreement (P4) between Brunei Darussalam, Chile, New Zealand, and Singapore. One of the objectives of the P4 Agreement was to create a model that could potentially attract new Asia Pacific members.

In addition to P4, TPP would build on New Zealand's existing FTAs with ASEAN members Malaysia, Viet Nam, Brunei and Singapore under AANZFTA and further strengthen existing bilateral agreements with Malaysia and Singapore. TPP would also complement our strong bilateral relationship with Australia under AANZCERTA.

TPP would be New Zealand's first FTA with the US, Japan, Peru, Canada and Mexico. This would put New Zealand's relationship with these partners onto a new level of economic and political engagement.

The US is the world's largest economy, with over 300 million consumers. An FTA with the US has been one of New Zealand's top trade policy goals for many years, with the US being New Zealand's fourth largest trading partner. New Zealand goods exports to the US are concentrated in the agriculture and related food sectors. New Zealand would also benefit from enhanced access for services exporters, and increased investment.

Japan, Peru, Canada and Mexico are the other negotiating partners with which New Zealand does not already have an FTA and all represent markets of interest to New Zealand trade and investment.

- Japan is New Zealand's fifth largest individual trading partner. In the year to December 2014 two-way trade stood at NZ$7.0 billion. New Zealand exports to Japan were NZ$3.6 billion, accounting for 5.4 percent of total exports. Japan joins as the second largest economy involved in TPP adding nearly US$4.6 trillion to the combined TPP Gross Domestic Product.
- Canada is New Zealand's nineteenth largest goods trading partner overall, with total trade worth NZ$1.1 billion in the year ended December 2014.
- Mexico is New Zealand's largest goods trading partner in Latin America and 29th largest trading partner overall, with goods trade worth NZ$517 million in the year ended December 2014.

- Peru is New Zealand's 48th largest trading partner and second largest export market in Latin America.

3.1.3 Advancement of New Zealand's strategic interests

TPP would advance a number of New Zealand's key strategic interests. As the first of the 'mega-regional trade deals' to conclude, TPP is at forefront of trade and investment integration in the Asia Pacific region – a region that is set to drive global economic growth in the 21st Century.

The TPP will harmonise rules governing trade between its members. Greater coherence in the rules that govern regional supply chains will streamline international trade, with benefits for businesses and consumers. Over time regulatory harmonisation will remove unnecessary duplication and reduce costs. This will be particularly beneficial for small to medium sized businesses, which can least afford compliance costs.

In the short term, this benefits New Zealand through the elimination of trade barriers, providing for the more efficient flow of goods, services and investment within the TPP region. Into the future, benefits would accrue through the increased productivity and growth that would result from regional liberalisation.

The facilitative trade and investment framework created by TPP is likely to have a significant influence on the form and function of value chains across the Asia Pacific region in the coming years. To a significant extent, these frameworks reflect New Zealand's existing policy and practice. New Zealand firms would therefore be well placed to take advantage of these frameworks, and to extract more value from regional production processes.

TPP promotes the APEC goal of free and open trade and investment in the Asia-Pacific region and has the potential to serve as a building block to a Free Trade Area of the Asia Pacific (FTAAP). As such, TPP is likely to exercise considerable influence on economic integration in the Asia-Pacific region well into the future.

While liberalisation of trade through the WTO still remains New Zealand's most important international trade policy priority, the promotion of increased trade liberalisation through TPP supports continued ambition in the WTO agenda.

3.1.4 Opportunities for new membership

Broadening participation is a core strategic objective for TPP. The Agreement is an important part of the emerging Asian economic and geo-political architecture, offering opportunities for growth in regional trade. TPP is intended to serve as a model within APEC that is open for other economies to join, acting as a key stepping stone towards the objective of free and open trade within the region.

Any future expansion of TPP is expected to increase the benefits of the Agreement to New Zealand, as it would provide even broader opportunities for New Zealand exporters and investors.

3.2 The consequences of New Zealand not becoming a Party to TPP

Against the economic and strategic benefits of the Agreement, it is also important to consider the risks inherent in the counterfactual scenario of New Zealand not joining the Agreement.

Choosing to remain outside the TPP would present several risks for New Zealand. New Zealand exporters and investors would lose the opportunity to benefit from enhanced access to markets that account for 44% of our total goods and services trade. New Zealand exporters would also be placed at substantial disadvantage to their competitors in TPP, as these competitors would now face lower barriers to trade relative to New Zealand businesses. Collectively, this would represent lost economic growth and opportunities for New Zealand and therefore relatively lower living standards for New Zealanders

Not joining the Agreement would also mean that New Zealand companies operating in TPP countries would not enjoy many of the protections that their competitors from TPP countries would receive, such as the non-discrimination and expropriation protections established by the Investment Chapter. New Zealand would also likely receive less investment from TPP Parties, as investors from these countries may prefer to operate within the frameworks established by the Agreement.

New Zealand would also lose the opportunity to influence the development of the rules that TPP will set for the region. This is both in respect of its present form, and more significantly, in the future as TPP membership increases. These rules, such as those contained in the Technical Barriers to Trade and Rules of Origin Chapters, will have important implications for the way trade is conducted within the region. For example, New Zealand companies would likely find it more difficult to participate in regional value chains (for example, in food and beverage or manufacturing) based on rules that did not reflect New Zealand's interests or trade profile.

TPP aims to serve as the inspiration for a broader Asia-Pacific Free Trade Agreement. By not joining TPP, New Zealand would miss the opportunity to influence the rules that may come to underpin future regional trade deals. New Zealand would instead have to accept rules developed by other countries if we were to decide to accede to these agreements in the future. These factors combined could see New Zealand companies at significant, long-term disadvantage to their competitors across the region. This would likely affect the competitiveness and productivity of the New Zealand economy more generally, with negative flow-on effects to employment, wages and standards of living.

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

This section of the NIA outlines the advantages and disadvantages that would accrue from New Zealand entering into TPP. The counterfactual for comparison is TPP entering into force with all other eleven countries, but without New Zealand.

The sub-sections below reflect different Chapters of TPP, each of which would set rules or frameworks for different areas. (See the final section of this NIA for a list of the chapters in TPP and a guide to the topics they cover.) The net effect of these different factors on New Zealand is assessed in Section 7 of this NIA.

4.1 Trade in Goods

The National Treatment and Market Access for Goods Chapter (Goods and Agriculture Chapter) sets out the rules TPP countries will apply for qualifying imports from other TPP countries, including the elimination of tariffs ("customs duties").

Each TPP Party has agreed a "schedule" of tariff commitments that is included as an Annex to TPP. This is standard practice in FTAs. Each schedule specifies the full list of national tariff lines of that country[15], specifying the preferential rate that will apply to qualifying imports from other TPP countries. Most TPP Parties apply the same treatment to all other TPP members on each tariff line, but where a Party applies different treatment on the same tariff line dependent on which TPP member is exporting the product, this is set out clearly in that Party's schedule.

4.1.1 Advantages of entering TPP, Trade in Goods

Market access – exports

Joining TPP would provide immediate economic benefit for New Zealand goods exporters on entry into force of the Agreement, particularly from reduced tariff rates in key markets with which New Zealand does not currently have an FTA.

[15] Each country in TPP follows the Harmonized Commodity Description and Coding System (Harmonised System, HS) to structure its national tariff. The HS system is a near-universal method for classifying international trade.

The twelve members of the TPP constitute 36% of world GDP (approx. US$28 trillion) and are the destination for approx. 40% of NZ's goods exports (NZ$20 billion in 2014). New Zealand exporters pay an estimated NZ$334 million annually in duties for the five TPP partners with which we do not have existing FTAs (the US, Japan, Canada, Mexico and Peru).[16]

Table 4.1: Estimated Tariff Savings per annum by Country[17]

Country	New Zealand exports	Estimated tariff savings at entry into force		Estimated tariff savings once fully implemented[B]	
	NZ$, millions	NZ$, millions	% of exports[A]	NZ$, millions	% of exports[A]
Parties where New Zealand has no existing FTA					
Japan	3,430	83	75.24%	207	90.63%
US	4,417	45	97.19%	52	98.61%
Mexico	418	3.1	73.70%	6.6	81.42%
Canada	645	4.8	99.16%	5.2	99.89%
Peru	135	0.9	99.65%	0.9	100.00%
Parties with existing FTAs with New Zealand[C]					
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).

