Opening Statement to the Foreign Affairs, Defence and Trade Committee:

The National Interest Analysis (NIA) for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

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Thank you Chair for the opportunity to introduce to the Foreign Affairs, Defence and Trade Committee the National Interest Analysis (NIA) for the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

I intend today to speak in four inter-related parts:

1) the context for the signing of CPTPP;
2) an overview of how we got to CPTPP;
3) a summary of the National Interest Analysis; and
4) an outline of the way ahead on New Zealand’s trade policy in the context of the CPTPP.

I  The context for the signing of the CPTPP

1. At the outset it is worth recalling why trade matters for New Zealand. The export sector sustains more than half a million New Zealand jobs. Put another way, one in every four New Zealanders in work today depends on exports for their livelihoods. Trade is also an important driver of productivity, employment and incomes. We know, for instance that productivity per New Zealand worker is 36% greater if they are in a firm that is exporting, compared to one that isn’t.\(^1\) It has also been established that employment grows 7% to 12% faster when New Zealand firms start exporting\(^2\). International research also tells us that exporting firms pay higher wages – up to 6% more than non-exporters\(^3\). In short, trade - the rules and market access openings that facilitate this such as those contained in the CPTPP - matter for our prosperity, well-being and livelihoods.

2. The CPTPP was signed on 8 March 2018 in Santiago, Chile. The evolving international trade policy context for that signing ceremony reinforces that this agreement is a vital New Zealand national interest. It was, after all, just over a year ago, on 23 January 2016, that President Trump announced the formal withdrawal of the United States of America from the Trans-Pacific Partnership Agreement (TPP).

3. New Zealand regretted the withdrawal of such an important strategic and commercial partner. In this regard, it is worth recalling that we are one of the few remaining members of the CPTPP\(^4\) which do not have a preferential trade agreement with the United States. Despite our disappointment at the US decision, we judged that for New Zealand the substance of the agreement, i.e. its high quality rules and market access commitments, were sufficiently important for us to seek their continuation in some form. To this end, New Zealand actively led efforts to persuade other partners that we needed to find a way to collectively preserve, and implement those hard fought rules and commitments.

4. In particular and over the past year, we therefore worked to negotiate a new international trade agreement - the Comprehensive and Progressive Agreement for

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4 The others are: Brunei, Japan, Malaysia and Viet Nam.
Trans-Pacific Partnership (CPTPP). Particular mention should be made of the role played by the then Minister of Trade, Honourable Todd McClay who spearheaded our early efforts to this end, travelling extensively and intensively across the CPTTP membership to persuade and encourage engagement on the new Treaty\(^5\).

5. The withdrawal of the United States from TPP just over a year ago was one concerning development. There have been others since then. One recent development has been a series of announcements of intended unilateral tariff increases on steel and aluminium. Several countries have responded to these planned unilateral increases, with proposed tariff escalations on their own on products as diverse as alcoholic beverages and soybeans. The compatibility of these proposed measures with WTO rules is far from clear.

6. The challenge to the international rules-based system is therefore both serious and growing. We may be seeing the ‘end of the golden weather’ for international trade rules. This simply reinforces the significance of the CPTPP because it acts as a:

1) **Bulwark against rising protectionism** there is now an emerging trend of increasing global protectionism on the one hand and, on the other, an ongoing assault on the rules which underpin the international trading system. To underline the point:

   - Since the Global Financial Crisis over 3,200 new trade-restrictive measures have been introduced; fewer than 850 dismantled. Put another way, since the GFC, almost 4 new protectionist measures have been installed for every one removed; and
   - Since 2015 there has been a 30% increase in trade-restrictive measures – the sharpest such increase since the end of the Uruguay Round and the establishment of the World Trade Organisation, in 1995.

In fact, setting to one side the conclusion of the WTO Trade Facilitation Agreement in 2013 and the elimination of agricultural export subsidies at the Nairobi WTO Ministerial in 2015 – the latter a key priority for New Zealand at least since the late 1980s - there has been no meaningful multilaterally-driven trade liberalization for nearly twenty five years.

Nevertheless, while there has been a very limited expansion of the existing disciplines, what we do have is a functioning international rules-based system. This is something that New Zealand continues to actively support and invest in, not least through the World Trade Organisation. This body houses the world’s only legally enforceable set of rules that bind all of the world’s economies large and small. The WTO is therefore vitally important to New Zealand and remains our first best option for international trade rules, providing a set of mechanisms, particularly its dispute settlement function through which major economic powers like the EU, China, the US, India, Indonesia and others, can be held to

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\(^5\) Particular appreciation is also due to the two Chief Negotiators for TPP, Mark Sinclair, currently our Ambassador to Mexico and David Walker, now our Permanent Representative to the World Trade Organisation in Geneva.
account. And the CPTPP acts as a building block to those multilateral rules, not least through its range of WTO-Plus disciplines and commitments;

2) **Safety-net for the rules-based system at risk**: the so-called ‘jewel in the crown’ of the WTO is its dispute settlement mechanism - and by extension the rules-based system itself - is under threat. If the current impasse in Geneva is sustained, by December 2017 – and possibly before then - there will no longer be a functioning WTO Appellate Body because of a lack of appellate judges to oversee its work. The risk of the system’s consequent disintegration would be heightened and this would seriously affect New Zealand traders, making them more vulnerable to non-transparent and arbitrary protectionist measures that cannot be disciplined. This in turn has implications for our economic prosperity and so on. It is in these circumstances that having a new robust set of enforceable international rules through CPTPP is so valuable; and

3) **Instrument to Protect the New Zealand interest**: New Zealand is at a disadvantage in international trade. This is a consequence of our (small economic) scale and distance from markets, both of which are compounded by our continued reliance on agricultural exports. These products face the highest levels of global protection - tariffs often in excess of 100% and an average of 23% - compared with an average of less than 6% for manufactured goods. In fact, tariffs are only part of the problem. A recent New Zealand Institute for Economic Research (NZIER) analysis suggests that in the Asia-Pacific alone non-tariff barriers (non-science-based sanitary and phyto-sanitary barriers; unnecessarily burdensome labelling requirements) cost our exporters nearly $6 billion a year.