While TPP has not delivered the full elimination of tariffs on New Zealand exports that had been sought, it would deliver substantial benefits to exporters from the moment the Agreement enters into force, and the full elimination of tariffs on 95.4% of New Zealand exports to new TPP partners when fully phased in, providing estimated tariff savings in these markets of over NZ$272 million. In addition, all tariffs on products of trade interest with Viet Nam and Malaysia that were not eliminated in previous FTAs would also be eliminated in TPP, providing additional tariff savings of NZ$2.4 million when fully implemented. This means that total savings on New Zealand exports to the TPP region, when the Agreement is fully phased in, are estimated at NZ$274 million. This does not capture dynamic impacts (i.e. the expected increase in exports over time as a result of improved market access, which are considered in Section 7 of this NIA). In addition, TPP would provide new

[16] All figures on tariffs and tariff savings in this document are based on average 2012-2014 trade.
[17] 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.

dairy market access into the US, Mexico, Canada and Japan through quotas, an improvement on existing access restricted by small quotas and prohibitive duties.[18]

Table 4.2: Estimated Tariff Savings per annum by Sector[19]

Sector	New Zealand exports[A]	Estimated duties paid	Estimated tariff savings once fully implemented
	NZ$, millions	NZ$, millions	NZ$, millions
Dairy	2,141	132	96
Fisheries	347	9	9
Forestry	773	11	11
Horticulture	694	34	34
Industrials	2,274	9.6	9.6
Meat	1,923	101	84
Other Agriculture	352	19	12
Textiles	96	3.4	3.3
Wine	461	16	16
Overall	**9,060**	**334**	**274**

[A] "New Zealand exports" column does not include trade with Malaysia and Viet Nam that benefits from, or would benefit from, duty free access under New Zealand's existing FTAs.

There would also be significant benefits for exporters by ensuring that they are able to compete on a level playing field with their main competitors from Australia, Canada and the US in TPP markets in the future.

Estimated benefits from tariff savings:

- *At entry into force:* tariffs eliminated on NZ$3.8 billion of New Zealand exports currently subject to tariffs, including many horticultural and forestry goods, a number of dairy products, some wine, many manufactured products, and much fish and seafood. Specific product examples include such items as: the US (bottled still wine, sheepmeat, prepared meats, protein isolates); Japan (kiwifruit, squash); Canada (wine); Mexico (mussels, kiwifruit, milk albumin); and Peru (buttermilk powder). As a result, 87.9% of New Zealand exports to these new FTA markets would enter duty free on the day the Agreement enters into force, with estimated tariff savings of NZ$137 million.
- *By the 5th year after entry into force:* tariffs eliminated on an additional NZ$199 million of New Zealand exports currently subject to tariffs, including: the US (beef, fish sticks, asparagus); Canada (beef); Japan (hoki and other frozen fish, carrot juice, sausages and mandarins); Mexico (wine). This constitutes 2.2% of total current New Zealand exports to the US, Japan, Canada, Mexico and Peru. This means that 90.1% of New Zealand exports to these

[18] Tariff quotas are where a certain volume of goods can be imported at a low duty, with a higher (and often prohibitive) tariff on trade outside of the quota volume.

[19] 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.

markets would enter duty free within five years after entry into force of the TPP. Estimated total tariff savings in the fifth year after entry into force are NZ$197 million.

- *By the 10th year after entry into force:* tariffs eliminated on an additional NZ$184 million of New Zealand exports currently subject to tariffs, including in the US (infant formula, ice-cream, tableware and sugar); Mexico (apples, sheepmeat and beef); Japan (tongues, hides, bluefin tuna and apples) and Viet Nam (wine). This constitutes 2.0% of total current exports to the US, Japan, Canada, Mexico and Peru. This means that 92.1% of New Zealand exports to these markets would enter duty free within ten years after entry into force of the TPP. Estimated total tariff savings in the tenth year after entry into force are NZ$236 million.
- *By the 15th year after entry into force:* tariffs eliminated on an additional NZ$242 million of New Zealand exports currently subject to tariffs, including in Japan (cheese, sawn wood and offals); and Malaysia (liquid milk and wine). This constitutes 2.7% of total current exports to the US, Japan, Canada, Mexico and Peru. This means that 94.8% of New Zealand exports to these markets would enter duty free within fifteen years after entry into force of the TPP. Estimated total tariff savings in the fifteenth year after entry into force are NZ$273 million.
- *When fully phased in*: tariffs eliminated on an additional NZ$57 million of New Zealand exports currently subject to tariffs. Tariffs on one of New Zealand's highest traded cheese tariff lines in the US is eliminated over twenty years (with a transitional safeguard lasting a further five years). Tariffs are also eliminated on milk powder exports to the US, with skim milk powder eliminated over twenty years, and whole milk powder eliminated over 30 years (with a transitional safeguard lasting a further five years). There are estimated total tariff savings of NZ$274 million per year at full implementation, not taking account of dynamic impacts.

Products receiving less than full tariff liberalisation

For a small number of agricultural products, with New Zealand's key affected export interests being dairy in some countries and beef in Japan, it was not possible to achieve complete tariff elimination. Instead, TPP access would provide improved access through tariff reductions or tariff quota access.

- *Tariff reductions:* Tariffs on an additional NZ$239 million of goods would be significantly reduced, but not eliminated, allowing for improved market access. Beef exporters would benefit from a 77% reduction in Japan's tariff for beef. This would be reduced from the current 38.5% (with the potential to 'snap-back' to a 50% duty if a WTO volume safeguard level is exceeded) to 9% over sixteen years, with an initial sharp cut at entry into force. There will be a transitional volume-based safeguard applying to all TPP beef imports into Japan, set above current trade levels, with a growth rate.[20] The safeguard will be abolished by Year 20 at the earliest. This outcome is the best outcome that Japan has agreed in a FTA to date, and immediately re-establishes a level playing field with Japan's largest beef supplier, Australia, after the Japan-Australia Economic Partnership Agreement entered into force in early 2015.

[20] Under a volume-based safeguard, a higher duty is applied if the volume of imports exceeds a pre-set level.

Japan will also reduce the tariff for ice-cream by two-thirds, from 21% today to 7% over six years, opening up new export opportunities given the significantly reduced tariff.

- *Tariff Quota Access:* For dairy, a portion of the overall benefits would come from improved market access through tariff quota access. New quota access for butter, cheese and milk powders (where tariffs are not eliminated) would have a market value (at current world prices as of October 2015) of approximately NZ$310 million at entry into force of the Agreement, growing to NZ$670 million over fifteen years. This access, spread across TPP importing countries, would be shared amongst exporters from the TPP countries.
- *Peru Price Band:* While Peru will eliminate all tariffs it has not committed to eliminate the price-band mechanism for a range of products including dairy. The Price Band acts as an additional duty if imported prices fall below a reference price.

Benefits of new TPP quota access

Reflecting sensitivities in several TPP Parties, tariffs will not be completely eliminated on all dairy products. Instead, New Zealand would have access to tariff quotas (TQs) for a number of key products in the US, Japan, Mexico and Canada, providing New Zealand with new dairy market access to these important markets.

Total quota access will grow over time and is made up of a mixture of country-specific access and plurilateral access shared with other TPP Parties. Quota access is at a preferential tariff (duty-free in the US, Canada and Mexico, and reduced significantly over eleven years in Japan).

New Zealand exporters would have potential access into quotas in the TPP region of the volumes in Table 4.3 below (including volumes shared regionally with other TPP suppliers). While the total volumes of potential access are relatively modest in terms of New Zealand production (5.6% for butter, 10.9% for cheese and 4.0% for milk powder at year 10) this access is into some of the most protected, high-value markets in the world.

Table 4.3: Estimated Total Volume of TPP Quota Access available to New Zealand Exporters[21]

Product	EIF	Year 5	Year 10	Year 15
Butter	15,500 MT	23,000 MT	29,600 MT	35,300 MT
Cheese	16,800 MT	31,000 MT	39,700 MT	44,300 MT
Powders	39,000 MT	54,000 MT	68,200 MT	73,000 MT
Other Dairy Products of primary trade interest[A]	12,200 MT	17,500 MT	22,500 MT	27,700 MT
Total volume of dairy products of primary trade interest	83,500 MT	125,500 MT	160,000 MT	180,300 MT

[A] Includes milk protein concentrates, cream, ice-cream, and buttermilk powder.

[21] In some markets tariffs are being eliminated for core dairy products without quota access being supplied for the transition period (i.e. cheese in Japan).

New quota access for core dairy products[22] would have a market value (at current world prices as of October 2015) of approximately NZ$310 million at entry into force of the Agreement, growing to NZ$670 million over fifteen years. This access will be shared amongst exporters from the TPP countries. This new access is spread across the TPP importing countries.

At Year 10:

- The US will provide 57,700 MT of quota access for New Zealand dairy products on a country-specific basis, with 95% of this access being for priority products – including 18,500 MT of new access for butter/anhydrous milk fat and other milkfat type products. For products not receiving eventual elimination, tariff quotas will grow in perpetuity with compounding growth rates of between 3% and 6% annually.
- Canada will provide 104,000 MT of TPP-wide access (approximately 3.3% of its market). Approximately 25,000 MT is for products which are a priority for New Zealand, including butter, cheese and milk protein concentrates.
- Mexico will provide 55,400 MT of access under a quota for TPP countries without existing FTAs with Mexico (i.e. excluding the US, Peru and Chile). This includes over 40,000 MT of milk powder access – a priority for New Zealand in the Mexican market.
- Japan will provide 40,200 MT of predominately TPP-wide access, with 14,000 MT on priority products for New Zealand including butter and powders. Japan is also eliminating tariffs for most cheese over sixteen years.

The actual share of quotas captured by New Zealand exporters would depend on the relative competitiveness between exporters, consumer demand, and quota conditions.[23]

This potential volume of core product access would be equivalent to a market of NZ$228 million growing to NZ$445 million in year 15. While this is modest compared to the total size of New Zealand's existing dairy exports (NZ$13.3 billion for core products) these quotas provide access into some of the world's highest-value consumer markets, with the possibility of earning prices well above the average world price. A key benefit for New Zealand exporters would be the marginal benefit from higher prices earned in these markets, along with any flow-on impact on world prices as a result of increased product shifting off the world market into these protected markets.

There is also new TPP quota access for other dairy products such as cream (primarily the US, but also Canada and Mexico), ice-cream (Canada), milk-protein concentrates (Canada and Mexico) and buttermilk powder (Canada). Total TPP-wide access for these products grows from 12,200MT at entry into force to 27,700MT in year 15, with volumes into Canada and Mexico shared with other TPP Parties.

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[22] Core dairy products: Butter, milk powders and cheese accounting for 78% of New Zealand's global dairy exports

[23] Some of this new trade opportunity will be shared with other TPP dairy exporters.

Elimination of export subsidies in the TPP region

TPP Parties have agreed to eliminate the use of agricultural export subsidies within the TPP region. Taken together with the decision on agricultural export subsidies at the Tenth WTO Ministerial Conference (MC10) in Nairobi in December 2015, this is a significant development in terms of New Zealand's long-standing aim to eliminate agricultural export subsidies globally.

Benefits of improvements for WTO quota access

WTO In-quota reductions: New Zealand would also benefit from the elimination of in-quota tariffs on our existing WTO quota access. In-quota tariffs in the US and Canada are eliminated on entry-into-force. For country-specific access into Japan, tariffs on WTO trade are eliminated over 21 years after entry into force, with an 80% reduction in the first 11 years. These benefits are captured in the total tariff savings set out above.

Market access – imports

The phase out of tariffs on New Zealand's imports from TPP countries also has advantages for New Zealand. In 2014, these tariffs totalled NZ$20 million from the five new FTA Partners. (See also Section 8.2.)

New Zealand's economy is dependent on imports in order to supply a range of goods and services to producers and consumers. Consumers may benefit directly from cheaper imported products – such as machinery and electrical machinery, autos and auto parts, plastics and rubber products, medical apparatuses, agricultural products, textiles and apparel, toys and sports equipment, and boats.

The cost of not entering TPP

If New Zealand were not to enter TPP, New Zealand exporters would face a significant deterioration of comparative access opportunities vis-à-vis our competitors in TPP, who would benefit from the tariff liberalisation in TPP, while New Zealand exporters continued to face the higher standard prevailing tariff rates into TPP markets. New Zealand exporters would also lose the opportunity to catch up to other pre-existing FTA partners already trading at an advantage into TPP markets. Given the scale of some of the tariff benefits from TPP that would, in this scenario, accrue to New Zealand's competitors inside TPP, but not New Zealand – e.g. Japan's reduced beef tariffs, or tariff elimination on key US or Japanese cheese tariffs – New Zealand exporters would likely lose significant market share to other TPP exporters if New Zealand were not part of TPP.

4.1.2 Disadvantages of entering TPP, Trade in Goods

No disadvantages have been identified for New Zealand from entering TPP resulting from the tariff commitments that other TPP Parties would make to New Zealand. Where these tariff commitments have an effect, they would be beneficial (leading to improved competitiveness for New Zealand exporters).

New Zealand's tariff commitments under TPP, as for any trade agreement involving reciprocal tariff adjustments, have the potential to create adjustment effects for domestic producers as a result of increased exposure to foreign suppliers. The effects are mitigated by the fact New Zealand's economy is already largely open, with most goods imported into New Zealand already facing no import tariff. The tariffs New Zealand still has in place are relatively low (mostly five percent, and none more than ten percent). These remaining tariffs have also been largely eliminated for imports from many of New Zealand's largest trading partners, given preferential access under existing FTAs. TPP would eliminate New Zealand's tariffs on imports from the TPP region, for those TPP Parties with which New Zealand does not have an existing FTA.

The removal of these tariffs may, at the margins, expose New Zealand industry to increased competition. In order to help mitigate the potential for any negative adjustment effects, New Zealand's tariff schedule provides longer (5 to 7-year) phased elimination periods for certain items, some of which are more sensitive to imported goods: some clothing/textiles items, some plastics, some machinery and electric machinery, some processed wood products and wooden furniture, and some steel, iron and aluminium items. Lessening the likely size of this impact is that New Zealand has already agreed to remove tariffs for all previous FTA partners, including China, ASEAN and Korea. Note also that, in the case of any serious injury arising from this tariff liberalisation, New Zealand would be able to apply a transitional safeguard action (see Trade Remedies section below).

4.2 Rules of Origin

The Rules of Origin Chapter of TPP establishes the rules for determining whether goods traded between TPP Parties are considered to "originate" in the TPP region and therefore qualify for relevant tariff preferences (as described in Section 4.1 above). All FTAs include such rules.

Under the TPP goods are originating if they:

- Are wholly obtained in the TPP Parties (such as fruits, plants, animals, etc.);
- Are produced entirely from materials that have been produced by TPP Parties; or
- Use non-originating materials (i.e., non-TPP materials) in the final substantive stage of production but otherwise meet the specific criteria set out for the good in Annex 3-D (Product Specific Rules of Origin, PSR Schedule).

Under the third option, a good will qualify as originating if it meets a specified Change in Tariff Classification (CTC). All products under TPP, except some automotives and their parts, have an applicable CTC rule. Some products also have an alternative rule based on the value added by producers within the TPP region (primarily industrial products).

For a good to qualify for TPP tariff preferences, it must be consigned directly between Parties. If transported through a non-TPP Party, the good may undergo certain specified operations necessary to preserve it in good condition and/or to transport the good. Goods transiting through a non-TPP Party must remain under customs control.

TPP has separate rules of origin for textiles (see following section).

4.2.1 Advantages of entering TPP, Rules of Origin

Rules of origin, in themselves, do not confer an advantage or disadvantage to New Zealand. They are a recognised part of FTAs, to determine what products are eligible for the preferential tariffs agreed between Parties. Having said that, rules of origin can be a key determinant in how easily exporters are able to access the preferential market access in an FTA. On the whole, New Zealand was able to negotiate a Rules of Origin Chapter in TPP that would align with our exporters needs, and includes several elements that would set a useful precedent for future trade agreements. Key outcomes are set out below. The situation for textiles is set out separately in Section 4.3 below.