7. It is also worth noting that, while the international trading environment is becoming increasingly difficult for New Zealand, it could easily become worse. We know what that looks like. Prior to 1995 there were no enforceable international disciplines governing nearly three quarters of our exports (ie in agricultural goods). This created uncertainty, a lack of transparency and exposed New Zealand traders to arbitrary protectionist measures. The importance of CPTPP to the New Zealand national interest therefore is not only that it delivers improved access conditions for New Zealand exporters into many of our key Asia/Pacific trade partner’s markets, but that it provides a hedging mechanism against the risk of weakened international rules.

II How we got to CPTPP

8. The realist and neo-realist schools of international relations suggest that small states – let alone distant ones like New Zealand - have significant constraints on their ability to act independently or particularly effectively. More generally, these theories are sceptical as to whether larger states are prepared to allow international rules to constrain their actions. The conduct of New Zealand’s trade policy has historically focused precisely on contradicting the realist and neo-realists assumptions about international rules. In fact, the realist school – notwithstanding its apparent elegant simplicity – has it wrong. The World Trade Organisation (WTO), the Organisation for Economic Cooperation and Development (OECD) and the Asia-
Pacific Economic Cooperation (APEC), inter alia, are all empirical demonstrations that small states can work effectively to structure norms, behaviours and rules that are not dependent on support from a hegemon. CPTPP is further evidence of this.

9. More generally, there are powerful incentives, both political and commercial, driving the negotiation of preferential trade agreements. These may include both first-mover advantage incentives, as well as defensive ones (i.e. to seek parity with competitors who have secured tariff and other preferences) as well as to drive regional economic integration in the absence of progress in the WTO negotiations.

10. While New Zealand explicitly prefers multilateralism and continues to do so, with good reason, it has had to take some difficult decisions including how to engage in regional economic integration outside multilateral frameworks. It is important to emphasise, however, that an FTA-focused strategy is very much a 'second-best' alternative to a functioning global rules-based system. FTAs risk creating discord in international trade law; accelerate the continued negative impact of trade diversion; and are a disincentive to non-discriminatory liberalisation. This flows from the construction of protective rents, exclusive benefits created by preferences and by the proliferation of rules that create differing obligations and higher transaction costs for companies. They are also unable to meaningfully address pervasive trade distorting agricultural subsidies which require multilateral solutions. New Zealand is also particularly vulnerable to our exporters facing competitive disadvantage as a result of FTAs that our competitors may secure, but are more difficult for us to obtain, as was the case in Korea and Japan until recently.

11. It is with the above in mind that New Zealand has proceeded carefully on FTAs, always seeking to ensure they are comprehensive and high quality such that any outcomes can support – rather than impede – multilateralism, while ensuring that New Zealand's commercial interests can be protected. To this end, New Zealand has adopted a non-linear strategy of 'paving stones' in the Asia-Pacific that developed pathways to extend New Zealand's integration into the evolving regional architecture. This was in part a pragmatic response to the ongoing international debate about the potential challenge posed by bilateralism to the nascent WTO system and whether such FTAs were building blocks or stumbling-blocks for the multilateral trading system.

12. Two long standing pathways that date back to the late 1990s were designed to facilitate New Zealand's long term regional economic integration. These have been initiated and informed by New Zealand, working with several other key small state partners, not least Singapore, Chile and Brunei. Together these pathways have contributed to the evolution of the current regional economic architecture.

13. The first of these pathways was established through the high quality Comprehensive Economic Partnership between Singapore and New Zealand. This was New Zealand’s first trade agreement since CER in 1983. The CEP with Singapore laid the foundation for a plurilateral agreement, the Pacific Four (P4) – Brunei, Chile, New Zealand and Singapore. This later morphed into the twelve country Trans-Pacific Partnership agreement (TPP) which in turn has now evolved into the CPTPP.

14. The second pathway for New Zealand’s engagement in regional economic integration has been the ASEAN-Australia-New Zealand FTA (AANZFTA), which
also had its origins in the bilateral FTA with Singapore and a separate bilateral FTA with Thailand. It was followed by another bilateral FTA with Malaysia. The significance of the plurilateral FTA with ASEAN went well beyond the significant commercial benefits for all partners. The conclusion of AANZFTA meant that New Zealand had ‘purchased its ticket’ to the next mega-regional negotiation that was emerging - the Regional Comprehensive Economic Partnership. In the absence of the AANZFTA ‘building block,’ New Zealand quite simply could not have been involved in the RCEP plurilateral that represents a key element of the emerging economic architecture in the Asia-Pacific (and includes such major countries in the region as China and India), with CPTPP providing another. Taken together, RCEP and CPTPP represent the region’s two ‘mega-plurilaterals’ that over time are expected by New Zealand to drive the region’s broader and deeper economic integration. And New Zealand needs to be in both agreements, given their importance in setting the rules and conditions for trade in our region for decades to come. As a longer term objective, these two components of the architecture (RCEP and CPTPP) are expected to form the basis for an eventual Free Trade Area of the Asia Pacific (FTAAP) – a long-standing New Zealand objective.