The TPP rules of origin accommodate full cumulation – allowing processing undertaken in TPP Parties to be counted towards achieving the origin threshold. This full cumulation principle – applied in the multi-party setting of TPP – means that New Zealand inputs, whether or not they meet the originating criteria, can be counted as part of the qualifying content for goods produced and traded between all TPP Parties. This would make New Zealand materials more attractive for companies in the TPP region that plan to utilise TPP tariff preferences. This would be expected to improve New Zealand's interaction in supply chains across the Asia-Pacific region more broadly. New Zealand seeks full cumulation in regional FTAs, and TPP would set a useful precedent for further agreements. For a limited number of product lines and for some goods under specific country quota this accumulation would not apply.

For specified goods, exporters can choose to calculate their regional content value based on the traditional build-down or build-up methods or alternatively use a focussed value method with a slightly higher threshold. Under this method only the value of specified non-originating materials will be deemed non-Party content and non-originating generic parts (that is parts that are not classified for specific end use), can be used without prejudicing the ability to reach the threshold. Adjustments may also be made to exclude foreign inland transport costs, thus making it easier to meet the threshold value.

The method for evidencing origin, i.e. the documentation required of a trader seeking preferential tariff treatment, is self-declaration by the producer, exporter or importer. This is New Zealand's preferred approach. New Zealand exporters to TPP markets would not be required to obtain independent certification that their goods are originating, thus reducing compliance costs.

4.2.2 Disadvantages of entering TPP, Rules of Origin

There will be more restrictive rules for some "sensitive" agriculture products under TPP. It is expected that this would have negligible impact on New Zealand's ability to meet the rules but processed food producers (particularly for dairy based products and products containing nuts and certain fruits) will need to be careful to ensure that these materials are sourced from within TPP Parties in order to qualify for preferential TPP tariff rates.

A limited number of the product specific rules in TPP reflect a more complicated approach than New Zealand would prefer. For example, for some goods businesses will have to use the regional value rule if they are using non-TPP parts. Separately, for a limited number of products the added value threshold will be higher than the 40% Regional Value Content New Zealand prefers to see as a maximum. Nevertheless, their expected commercial impact on New Zealand is expected to be minimal, as they are offset by full cumulation provisions, transport cost adjustments, and for New Zealand manufacturers the fact we are highly integrated with Australia.

4.3 Textiles

Rules of origin for textiles in TPP are treated differently from New Zealand's other trade agreements. The majority of textile products (yarns including elastomeric yarn, and sewing thread, fabrics including elastic narrow bands, apparel and other made-up textile articles) will need to be manufactured from materials produced within the TPP in order to qualify for preferential TPP tariff rates.

To mitigate the impact of some of these restrictive rules, and to take account of production gaps within the TPP region, a Short Supply List (SSL) has also been agreed. Products on this list, when used for the specific end use identified, are deemed to be originating and can be sourced from countries outside the TPP. These product lines are largely blended fabrics for use in women's apparel.

4.3.1 Advantages of entering TPP, Textiles

Carpets are exempt from the yarn forward rule. The yarns and backings for carpets will be able to be sourced from outside the TPP, thus allowing New Zealand carpet manufacturers to take full direct benefit from tariff reductions.

While New Zealand is not a significant exporter of apparel, it does have many small and successful textile and related fashion design businesses that utilise manufacturing facilities in other TPP Parties, (particularly Viet Nam and Malaysia). The full cumulation provisions of TPP would open opportunities for these businesses to participate in the TPP supply chain.

4.3.2 Disadvantages of entering TPP, Textiles

The textile rules are technically complex. New Zealand textile exporters looking to access preferential tariff treatment in TPP markets would face greater compliance costs in proving origin compared to other sectors, and companies that source their materials from non-TPP Parties are unlikely to qualify for preferential tariff treatment, unless they are able to shift to TPP suppliers.

Most of New Zealand's apparel exports, however, enter TPP markets through mail order distribution networks and in price bands that are not sensitive to tariff duties. Those looking for opportunities in more generic product lines would be able to utilise the cumulation provisions, either to source TPP originating materials for use in New Zealand manufacture or to provide materials that are further manufactured offshore by TPP partners.

4.4 Customs

The Customs Chapter of TPP builds on the commitments in the recently agreed World Trade Organization Agreement on Trade Facilitation and extends beyond these obligations in some areas. These commitments are 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.

4.4.1 Advantages of entering TPP, Customs

The enhanced customs commitments in the TPP region will benefit exporters through increased efficiency at the border and expedited release of goods. This should lead to a lower cost of trade, and simplified customs procedures for traders.

TPP will require Customs agencies to provide advance valuation rulings for imports which would provide certainty and predictability for New Zealand exporters, and would make compliance with Customs laws, regulations and requirements easier. New Zealand businesses often report that uncertainty about the treatment of their goods can represent a significant cost or barrier to trade. The New Zealand Customs Service would require some additional resources to administer advance rulings on customs valuation[24], but the cost of this would be outweighed by the benefit to New Zealand exporters of advance valuations in other TPP countries.

The Customs Chapter would also support the New Zealand Customs service in its mission to protect New Zealand's borders, with mechanisms for closer cooperation between other customs agencies, including information sharing aimed at aiding in the investigation of fraudulent activities by traders.

4.5 Trade Remedies

Trade remedies allow governments to provide temporary relief to domestic industry from unfair competition from abroad or an unexpected surge in imports. World Trade Organization (WTO) rules cover three types of trade remedy:

- Anti-dumping duties. (Applied, in certain circumstances, on an imported product that has been exported at a lower price than its "normal value".)
- Subsidies and countervailing measures. (The WTO rules seek to limit trade-distorting subsidies, and provide for countervailing duties to offset the use of certain subsidies by other countries.)
- Safeguard action. (Temporary measures applied to allow domestic producers to adjust to sudden surges in imports.)

[24] One-off establishment cost of $400,000, with on-going costs to be met from baseline funding or cost recovered. See Section 8 of this NIA.

The TPP Trade Remedies Chapter provides that Parties retain their rights and obligations under the relevant WTO agreements, and includes an Annex that identifies a range of practices that promote the goals of transparency and due process in anti-dumping and countervailing duty proceedings. The Chapter also provides that a Party may apply transitional safeguard measures with respect to imported goods from another Party (which involves temporarily raising the tariff applying to the imported goods), if, as a result of the reduction of tariffs under TPP, there is an increase in imports causing or threatening to cause serious injury to the Party's domestic industry. The Chapter sets out the conditions and procedures for such measures. New Zealand's agreement to the inclusion of a transitional safeguard mechanism along the lines of outcomes negotiated in past FTAs was conditional on an appropriately ambitious outcome on goods market access. The outcome meets those requirements.

4.5.1 Advantages to entering TPP, Trade Remedies

The TPP Trade Remedies Chapter would enhance the interests of New Zealand exporters faced with trade remedy actions in TPP jurisdictions. It confirms that WTO rules will apply to the application of global safeguards and to the administration of anti-dumping and countervailing duties on trade between the Parties, while providing additional guidelines on the operation of key measures to enhance transparency and fairness in anti-dumping and countervailing duty proceedings.

4.5.2 Disadvantages to entering TPP, Trade Remedies

New Zealand would not be disadvantaged by entering TPP with respect to Trade Remedies. New Zealand uses trade remedies sparingly, reflecting our already open economy (with few tariffs remaining), and businesses that are on the whole already internationally competitive. The TPP Trade Remedies Chapter would not require any additional obligations or changes to New Zealand's current practice.

As frequently occurs in FTA negotiations, some TPP countries were only able to agree tariff liberalisation on particular products of key export interest for New Zealand (particularly, some agricultural products) in conjunction with "transitional safeguard mechanisms" that would allow them to remedy any serious injury experienced by their domestic sectors as a result of tariff liberalisation under TPP. If applied, such transitional safeguards can potentially temporarily undermine the agreed market access outcomes granted in the Agreement. The TPP Trade Remedies chapter mitigates this – and hence protects market access outcomes for New Zealand exporters – by establishing clear processes to discipline and limit the ability of Parties to take transitional safeguard actions. As described in the Section 4.1, such transitional safeguard actions would also be available for New Zealand in the case of serious injury arising from tariff liberalisation by New Zealand. (Note that while New Zealand has similar provisions in other FTAs, to date there has not been a need to utilise these.)

4.6 Sanitary and Phytosanitary (SPS) Measures

Imports, particularly primary products, can face measures designed to protect human, animal or plant life or health against pests, diseases and food-borne risks (referred to collectively as SPS measures: *sanitary*, human and animal health; and *phytosanitary*, plant health). For example, imported fruit may require treatments and inspections to ensure absence of pests, and food may be required to have pesticide levels below certain maximum residue limits. All TPP Parties are members of the WTO SPS Agreement, which allows countries to determine their own level of protection for health and safety, but also requires that any restrictions on trade need to be non-discriminatory, transparent and scientifically justified.

TPP provisions build on the WTO SPS Agreement, and provide a solid framework for TPP Parties to practically implement their WTO SPS commitments (in relation to both new and existing SPS measures). TPP encourages better and more consistent SPS regulatory practice, with a view to potentially benefiting exporters and importers across the region. The chapter is focused on establishing frameworks that help address future regulatory issues. TPP equals or exceeds SPS chapters in New Zealand's existing FTAs, building on our experience including the NZ-China FTA.

4.6.1 Advantages of entering TPP, SPS

TPP provides additional mechanisms to minimise negative trade effects of SPS measures on New Zealand exports, for example for Parties to facilitate and record agreements on such issues as equivalence (recognising another Party's systems as "equivalent" and therefore meeting import requirements) and regionalisation (targeting SPS measures to an affected region, rather than applying to a whole country). These mechanisms are important ways the New Zealand Government negotiates access for our primary products to be exported to markets. In developing SPS measures, TPP Parties will be obligated to undertake transparent decisions, and either conform to internationally agreed SPS standards or provide a documented scientific risk assessment where their requirements do not conform to the standards. TPP will require increased transparency around import checks and restrictions based on adverse results of import checks, as well as requiring the import programme be risk based. These requirements should enable New Zealand exporters to clearly understand the SPS requirements of other TPP countries. (New Zealand already meets such requirements.)

The TPP SPS Chapter contains obligations around best practice when conducting audits of another country's systems and requires that the costs incurred by the auditing Party are borne by the auditing Party (unless otherwise mutually agreed). This should minimise the cost burden for New Zealand exporters, compared with previous FTAs.

The Chapter also provides the ability to take SPS issues to Cooperative Technical Consultations for resolution, for relevant trade and regulatory agencies to aim to resolve within 180 days of the request. This should be an advantage for New Zealand, in providing exporters greater certainty through access to a robust and prompt means of dispute resolution. While it is possible that TPP countries could seek to use the same mechanism to change New Zealand SPS measures that affect their imports, this risk would be low given that New Zealand's SPS regime operates in alignment with the WTO SPS Agreement.

4.6.2 Disadvantages of entering TPP, SPS

Nothing in the TPP SPS Chapter would require New Zealand to change our approach to protecting human health, maintaining food safety, and protecting New Zealand's animal and plant health status from pests and diseases. As a result, there are no disadvantages to New Zealand entering TPP from an SPS perspective.

4.7 Technical Barriers to Trade (TBT)

The Technical Barriers to Trade (TBT) Chapter aims to address the trade barriers and costs associated with standards, technical regulations and conformity assessment procedures. The Chapter builds on the Parties' existing rights and obligations in the World Trade Organization (WTO) TBT Agreement and seeks to eliminate unnecessary technical barriers to trade, enhance transparency and promote regulatory cooperation and good regulatory practice.

The approach taken in the TBT Chapter is broadly aligned with New Zealand's policy settings and the outcomes achieved in the TBT chapters of our previous FTAs, although some obligations would require changes in New Zealand's current practices in certain areas.

4.7.1 Advantages to entering TPP, TBT

The diversity of regulatory measures among TPP Parties can make it difficult and expensive for exporters to understand and comply with the different requirements in each market. These can create TBTs that significantly increase transaction and compliance costs for exporters, particularly when regulations are more trade-restrictive than necessary to achieve a legitimate objective or are developed in a non-transparent way.

The TBT Chapter aims to address these issues and facilitate trade among TPP members, which would ultimately benefit New Zealand exporters. TPP includes provisions to enhance transparency in the development of TBT measures in the TPP region and promote greater regulatory cooperation and good regulatory practice. In the longer-term, this is expected to lead to regulatory frameworks in TPP markets that would make it easier for New Zealand exporters to determine the requirements for exporting. The TPP TBT Chapter also has provisions to minimise the adverse effects regulations can have on trade by reducing transaction costs for businesses, and to provide mechanisms for Parties to address specific trade issues with an aim of reducing or eliminating unnecessary TBTs.

A feature of the TBT Chapter that differs from our previous approach to TBT chapters is the inclusion of seven sectoral annexes to the chapter (Wine and Distilled Spirits, Pharmaceuticals, Medical Devices, Cosmetics, Proprietary Formulas for Certain Food Products and Additives, Organic Products and Information and Communications Technology Goods) which include sector-specific obligations aimed at reducing unnecessary barriers to trade in these products. The net effect of entering TPP with respect to these annexes is expected to be to New Zealand's overall advantage, as they would provide important benefit for New Zealand exporters. Key outcomes of likely interest for New Zealand exporters are:

- The Wine and Distilled Spirits Annex would simplify the sale and export of New Zealand wines in TPP markets and reduce costs for New Zealand wine producers, for example reducing unnecessary requirements that have previously required specific labels for different markets. The provisions are largely based on the World Wine Trade Group (WWTG) Agreements, which New Zealand is a signatory to.
- The annexes relating to pharmaceuticals, medical devices and cosmetics include provisions aimed at better aligning the respective regulatory regimes of TPP partners and removing unnecessary regulatory requirements for these products. This should reduce unnecessary regulatory divergences and the associated costs to our exporters of complying with a number of different regulatory requirements. The obligations in the annexes are consistent with international good practice and our current regulatory regimes for these products, and provide sufficient flexibility for our regulators to determine their own appropriate level of public health protection.
- The Annex on Information and Communications Technology (ICT) Products commits TPP Parties to accepting a supplier "declaration of conformity" as positive assurance that equipment meets a prescribed electromagnetic compatibility (EMC) standard. This lowers the cost to manufacturers of ICT goods (compared to a full testing and documentation regime) while giving our regulators reasonable assurance of technical compliance with EMC requirements.

The chapter also provides a mechanism to consider the negotiation and conclusion of further sector-specific annexes in the future. This helps ensure TPP is able to adapt to the changing needs of exporters in this area.

4.7.2 Disadvantages to entering TPP, TBT

New Zealand's regulatory regime already fulfils the principles of the TBT Chapters, so TPP is not expected to bring any disadvantage to New Zealand's development of standards and conformance. While New Zealand has a very transparent process for the development of regulations, the TBT chapter contains some prescriptive provisions which go beyond our WTO obligations e.g., broadening the scope of proposed TBT measures that must be notified to the WTO; placing proposals for, and final versions of, TBT measures on a single website; and making publicly available certain regulatory decision-making information. The additional costs to fulfil these would be low, however, and we have sought to minimise those costs where possible, e.g. by agreeing to use the existing WTO TBT Information Management System as the "single website" rather than being required to create a dedicated New Zealand website.

The wine and distilled spirits annex includes a production standard requiring that exports designated 'ice wine' be made from grapes naturally frozen on the vine. As a result, New Zealand wine producers would not be able to export as 'ice wine' wine made from grapes frozen using modern technology. This expands the outcome of the 2007 World Wine Trade Group Labelling Agreement (to which New Zealand is already a member). The commercial impact is likely to be low as few New Zealand companies export products designated 'ice wine' to any market. This would be an export-only production standard, so domestic sales of designated wine would not be affected.

4.8 Investment (including Investor-State Dispute Settlement)

The Investment Chapter of the TPP will establish a high quality yet balanced framework of investment obligations to govern investment relationships in the TPP region. The Investment Chapter is designed to facilitate the flow of investment between New Zealand and other TPP Parties within a stable and transparent framework of rules. The obligations contained in the Chapter, and New Zealand's specific reservations, are similar to those in New Zealand's existing trade and investment agreements (including New Zealand's FTAs with China, ASEAN, Malaysia and Korea).