III CPTPP: The National Interest Analysis

15. The CPTPP National Interest Analysis (NIA) comprehensively assesses the full impact of CPTPP for New Zealand. It concludes that the costs of CPTPP are significantly outweighed by a range of benefits including that once fully in effect CPTPP is expected to increase New Zealand’s real GDP by between 0.3 percent ($1.2 billion) and 1.0 percent ($4.0 billion). If CPTPP goes ahead without New Zealand, the modelling estimates a $183 million decline in our GDP.

16. The first important point to make on the CPTPP is that this is a new international treaty which incorporates by reference the TPP but lists 22 specific elements of the TPP which have been suspended.

17. The text of the TPP was pro-actively made available since January 2016 on the Ministry of Foreign Affairs and Trade’s website. Since 11 November 2017 the specific suspensions from the TPP which were under negotiation were also listed, along with an outline of the provisions of the CPTPP itself. A plain language guide to the suspended elements and what they mean for New Zealand was added on 29 November. Stakeholders have therefore been able to compare the text of the TPP with the CPTPP, including identifying the specific suspended elements since November 2017. On 21 February 2018 and a fortnight ahead of the signature of the CPTPP in Santiago, the National Interest Analysis along with the text of the new Agreement was proactively and formally released, including to the Ministry’s website. This was accompanied by a plain language summary of the agreement, as well as an elaborated explanation of the suspended elements and what these mean for New Zealand.

18. In addition to the release of the text of the agreement before it was signed, along with the NIA, extensive public engagement and outreach has been undertaken on the CPTPP. Annex 1 lists the public engagement meetings held on CPTPP since early November 2017. These meetings involved as wide a range of stakeholders as possible, including business, Maori and civil society more broadly. In addition some non-traditional mechanisms were used to raise
awareness about and provide information on the new treaty, including through a Minister-led Facebook live session, active Facebook updates and tweeting to encourage attendance at CPTPP-related public events. Additional specific consultations were undertaken with Maori. Annex 2 lists the engagement undertaken since the commencement of negotiations for CPTPP earlier in 2017.

CPTPP: A New Agreement

19. As noted above, the CPTPP is a new treaty and is different from TPP. The differences can be broadly clustered into two parts.

20. First, there are suspensions of a range of particular TPP provisions. These were the product of extensive negotiations between the eleven CPTPP partners. It is important to underline that these suspensions do not automatically enter-into-force if, for instance, the United States joins CPTPP at any stage. In fact, the CPTPP is explicit in Article 2 that all eleven parties must agree to implement a specific suspended provision before it can enter into force.

21. In terms of the suspensions specifically, there are two main clusters:
   (a) on Intellectual Property where fully eleven provisions from the chapter have been suspended; and
   (b) across the remainder of the Agreement, ranging from the Customs Chapter, through to the narrowing of the scope of the investor-state dispute settlement provisions.

22. All of these suspensions are explained and assessed in extensive detail in the NIA. Several of these suspensions will result in savings for the New Zealand economy.

23. Second – and crucially for New Zealand, a number of important outcomes of the TPP were reconfirmed and several new treaty-level commitments were secured that are distinct from the TPP. These relate particularly to the investor state dispute settlement provisions of CPTPP and include:
   - The reconfirmation of the treaty-status side letter with Australia which excludes investor-state dispute settlement between the two countries. This is significant because it effectively (and reciprocally) excludes up to 80% of the investment flows into New Zealand from using the ISDS provisions of CPTPP;
   - Treaty-status side letters which also either exclude ISDS between the partners or require ‘prior consent’ by the Governments concerned before ISDS can be triggered. These separate and new treaties were concluded and signed alongside the CPTPP with Brunei, Malaysia, Peru and Viet Nam;
   - The formal reconfirmation, in the new treaty which comprises CPTPP of the right to regulate in the public interest and the retention of the range of robust procedural and substantive safeguards from TPP that mitigate as far as possible the risk of being successfully sued by a private investor; and
   - The Joint Declaration on ISDS issued by New Zealand, Chile and Canada which underlines that in future reviews of the CPTPP, the
24. It is also worth underlining that CPTPP has preserved our ongoing and long-standing core interests. To this end, CPTPP sustains the

- **government’s right to regulate in the public interest**, including for public health, public education, the environment and so on;

- **pre-eminence of the Treaty of Waitangi** in New Zealand. The CPTPP contains a Treaty of Waitangi exception that explicitly allows the government to adopt any policy it considers necessary to fulfil its obligations to Māori. This unique provision allows the government to implement policies which benefit Māori without being obliged to offer equivalent treatment to persons from other CPTPP countries. The Treaty of Waitangi exception is just one of a number of exceptions and reservations which ensure that our government retains its right to regulate in the public interest;

- **PHARMAC model**, including its ability to prioritise its spending and negotiate the best price for medicines. In fact, as a result of CPTPP, the administrative changes to PHARMAC which were required from TPP have been suspended. The costs cited in the NIA for TPP in this area will no longer apply, ie of up to $4.5 million in one-off establishment costs and up to $2.2 million a year in operating costs.

CPTPP: What’s in it for New Zealand?

25. For New Zealand there are essentially three important reasons (*strategic, commercial and sustainability*) that it concluded and signed CPTPP and underline why this agreement is in the national interest.

26. In **strategic terms**, this new Treaty ensures that New Zealand is at the heart of the evolving regional economic architecture and will therefore be able to help shape and inform the rules and disciplines in the agreement as it develops and expands over time.