The manner in which market access commitments are made for services and investment in TPP is through a 'negative list' framework. This format provides exporters and investors a simple way to determine whether the services and investment chapters apply to their area of business in another TPP market. Under a 'negative list' approach, Parties commit to provide market access except in areas where restrictions are listed in individual Parties' services and investment schedules. These restrictions are known as 'non-conforming measures' or 'reservations'. Each country's 'negative list' has two parts: Annex I and Annex II:

- Annex I sets out existing measures (laws, regulations, decisions, practices and procedures) that TPP Parties retain the right to maintain in their present form. Such measures may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors. These existing measures are subject to a 'ratchet' clause. This means that TPP Parties commit to automatically extend the benefits of any future autonomous liberalisation of these measures to all other TPP countries. Measures in Annex I reflect the current level of openness provided in a market and cannot be made more restrictive in the future.
- Annex II lists reservations for sectors and activities where TPP Parties reserve the right to maintain existing discriminatory measures and/or adopt new or more discriminatory measures in the future. The ratchet clause does not apply to any measure covered by Annex II.

If a TPP Party does not list any restrictions for a particular industry sector it means that Party is committed to not applying any measures that would be inconsistent with certain Investment Chapter obligations, such as, discriminatory practices that favour local investors or service suppliers, and is committing to keep that market open for TPP investors.

4.8.1 Advantages of entering TPP, Investment

Joining TPP would benefit New Zealand investors, providing improved conditions when making investments and doing business in other TPP Parties for many sectors, including our agricultural, manufacturing and natural resource industries. Improved conditions for investment are also important for many New Zealand goods and services exporters, who increasingly look to undertake activities to support their international business (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service).

New Zealand's outward foreign direct investment (ODI) in TPP countries represents about 73% of total investment abroad, and TPP will reduce barriers to investment and facilitate the navigation of complex regulatory systems. If New Zealand was not part of TPP, the investment among TPP members would benefit from a consistent framework but New Zealand investors would operate under different rules.

TPP would be the first time New Zealand has entered into FTA investment commitments with Canada, Japan, Mexico, Peru and the US, and would also improve on the partial investment commitments New Zealand has with several other TPP Parties through existing FTAs.

Foreign Direct Investment (FDI) from TPP countries already amounts to 75% of all FDI into New Zealand, and is an important source of capital to keep building New Zealand's competitive and productive economy. Membership in TPP would also send a signal to investors in TPP Parties about the investment environment into New Zealand by generating increased confidence and knowledge in New Zealand's stable and transparent investment regime, which would be expected to encourage inward investment flows into New Zealand.

Investment protections

The specific advantages provided by the Investment Chapter to New Zealand investors in other TPP countries and TPP country investors in New Zealand include:

- *Non-discrimination:* The Investment Chapter provides that New Zealand investors and investments cannot be discriminated against by a TPP government, compared to its own domestic investors in like circumstances, or against other foreign investors from any other country. Without these obligations, which are subject to limited exceptions, New Zealand investors could be treated less favourably than other investors (for example, they could face more onerous investment authorisation requirements) at any stage of their investment's lifecycle.
- *Standard of treatment*: The Investment Chapter confirms that investors and investments are to be treated in accordance with the minimum standard of treatment under customary international law, including fair and equitable treatment and full protection and security.
- *Control over investments*: The Investment Chapter would enable New Zealand investors to retain greater control of their investments in other TPP countries, as it includes restrictions on the imposition or enforcement of performance requirements, such as a requirement to achieve a percentage of domestic content or to transfer technology to a person in that TPP country. These types of requirements can be particularly onerous on small and medium size enterprises. The Investment Chapter also provides certainty that transfers relating to a covered investment will be able to be made freely and without delay, though an exception has been agreed that allows the imposition of certain restrictions (including on transfers) in a balance of payments crisis, or threat thereof. TPP would also allow investors to appoint their own experts to governance and senior management positions.

Investor-State Dispute Settlement

As with many of New Zealand's existing FTAs (including with China, ASEAN, Malaysia and Korea), the provisions of the TPP Investment Chapter are supported by recourse to investor-State dispute settlement (ISDS).

ISDS is a dispute resolution mechanism that allows foreign investors to pursue remedies directly against a TPP Party in relation to breaches of TPP's investment provisions. The ISDS mechanism in TPP applies to the Investment Chapter (including provisions on investment agreements and investment authorisations), and limited aspects of the Financial Services Chapter which relates to investment in financial services. In respect of investment agreements and investment authorisations, the scope of application of ISDS has been deliberately narrowed:

- Investment agreements are defined in TPP as a narrow set of agreements entered into by New Zealand's government departments and ministries. Agreements relating to matters such as land, water or the delivery of correctional, healthcare or other social services are not covered investment agreements and are not subject to ISDS under the investment agreements provision.
- A country-specific exception means that Government decisions under the Overseas Investment Act to grant or decline consent for foreign investment are not subject to ISDS. This is relevant for investment authorisations under the Act and protects the Government's ability to control approval of foreign investment in significant business assets, sensitive land and fishing quota.

ISDS only applies to the investment obligations in TPP – it cannot be used to challenge any other provisions in the Agreement.

Including ISDS ensures security for New Zealand investors and avoids putting them at a relative disadvantage to other investors in TPP countries. This is particularly the case in relation to countries whose investment policies and legal systems have historically not been as robust as in New Zealand.

The Investment Chapter's protections apply to all phases of an investment's lifecycle. This increases the level of protection afforded by the TPP Investment Chapter, including the possibility for an investor to bring an ISDS claim in relation to the "pre-establishment" phase of an investment (i.e. the period before an actual investment is made, where an investor is taking concrete steps to make an investment). This is different to New Zealand's existing FTAs that include ISDS, but this difference is mitigated by a New Zealand-specific exclusion for decisions to grant consent, or decisions to decline to grant consent, under the Overseas Investment Act 2005 from ISDS and Dispute Settlement under Chapter 28.

There are also provisions in the Investment Chapter which provide that ISDS tribunals must be constituted with sufficient expertise and jurisdiction to resolve claims appropriately. The transparency requirements of the Investment Chapter, such as the requirement for hearings to be open to the public and for ISDS decisions to be publicly available, will also help ensure integrity of the ISDS process.

4.8.2 Disadvantages to New Zealand of entering TPP, Investment

The obligations of the Investment Chapter, as designed to facilitate and protect investment flows between TPP countries, would on the whole not create additional obligations for New Zealand. This is because existing agreements and customary international law are already reflected in New Zealand's investment policy and regime. While on the whole there is benefit to New Zealand from other countries taking on TPP's Investment Chapter obligations, there are two areas that could generate potential costs. These are the implications of the ISDS mechanism and changes to New Zealand's investment screening thresholds for significant business asset. In both areas, New Zealand was able to address these risks through specific reservations (non-conforming measures), exceptions and safeguards. The legal operation of these mechanisms is explained in more detail below (see also the Legal Obligations section below on the Investment Chapter).

Investor-State Dispute Settlement

The ISDS mechanism, while providing positive recourse for New Zealand investors in TPP countries, has the reciprocal potential consequence of an increased exposure of the New Zealand Government to ISDS claims. Even though ISDS has been included in many of New Zealand's existing trade and investment agreements, it has never been utilised. However, the size of the TPP region and the potential number of new investors in New Zealand could increase the risk that New Zealand may face an ISDS claim (and the actual cost of responding to such a claim) in the future. This increased risk has been suggested by some commentators as potentially preventing future governments from taking regulatory action in areas of importance to New Zealand, such as for environmental objectives.

There are several aspects of ISDS in TPP that are considered to provide sufficient mitigation to balance the advantages and disadvantages of ISDS as acceptable for the New Zealand Government. For example, consistent with ANZCERTA and the Australia-ASEAN-New Zealand FTA, TPP's ISDS provisions would not apply between New Zealand and Australia. Australia is responsible for three-quarters of the total foreign direct investment from TPP countries into New Zealand. In other words, under the TPP Agreement, ISDS would not be available to three-quarters of all FDI from TPP countries in New Zealand.