27. Importantly too, by being in the CPTPP, New Zealand will be in a position to negotiate with partners seeking to accede to the new Agreement. More broadly, the CPTPP – as a mega-regional agreement with an open accession clause supports and helps advance in the medium term our long-standing ambition for a Free Trade Area of the Asia Pacific (FTAAP). Similarly, the effect of CPTPP’s open accession clause and the extensive WTO-plus rules, disciplines and market access commitments mean that this treaty supports the multilateral rules-based system. It is - to use a trade economic metaphor - a building block to multilateralism, not a stumbling block.

28. **Commercially** this agreement matters to New Zealand. As at the time of this briefing (3 May 2018) New Zealand’s current FTA network covers 56% of our exports. This will rise to 65% once CPTPP enters into force – and New Zealand’s prompt ratification of the agreement is therefore crucial to ensure that we can secure the full benefits of this agreement as soon as possible. The raw
numbers are compelling – we export $15 billion of merchandise goods and $6.8 billion of services to CPTPP partners and 64% ($66 billion) of all our FDI comes from CPTPP members.

29. The CPTPP effectively delivers four new free trade agreements, with Canada, Japan, Mexico and Peru. In addition, it provides ‘WTO-plus;’ ‘P4-plus,’ ‘AANZFTA-plus’ and ‘Malaysia-NZ FTA-plus’ benefits for our export to the ASEAN members of CPTPP (e.g. Brunei, Singapore, Malaysia and Viet Nam) and Chile. In other words, the CPTPP provides additional and enhanced benefits and preferences over and above the existing WTO benefits, as well as advantages that go beyond our existing FTA network involving individual CPTPP partners.

30. A straightforward statistical analysis of the tariff savings indicates that New Zealand exporters stand to benefit significantly from the CPTPP, including its early entry-into-force. Once fully implemented, the CPTPP has the potential to deliver an estimated $222.4 million of tariff savings annually based on current exports. $95.1 million of those savings would accrue as soon as the CPTPP enters into force. Those savings are almost certainly an understatement because as the tariffs are removed and preferences apply, more trade is diverted to take advantage of these new preferences given the emerging competitive advantage. By way of comparison, prior to entry into force, New Zealand’s exports to China were estimated to grow by 123% over a 20 year period due to the New Zealand China trade agreement. In the 10 years since entry into force in 2008, exports have already expanded 429%.

31. Crucially, CPTPP means that New Zealand exporters are not disadvantaged in important markets like Japan compared with competitors such as Australia and Chile which both have existing FTAs with Japan. In addition, the 28 members of the EU – many of them significant agricultural exporters will soon also have preferential access to Japan through their recently concluded trade agreement. This reinforces the need to implement CPTPP as a priority.

32. Key outcomes for our goods exporters throughout the CPTPP region include:

- All tariffs for New Zealand kiwifruit will be eliminated at entry into force and existing duty free access will be locked in. This includes immediate duty free access to Japan – New Zealand’s largest kiwifruit market – representing tariff cost savings of more than NZ$26 million. By way of a practical example of the benefit of CPTPP in Japan, New Zealand trades over a tariff of 6.4%. Chile – a key competitor in this high-value market - because of the Japan-Chile Strategic Economic Partnership Agreement pays a zero tariff. Levelling of this playing field matters, not least because the kiwifruit industry accounts for around 18,000 fulltime and seasonal jobs. Moreover, a recent report from the University of Waikato forecasts another 29,000 new jobs in the industry by 2030 in New Zealand. As Zespri has underlined “trade agreements underpin prosperity in rural New Zealand”.

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• All tariffs on *New Zealand wine* will be eliminated, including immediate duty-free access to Canada (New Zealand’s 4th-largest wine market). Again, a comparison is instructive. At present New Zealand trades across a 15% tariff on wine into Japan, while two of our main competitors – Chile and Australia - are paying tariffs of 4.6% and 9.5% respectively.

• Nearly all tariffs on *New Zealand sheep meat* will be eliminated upon entry into force, including locking in preferential rates to Canada (New Zealand’s 7th-largest sheep meat market).

• All tariffs on *New Zealand forestry and forestry products* will be eliminated as part of CPTPP, including in Japan (New Zealand’s 4th-largest export market) and Viet Nam (New Zealand’s 9th-largest market).

• All tariffs on *New Zealand apples* will be eliminated within 11 years. This would level the playing field with Australian apple exporters, who already enjoy preferential access into Japan.

• Tariffs on *New Zealand beef exports* to Japan will reduce from 38.5 percent to 9 percent over 16 years - the best outcome Japan has given to any partner. This will immediately remove Australian beef exporters’ current tariff advantage (27.5%) over New Zealand in the Japanese market which has resulted in a decline in New Zealand’s exports and a loss of $53 million to the industry per annum. It is worth noting that, according to New Zealand Beef and Lamb and the Meat Industry Association, the red meat sector exports from New Zealand “directly support 80,000 jobs (and families) employed across New Zealand, mostly in the regions”. The CPTPP also eliminates the potential for Japan’s WTO beef safeguard to be applied to New Zealand’s exports. Until recently, New Zealand exporters were paying a ‘snap-back’ tariff of 50 percent. As a result of CPTPP, this instrument can no longer be applied to our exports.

• All of New Zealand’s *fish and fish* products currently face tariffs – 20% in Mexico for some lines; 15% in Viet Nam on red salmon and 3.5% to 10% in Japan. Our competitors like the US (in Mexico) and Australia (in Japan) face a zero tariff. Fully 99% of such tariffs in CPTPP partners will be eliminated within 11 years, and the remainder within 16 years.

• CPTPP includes useful improvements for New Zealand’s *dairy* exporters. They would benefit from an estimated NZ$86 million in overall tariff reductions through preferential access to new quotas into Japan, Canada and Mexico, in addition to tariff elimination on a number of products.

• It is also worth highlighting the impact CPTPP has on a number of small and medium sized enterprises working in New Zealand’s horticultural industry – the overwhelming bulk of which are across the regions of New Zealand. The cost of the 3% tariff in Japan to the 30 New Zealand firms that grow and export *buttercup squash* was $1.53m or an average of $50,600 per grower. The 8.5% tariff on *onion* exports to Japan cost an average $19,500 to

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Retrieved on 14 April 2018)
each of the 90 commercial onion growers around New Zealand.\textsuperscript{8} CPTPP therefore represents real-world savings that affect the bottom lines of small and medium sized firms trading with the world.

In addition to tariff liberalisation, the CPTPP will also help address non-tariff barriers to trade in goods. This will usefully complement the ‘whole-of-government’ work being undertaken in this area, including by the Ministry of Foreign Affairs and Trade.\textsuperscript{9} The following outcomes should similarly lower compliance costs, reduce the time exporters spend waiting for goods to clear customs, and increase predictability and transparency for New Zealand business:

- \textit{facilitatory rules of origin procedures} for New Zealand goods that allow for transhipment and streamlined procedures for traders to claim tariff preferences;
- \textit{Ability to ‘self-certify’ a certificate of origin} – a significant reduction in business transaction costs;
- \textit{Advance rulings} will be available to provide greater certainty for companies exporting internationally;
- \textit{48 hour customs clearance} of New Zealand products in CPTPP ports of entry;
- \textit{6 hour clearance for express consignments} – a particular benefit for smaller New Zealand traders providing ‘just-in-time’ parts and equipment (etc);
- \textit{science and risk-based} sanitary and phyosanitary (SPS) provisions, including new facilitative rules for audits and import checks;
- \textit{specific technical barriers to trade (TBT) regulatory provisions} for wine, pharmaceutical, medical device and cosmetic exporters; and
- \textit{new regulatory coherence disciplines}.

\textbf{CPTPP and Services}

33. CPTPP partners are already the destination for 31\% ($6.8 billion) of New Zealand’s services exports. The CPTPP commitments can be expected to further facilitate services exports, not least because these are GATS-Plus and Doha-Plus. This means that the commitments made by CPTPP partners are an improvement over and above the commitments made under the General Agreement on Trade in Services, as well as representing an improvement on existing offers tabled as part of the WTO negotiations for the yet to be concluded Doha Round.

34. In particular, CPTPP will provide greater openness and certainty for New Zealand exporters of services. Existing access to CPTPP markets has been legally ‘bound in’ for New Zealand service providers across a range of sectors, including providers of professional, business, private education, environmental, transportation


\textsuperscript{9} A ‘one-stop’ portal for addressing non-tariff barriers is available at: \url{https://tradebarriers.govt.nz/} (Retrieved on 12 April 2018).
and distribution services. This means that the existing levels of access cannot be reduced for New Zealand firms — thereby providing business certainty. Some specific outcomes include:

- **Agricultural services**: Peru has made new liberalising commitments, including to enable internet-based provision of agricultural services;
- **Education services**: Malaysia now allows 100% foreign ownership for international schools; Viet Nam bound increased the level of students allowed into the international schooling system; Mexico has made improved commitments across internet delivery of education for primary, secondary, higher and other education services;
- **Engineering and other professional services**: guaranteed market access improvements for engineers, urban planners and architects in Canada, Mexico and Peru. Malaysia has raised the 30% threshold to 70% for foreign ownership of firms supplying engineering, architectural and quantity surveying services; and
- **Air transport services**: Particular areas of New Zealand speciality included in the CPTPP across a range of commitments, including delivery via the internet of services related to the design and operation of airports, baggage handling, flight training and so on.

### Business People Movement (Temporary Entry)

35. The temporary entry provisions of this agreement improve the mobility of New Zealand business people in the CPTPP region. These include specific legally binding commitments that enhance the transparency of the visa process and guarantee entry for certain New Zealand business people.

36. New Zealand’s own commitments relate to business visitors, intra-corporate transferees, installers of services and independent professionals and are consistent with current policy settings.

### Digital Trade/Electronic Commerce

37. Electronic commerce is an increasingly important part of the New Zealand economy – with one area alone, the ICT sector, valued at almost NZ$9 billion.

38. The CPTPP contains a range of commitments on electronic commerce that will facilitate the growth of this dynamic and evolving trade that will be particularly important for a distant economy like New Zealand’s. At the same time, the Government’s right to regulate in this sector has been explicitly protected in the chapter.

39. Specific benefits include the CPTPP’s requirement that all parties allow cross-border data flows and prohibit any requirement that service providers have to maintain computer servers in specific geographical locations. As noted above, however, the Government’s right to regulate for legitimate public policy reasons is explicitly enumerated in the ‘public policy safeguard’ clauses contained, for instance, in Articles 14.11.3, 14.13.3 of the Agreement. The Agreement also contains a
separate Article on requiring Parties to adopt and maintain legal frameworks for the protection of personal information protection for users of electronic commerce (Article 14.8.2). In addition, CPTPP is expected to help to integrate New Zealand’s growing electronic commerce sector into regional supply chains, thereby helping to overcome the distance that currently acts as a barrier to information flows. This would increase opportunities for knowledge and technology transfer. Taken together, this chapter is expected to help the growing New Zealand information technology sector export online, while preserving New Zealand’s ability to regulate the sector, as needed and for a legitimate public policy-related reason.