TPP's safeguards, reservations (non-conforming measures) and exceptions that ensure New Zealand retains the ability to regulate for public health, the environment and other important regulatory objectives. Given a claim has never been made against a New Zealand Government under an international agreement, the actual costs of responding are unknown and, in any case, would depend on the substance of the claim itself. Despite this, there are several important features that would affect the likelihood of a claim successfully being brought, or that place upper limits on the possible cost of claims. For example:

- If the claim is outside of jurisdiction, the New Zealand Government would have the opportunity to seek to resolve it through the compulsory consultation and negotiations procedures[25], which would consequently not cost a large amount to resolve. Additionally, where multiple cases are separately submitted with commonalities, the Investment Chapter provides for a tribunal to hear consolidated claims which would also reduce costs. Where New Zealand successfully defends a claim (and, as outlined below, States have been successful in the majority of cases) New Zealand would be able to seek costs from the unsuccessful investor claimant.

- The Investment Chapter does not allow punitive damages to be awarded. This means any costs New Zealand might be required to pay would be limited to the actual damage suffered by an investor, and their legal fees.
- In addition, it is important to note that ISDS does not change New Zealand's obligations under TPP, it simply provides an avenue for TPP investors to pursue a claim in the case a government has not met certain obligations. Similar resources would be involved defending a case if, for example, a TPP Government was asked by one of its investors and decided to pursue a remedy via State-to-State dispute settlement, or pursue the issue through the domestic avenues (such as the New Zealand courts).

The TPP Investment Chapter deliberately includes certain safeguards to preserve the New Zealand Government's right to regulate and which seek to prevent unwarranted ISDS claims, including:

- Exceptions to the Investment chapter's rules to limit the scope of the chapter and therefore limit the scope of ISDS. For New Zealand, these exceptions cover important policy areas such as health and other public services, and the ongoing screening of foreign investment.
- A provision that allows the Government to rule out ISDS challenges over tobacco control measures. The Government intends to exercise this provision.
- Additional provisions that confirm Government action to implement legitimate public welfare measures, such as public health, safety and the environment, is very unlikely to constitute indirect expropriation.
- The investment obligations in TPP have been drafted in a way that would impose a high burden of proof on investors to establish that a TPP government had breached obligations such as 'expropriation' or 'minimum standard of treatment'. The investor has the burden of proving all elements of its claims under TPP.
- Government action (or where the Government does not take an action) that is inconsistent with an investor's expectations will not in and of itself constitute a breach of the Investment chapter leading to potential ISDS, even if there is loss or damage to the covered investment.
- Government decisions not to issue, renew or maintain or decisions to modify or reduce subsidies or grants will not in and of itself constitute a breach of expropriation, or the minimum standard of treatment obligations leading to potential ISDS.

[25] The consultation and negotiations processes are compulsory for any potential ISDS case. This provides an opportunity for any case to be resolved prior to it reaching a full arbitral hearing.

- As noted above, limiting the types of monetary awards and damages that can be made against the Government. The New Zealand Government cannot face claims for punitive damages and costs can also be awarded against an investor if their claim is ultimately unsuccessful.
- In addition to existing arbitration procedures, the Government is expressly permitted to make a counterclaim and obtain damages when the investor is in the wrong under a covered investment agreement.
- A number of provisions that allow TPP governments to issue binding interpretations on ISDS tribunals.
- Provisions that mean hearings will be open to the public, and which allow tribunals to accept submissions from experts and the public.
- Procedures and rules that limit the possibility of an ISDS claim being made in the first place. Claims must be submitted before three and a half years have passed, and the investor must initially enter into consultation and negotiations to attempt to resolve the claim with the New Zealand Government. Any preliminary objections from the Government, e.g. that the claim goes beyond a tribunal's jurisdiction or is manifestly without legal merit, must be resolved before the full arbitration commences.

More fundamentally, however, the ISDS mechanism does not change the obligations of the TPP Investment Chapter. Ultimately it is these obligations, not the existence of an ISDS mechanism, that determine any constraints on regulation or policy. In this respect, the TPP Investment Chapter would not limit New Zealand's fundamental investment and public policy settings.

New Zealand screening thresholds

As part of a negotiated outcome on improved investment opportunities in other TPP Parties, New Zealand made some improved market access commitments. Under TPP, the threshold above which a non-government investor must get approval to invest significant business assets in New Zealand would increase from NZ$100 million to NZ$200 million for investors from TPP Parties.[26] (Note that non-government investors from Australia are already screened at a higher threshold, currently NZ$497 million, under ANZCERTA.) New Zealand would be unable to reduce this threshold in the future for TPP Parties. The increased threshold requires an amendment to the Overseas Investment Act 2005. Other than this specific threshold, TPP would not have any further implications or required amendments for the investments currently screened under the Overseas Investment Act 2005. No changes would be required to the way New Zealand currently approves foreign investment in sensitive land (including farm land over five hectares) or fishing quotas. TPP rules do not provide the ability for a government to ban TPP nationals from buying property in New Zealand. Under TPP, however, New Zealand would be able to impose some types of new, discriminatory taxes on property and, as noted above, continue to require approval to require approval for foreign

[26] Increasing the threshold on entry into force of TPP will also engage MFN commitments that New Zealand has under certain existing FTAs. The $200 million screening threshold for significant business assets would also have to be applied under relevant MFN provisions in existing agreements with China, Hong Kong, Chinese Taipei and Korea. This will need to be addressed in implementing legislation for TPP.

investments in sensitive land. New Zealand would also retain the flexibility to make the approval criteria under the Overseas Investment Act more or less restrictive.

This new TPP threshold was judged to be acceptable for New Zealand's investment policy because of the benefits for the perception of New Zealand's investment environment due to the reduction in compliance costs for some investment entering New Zealand, and the fact that Overseas Investment Office statistics indicate that no application relating solely to significant business assets (i.e. no sensitive land involved) has been declined for a number of decades.

Beyond the Overseas Investment Act, New Zealand commitments under TPP are on the whole consistent with current law and practice, but could potentially limit New Zealand's future policy flexibility. For example, New Zealand would make commitments not to impose performance requirements and in relation to senior management and boards of directors except in areas covered by specific Annex I and II reservations in New Zealand's negative list to TPP (although New Zealand sees such obligations as a net advantage, and seeks such outcomes in FTAs). These Annex I and II reservations relate to sensitive areas of policy (including health, public education and social security), reflect the same types of exceptions New Zealand has included in previous FTAs, and on the whole are deemed to preserve appropriate future policy space.

4.9 Cross-Border Trade in Services

The Cross-Border Trade in Services Chapter seeks to facilitate the expansion of cross-border trade in services, including in sectors such as accountancy, construction, engineering and architecture services. Like a number of New Zealand's existing FTAs, TPP takes a broad approach to cross-border trade in services, with services covered unless specifically excluded or listed in a country's schedule of non-conforming measures. The areas of government procurement, financial services and telecommunications are also covered by separate chapters under TPP.

The manner in which market access commitments are made for services and investment in TPP is through a 'negative list' framework. This format provides exporters and investors a simple way to determine whether the services and investment chapters apply to their area of business in another TPP market. Under a 'negative list' approach, Parties commit to provide market access except in areas where restrictions are listed in individual Parties' services and investment schedules. These restrictions are known as 'non-conforming measures' or 'reservations'. Each country's 'negative list' has two parts: Annex I and Annex II:

- Annex I sets out existing measures (laws, regulations, decisions, practices and procedures) that TPP Parties retain the right to maintain in their present form. Such measures may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors. These existing measures are subject to a 'ratchet' clause. This means that TPP Parties commit to automatically extend the benefits of any future autonomous liberalisation of these measures to all other TPP countries. Measures in Annex I capture the current level of access provided in a market and cannot be made more restrictive in the future.

- Annex II lists reservations for sectors and activities where TPP Parties reserve the right to maintain existing discriminatory measures and/or adopt new or more discriminatory measures in the future. The ratchet clause does not apply to any measure covered by Annex II.

In other words, if a TPP Party does not list any restrictions for a particular industry sector it means that Party is committed to not applying any measures that would be inconsistent with certain Chapter obligations, such as, discriminatory practices that favour local investors or service suppliers, and is committing to keep that market open for TPP exporters and investors.