CPTPP and Investment

40. Investment from CPTPP partners into New Zealand accounts for nearly 70% of all foreign direct investment. About 56% of all of New Zealand’s outward foreign direct investment is in CPTPP partners. In this regard, therefore, membership of CPTPP will deliver improved conditions for New Zealand investors into those economies, while also ensuring New Zealand can secure the capital it needs to continue to build a competitive and productive economy.

41. New Zealand investors will enjoy preferential access for their investments into CPTPP partners that operate investment screening regimes for significant or sensitive acquisitions. By way of specific examples:

- Canada has bound in the higher approval threshold that it extends to investors from the US and Mexico under NAFTA (C$1.5 billion, rising from the current threshold of C$600 million);
- Mexico has bound in its higher screening threshold (US$1 billion) rising from the equivalent of around US$230 million; and
- Canada and Mexico’s thresholds may increase over time as they are subject to annual adjustments based on GDP growth and other factors. This is also the case for Australia.

42. For its part and in the context of the wider negotiations, New Zealand agreed to raise the Overseas Investment Act threshold for investments in ‘significant business assets’ from NZ$100 million to NZ$200 million for non-governmental investors from CPTPP countries. Unlike the offers of Australia, Canada and Mexico, this threshold is static and will not rise over time.

43. The CPTPP includes a ratchet provision and a ‘most-favoured-nation’ (MFN) commitment for services and investment, though both commitments are subject to exceptions. Both of these obligations are a way of ‘future-proofing’ the New Zealand interest in CPTPP partners.

44. Ratchet means that if a CPTPP member, including New Zealand, autonomously liberalises an existing law or regulation, it cannot then reinstate that same measure as it is then more restrictive, i.e. discriminatory.

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10 Increasing the threshold on entry into force of CPTPP will also engage MFN commitments New Zealand has under certain existing FTAs. Most significantly, a $200 million screening threshold for significant business assets will also have to be applied to non-governmental investors from China, Chinese Taipei and Korea as well as non-governmental investors in services from Hong Kong. This will be addressed in implementing legislation for CPTPP.
45. The most favoured nation provision means that CPTPP Parties will need to treat New Zealand services exporters and investors at least as favourably as other foreign competitors. This is a reciprocal commitment and once CPTPP enters into force, any better treatment a CPTPP partner extended to other FTA partners in the future would need to be extended to all CPTPP Parties. For New Zealand, an important exception to MFN involves protecting the ability to provide more preferential treatment afforded to nationals from Australia (under CER) and Pacific Island countries (under PACER Plus).

**Dispute Settlement and Investment**

46. The CPTPP provides for two dispute settlement mechanisms: a government-to-government system to resolve disputes in the Agreement and investor-state dispute settlement (ISDS). The state-to-state mechanism applies across the Agreement, with some exceptions (e.g. the cooperation-focused chapters like the SME, Competition Policy, Cooperation and Capacity Building, Competitiveness and Business Facilitation, Development, and Regulatory Coherence Chapters).

47. ISDS only applies to the Investment Chapter and limited investment-related elements of the Financial Services chapter. A number of existing New Zealand FTAs (e.g. with China, ASEAN, Malaysia and Korea) also include ISDS provisions. Inclusion of ISDS in TPP was contentious for many reasons including because of growing unease about ISDS mechanisms more generally.

48. As a result of negotiations in CPTPP, the scope of the ISDS mechanism is now narrower than was the case in the TPP. Claims are no longer permitted in relation to investment contracts and approvals (called ‘investment agreements’ and ‘investment authorisations’ in the TPP). This means that private companies who enter into an investment contract with the Government will not be able to use ISDS clauses under CPTPP if there is a dispute about that contract. Decisions made under the Overseas Investment Act are also not subject to ISDS. Suspensions around the minimum standard of treatment related to financial services further reduce the risk of successful ISDS claims in the CPTPP being taken against New Zealand.

49. In addition, and as noted earlier reciprocal treaty-status side letters that either rule out or make ISDS subject to the New Zealand Government’s consent have been secured with several CPTPP Parties. This is in addition to the retention of the treaty status side letter with Australia. This is important because Australia source of 80 percent of New Zealand’s overseas investment from within the CPTPP region. We have also signed treaty status side letters with Brunei, Malaysia, Peru and Viet Nam.

50. A further two CPTPP Parties, Canada and Chile, joined New Zealand in issuing a Joint Declaration on ISDS alongside the signing ceremony (Annex 4). This declaration reaffirms each Government’s right to regulate and commits us to working together to take into account evolving views on ISDS and to promote greater transparency.

51. Strong safeguards to protect the Government’s right to regulate in the public interest and prevent unwarranted claims have been retained in the CPTPP. These safeguards mean, for example, that the chance of the New Zealand Government being successfully sued for measures related to public education, health and other
social services is low. A specific provision rules out cases relating to tobacco control measures. A list of these safeguards is provided in Annex 3.

**Intellectual Property Rights**

52. There are advantages for New Zealand in joining CPTPP, including that rules on ‘geographical indications’ will establish processes that should help preserve access for New Zealand exports that use generic names. Consistent enforcement procedures for intellectual property would also benefit exporters that rely on protecting intellectual property overseas. Provisions on traditional knowledge also provide a framework within which CPTPP Parties can cooperate to improve understanding of issues related to traditional knowledge and genetic resources, including mātauranga Māori and taonga species.