4.9.1 Advantages of entering TPP, Services

Services are critical to New Zealand's international competitiveness, accounting for 64 percent of GDP (NZ$140 billion in 2014), with exports worth NZ$17.7 billion (around a quarter of total exports). Nearly half these exports go to TPP countries. Commercial services, including knowledge intensive services such as ICT, audio visual and consultancy services, are valued at NZ$4.6 billion (or 7% of exports). According to the New Zealand Productivity Commission[27], the service sector contributes to over 52% of the value of our exports (some NZ$35 billion), reflecting the contribution of embedded services such as logistics, software, finance and design to the final value of our exports (goods included).

Entering TPP would make it easier for New Zealand service exporters – such as providers of professional, business, education, environmental, transportation and distribution services – to exploit new opportunities and increase their competitiveness and profitability. Improved commitments for services (and investment) are also important for many New Zealand goods exporters, which increasingly look to undertake services related activities to support their international business (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service). Increased services trade can increase productivity through greater specialisation and agglomeration and by increasing the level of competition in the domestic market. Exporters gain from improved access to larger markets in the TPP region, while consumers gain access to a wider variety services.

On the import side, TPP would help to integrate New Zealand into regional supply chains and to overcome the distance that currently acts as a barrier to information flows. This would increase opportunities for knowledge and technology transfer and reduce the deterrent effect that New Zealand's small market may currently have on expansion of services imports.

The cost to New Zealand services exporters of not entering TPP would be being placed at a competitive disadvantage against other TPP exporters that enjoy preferential advantage in TPP markets.

[27] Productivity Commission, *Boosting productivity in the services sector*, May 2014.

Regulatory framework

The Cross Border Trade in Services Chapter would support growth for New Zealand's services sectors by including provisions relating to non-discrimination and market access. Other than where exceptions apply or countries have specific restrictions, New Zealand services and service suppliers would be entitled to equal treatment in "like circumstances" and TPP countries cannot impose quantitative restrictions that would lock out service suppliers from their markets. The inclusion of "most-favoured-nation" (MFN – requiring a TPP country to extend to TPP Parties the best level of access it might offer in the future to any non-TPP country) would help to ensure that the competitive position in the TPP region of New Zealand exports is not eroded over time. These core obligations are supported by other disciplines such as a prohibition on requiring a local presence, and provisions to enable the free transfer of payments. In combination, the Chapter aims to reduce barriers to entry into TPP markets.

The Chapter's commitments on domestic regulation are designed to complement market access commitments by ensuring that domestic regulation in TPP countries related to the authorisation, licensing and qualification procedures does not operate as a barrier to services trade.

These obligations are supported by improved market access commitments over and above existing GATS and FTA commitments, made by a number of TPP countries, including for commercial services and in the education sector. Examples of these market access commitments that are expected to provide direct benefit to these sectors include, for example:

- *Global supply chain related services*: transportation, warehousing, distribution and retail are important services when getting goods to market. TPP Parties have agreed not to restrict foreign participation in warehousing, distribution and retail services (with limited exceptions), while access to transportation related sectors (land, sea, air related services and rail) will also be significantly improved.
- *Education services*: New Zealand providers would have improved access to the private education service markets of new FTA partners (Canada, Japan, Mexico, Peru and the US) and business and second-language training services in Chile and Viet Nam. These provide further opportunities for New Zealand's growing international education sector.

  Education is one of the New Zealand's most important services export sectors. The TPP region has not traditionally been a strong source of New Zealand's education services exports, accounting for less than 20% of New Zealand's NZ$2.3 billion global 2014 education services exports.[28] This presents a potential growth opportunity, in particular for large purchasers of New Zealand education services in the TPP region that do not have existing FTAs with New Zealand: in 2014, New Zealand exported NZ$278 million of education services to Japan, and around NZ$50 million to the US.

[28] Note that Australia is not counted in New Zealand's education services export statistics, as students from the two countries pay domestic fees.

- *Accountancy services*: New Zealand accountants and accounting firms would have greater access to provide services in TPP countries. Some limited exceptions do exist, such as a requirement to have a local commercial presence in Viet Nam.
- *Other professional services*: New Zealand professionals would benefit from improved commitments in a wide range of sectors such as engineering, architecture, management consultancy and foreign legal services. While the provision of services across TPP countries is subject to certain local professional standards and licensing requirements, New Zealand would benefit from TPP commitments not to discriminate or impose quantitative restrictions in these sectors.
- *Agriculture services*: New commitments would support the commercial opportunities that exist in the region for New Zealand agriculture, hunting and forestry service suppliers. Together with gains on goods, investment and visa access, this paves the way for regional expansion in an area of New Zealand expertise.
- *Environmental services*: Improved commitments for environmental services, particularly in the US where significant improvements to existing WTO commitments have been made.

4.9.2 Disadvantages of entering TPP, Services

The Chapter's rules are designed to facilitate the expansion of the services trade, and in doing so impose certain obligations on Parties. Some countries may face adjustment costs and the need for reform to meet the level of services trade liberalisation under TPP. For New Zealand, these obligations would be relatively low-cost to fulfil, as our domestic regulatory regime already operates in an open and non-trade restrictive way.

New Zealand's lists of non-conforming measures preserve the ability of New Zealand to maintain monopoly service provision in certain areas, for example, with respect to the promotion of film and television production in New Zealand.

Public services provided in the exercise of governmental authority, and social services such as healthcare and public education, are also excluded from the scope of New Zealand's market access commitments in TPP.

4.10 Financial Services

The Financial Services Chapter of TPP will establish a framework of rules governing the cross-border trade in financial services among TPP Parties. The TPP is the first time that New Zealand has included a separate chapter of commitments on financial services in an FTA. The Chapter is closely connected to the Cross-Border Trade in Services and Investment Chapters. Financial services are an important underlying service that is essential for all international trade and investment.

Investment-related provisions in the Financial Services Chapter will apply to each TPP Party according to its negative list schedule of "non-conforming measures". This is New Zealand's preferred format, as it provides a simple outcome for businesses: each TPP country will apply

Chapter commitments to every area, except those in the "negative list" of non-conforming measures. Under TPP, the list of non-conforming measures under the Cross-Border Trade in Services and Investment Chapters applies to the Financial Services Chapter where relevant, reflecting the close relationship between financial services, general trade in services and investment. The separate financial services non-conforming measures are listed in two sections:

- *Section A:* sets out existing measures (laws, regulations, decisions, practices and procedures) that the TPP Party retains the right to maintain in their present form (but not make more restrictive). Such measures may restrict the access of foreign financial service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors. These existing measures are also subject to a 'ratchet' clause, requiring the TPP Party to automatically extend the benefits of any future liberalisation of these measures to all other TPP countries.
- *Section B:* lists reservations for sectors and activities where the TPP Party has reserved the right to maintain existing discriminatory measures and/or adopt new or more discriminatory measures in the future. The ratchet clause does not apply to any measure covered by Section B.

Commitments to allow the provision of financial services from one TPP country into another (cross-border supply) are limited to a prescribed set of activities set out in a separate annex of country-specific commitments.

4.10.1 Advantages to entering TPP, Financial Services

New Zealand sold NZ$136 million of financial services to the TPP region in 2014, the majority of which was NZ$99 million to Australia. (Total imports of financial services from TPP were NZ$132 million.) These exports were a relatively small proportion of the total NZ$670 million of financial services New Zealand exported in 2014, indicating potential for increased exports to other TPP markets. The framework of rules provided by the Financial Services Chapter would help grow our exporters' activity in the TPP region.

The Chapter includes a market access commitment requiring TPP countries ensure access to their markets for New Zealand financial service suppliers by, among other things, not imposing quantitative restrictions on the number of financial institutions; the value of transactions; or by requiring a particular type of legal entity or joint venture to provide the service. The Chapter's commitments also ensures that once established as a financial service provider, a New Zealand exporter would not be disadvantaged compared to other providers of the same or similar services under TPP, subject to limited exceptions. New obligations relating to portfolio management and electronic card payment services, which reflect existing New Zealand policy, will also reduce barriers to trade for New Zealand suppliers in TPP markets.

Specific commitments are also included in the Chapter that will promote transparency, which is particularly important in the financial services sector given that regulation is often highly technical.