53. Within three years of entry into force of CPTPP, there is a requirement for New Zealand to decide whether to accede to the most recent 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 91), or to implement through a New Zealand specific approach a plant variety rights system that gives effect to UPOV 91. When implementing this latter obligation, New Zealand is able to adopt any measure that it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi. This New Zealand-specific text in CPTPP provides the Government with time and flexibility to conduct consultations and decide how to best meet its obligations while taking into account the recommendations contained in Wai 262.

54. One of the main quantified costs to New Zealand of the TPP has been removed through CPTPP with the suspension of the requirement to extend the term of protection for copyright to 70 years. The copyright term for films and sound recordings (including recorded music) will remain at 50 years after the end of the calendar year in which they were made or published. This is consistent with existing New Zealand practice. The copyright term for books, screenplays, music, lyrics and artistic works will continue to expire 50 years after the end of the calendar year in which the author died.

55. The long-term cost of extending these aspects of copyright to 70 years was estimated to be $55 million per year to New Zealand consumers (although some creative sectors in New Zealand believe there are other economic benefits to the extension of term).

56. Additional suspensions of the intellectual property text mean New Zealand will not have to provide more extensive protection to: technological protection measures (TPMs), the digital ‘locks’ used to protect copyright works; encrypted programme-carrying satellite and cable programme signals (such as a pay television services); rights management information (RMI), which is information that identifies a copyright work, its copyright owner and, if applicable, the terms and condition of the use of the work.

57. Elsewhere in the health area, suspensions in the Intellectual Property chapter of CPTPP mean no change is required to New Zealand laws to enable people to apply for an extension of the term of a patent following unreasonable delays in obtaining approval from Medsafe for a pharmaceutical product’s entry into the New
Zealand market. And under CPTPP there is no longer a requirement for any Party to increase its data or market protection settings for new medicines, including small molecule medicines, biological medicines (medicines manufactured in or derived from a living system such as plant or animal cells). This was another key concern of TPP critics globally although New Zealand already has laws, policies and settings that provide a period of market protection to new medicines against competition from generic copies. These were already fully consistent with the previous TPP obligations.

58. While no changes were required to New Zealand legislation to meet these obligations, future policy flexibility has also been retained through suspensions under CPTPP for providing patent protection for new uses of known products and make patents available for inventions that are derived from plants as well as New Zealand’s rules for liability of internet service providers for online copyright infringement.

CPTPP and Sustainable Development

59. The CPTPP contains the most comprehensive outcomes on core sustainability issues – labour and environment – that New Zealand has achieved in a free trade agreement. These are legally enforceable for the first time, although some Parties such as Viet Nam (a developing country) have been given more time to comply with some of the provisions before other Parties have recourse to trade sanctions.

60. Key commitments given by CPTPP Parties include agreement to adopt and maintain the internationally-recognized labour rights enumerated in the 1998 International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work in their laws and practice, as well as to adopt and maintain laws governing ‘acceptable conditions of work’ with respect to minimum wages, hours of work, and occupational safety and health, as determined by each Party. Recognising that it is inappropriate to encourage trade or investment by weakening or reducing labour laws, CPTPP Parties agree not to derogate from their laws (or offer to do so) in a manner affecting trade or investment between them and commit to discourage the importation of goods produced by forced or compulsory labour.

61. Particularly significant is the fact that CPTPP will be a world-first for including a legal prohibition on granting or maintaining subsidies that contribute to illegal, unreported or unregulated (IUU) fishing or that negatively affect over-fished stocks. This is a substantive and meaningful contribution to achieving UN Sustainable Development Goal 14 (on fish subsidies and addressing collapsing fishing stocks before 2020). The agreement demonstrates in practical terms that trade can help address global issues that concern New Zealanders, like collapsing global fish stocks. CPTPP provides a useful starting point for multilateral negotiations to give effect to SDG14.

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11 These being freedom of association, the promotion of collective bargaining, non-discrimination in employment, the elimination of forced labour and abolition of child labour, and, for the purposes of the CPTPP, prohibition of the worst forms of child labour.
62. Other obligations and/or undertakings for enhanced cooperation between CPTPP countries include:

- Three multilateral environmental agreements (MEAs) – Montreal Protocol on Substances that Deplete the Ozone Layer; London Protocol to the International Convention for the Prevention of Pollution from Ships; and the Convention on International Trade in Endangered Species of Wild Fauna and Flora;
- The conservation and sustainable use of biodiversity, and sharing the benefits arising from the utilisation of genetic resources, consistent with New Zealand’s obligations under the Convention on Biological Diversity;
- Reducing carbon emissions;
- Promoting conservation and combating the illegal take of, and illegal trade in, wild flora and fauna;
- Liberalising trade in environmental goods and services;
- Encouraging the use of voluntary mechanisms (such as auditing and reporting, labelling) to protect natural resources and the environment.

63. Importantly too, Canada, Chile and New Zealand have issued a Joint Declaration which underlines their shared commitment to a New Progressive and Inclusive Trade Agenda. In the New Zealand context, the Government has recently launched consultations for a Progressive Trade for All Agenda which supplements and aligns itself with the Joint Declaration issued by these three CPTPP partners in Santiago on 8 March. The Joint Declaration is attached as Annex 5 and underlines a shared commitment to considering a range of issues during the required review of the CPTPP in three years’ time. Issues for consideration include the impact of CPTPP on gender, Maori, small and medium enterprises, domestic regional economic development and sustainable development.

Other Areas of the Agreement

64. New Zealand suppliers will have new guaranteed access to government procurement opportunities in Malaysia, Mexico, Peru and Viet Nam, with TPP requiring significant changes in Malaysia and Viet Nam to allow foreign competition in competing for government contracts. A number of other CPTPP Parties have also made modest improvements to their existing FTA and WTO Government Procurement Agreement (GPA) offers.

65. In return, New Zealand has offered a subset of commitments made during our recent accession to the GPA. Procurement by New Zealand SOEs and local government is excluded for now. These elements will be subject to further negotiation no earlier than five years after the Agreement comes into force unless otherwise agreed by the Parties. This is later than would have occurred under TPP which stated within three years.

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12 Government procurement is the acquisition of goods and services, including construction services, by government entities from third parties to fulfil their public functions.
13 Australia, Canada, Chile, Japan and Peru have already included sub-central coverage in their CPTPP schedules. The longer five-year time period was agreed following a suspension to TPP.
Overall, the CPTPP establishes rules ensuring open, fair and transparent conditions of competition in government procurement. These are consistent with New Zealand’s Government Rules of Sourcing, and no changes to our government procurement regulatory framework will be required.

Similarly, New Zealand is well placed to comply with obligations in the CPTPP’s SOEs and Designated Monopolies chapter. The outcomes are broadly in line with current practices and the principles underpinning the State-Owned Enterprises Act 1986 and New Zealand competition law. They do not constrain the creation of new SOEs or require the winding up of existing entities. In respect of SOEs, the obligations are limited to entities that are principally engaged in commercial activities (activities which are undertaken with an orientation towards profit making).

A number of chapters of the agreement will contribute to facilitating economic efficiency, ease of doing business and consumer welfare. These chapters include those covering Competition, Competitiveness and Business Facilitation; Small and Medium Enterprises; and Regulatory Coherence. Both the Competitiveness and Business Facilitation and Small and Medium Enterprises chapters are new for New Zealand and designed to help SMEs and regional businesses to access information and draw attention to specific issues capable of facilitating their involvement in the regional economy, including regional supply chains.

The CPTPP also includes new chapters on Development and on Transparency and Anti-Corruption. Central to the Development chapter is the recognition of the important role an agreement like CPTPP can have in encouraging greater policy coherence around trade, investment and sustainable development, including through the promotion of shared development goals in areas such as enhancing opportunities for women in economic development and inclusive economic growth. For its part, the Transparency chapter contains provisions aimed at reinforcing existing international agreements on anti-corruption, including the APEC principles and codes of conduct and the UN Convention Against Corruption.

Entry into Force

Entry into force of the CPTPP is subject to the completion of the necessary domestic procedures of Parties. The Agreement will enter into force 60 days after the date on which at least six signatories have notified the Depositary – New Zealand – that they have completed their applicable legal procedures.

It is important for the strategic, commercial and sustainability reasons identified that New Zealand is among the first tranche of signatories to bring the Agreement into force. In order to achieve this, the Ministry of Foreign Affairs and Trade considers that New Zealand would need to complete all of its domestic requirements, including legislative changes, that are necessary to ratify CPTPP and bring it into force before the end of this year.

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14 The provisions do not apply to Pharmac, Zespri or Fonterra, or to entities such as district health boards and crown research institutes.
CPTPP: Implementing Legislation

72. Most of the obligations in CPTPP will be met by New Zealand’s existing domestic legal and policy regime. That said, a number of legislative amendments to New Zealand law are required to comply with CPTPP obligations and to enable New Zealand to ratify the Agreement.

73. As noted in the NIA, the Government would implement the CPTPP obligations that require changes to legislation by introducing a Bill to amend the Trans-Pacific Partnership Agreement Amendment Act 2016 (TPP Act), available at: http://www.legislation.govt.nz/act/public/2016/0090/latest/whole.html#DLM6838023.

74. This is necessary because the TPP Act has not entered into force (and will not do so until the TPP enters into force for New Zealand). The Bill would amend the TPP Act so that the provisions in this Act relating to obligations in the CPTPP enter into force when the CPTPP enters into force for New Zealand.

75. The changes required to comply with CPTPP obligations would be fewer than required for TPP because we would not be required to implement the suspended provisions. The required amendments fall into three key areas: intellectual property, changes to improve the transparency of regulations to the public, and changes to implement other obligations, for example to reduce tariffs and to provide for the raising of screening thresholds under the Overseas Investment Regulations.

76. This Bill would not be introduced until after the conclusion of the parliamentary treaty examination process.

IV New Zealand Trade Policy: The way ahead

77. Since 1995 when the legal enforceability of global market access obligations covering both agricultural and manufactured goods, as well as services trade were codified through the establishment of the World Trade Organisation (WTO), the framework for pursuing New Zealand’s trade agenda has been informed by two inter-related working assumptions:

1. global market openness will continue to increase over time; and
2. the multi-lateral rules-based trading system will continue to operate effectively and to strengthen and expand.

78. The nature of the current rising tensions in international trade are however, increasingly challenging these assumptions. Our judgement is that while the above remain relevant aspirational objectives, we may need to recalibrate our approach and points of emphasis, four specific adjustments are proposed. In particular, this elevates a new organising concept - ‘open plurilateralism’ - as an instrument through which to advance New Zealand interests including in a situation where the WTO may have become a somewhat diminished entity.

79. New Zealand has options available to it that can help mitigate the emerging risks identified above. Some of these are clearly second-best alternatives to the WTO, but are useful nevertheless. An important component in our forward hedging strategy is the network of international treaty-based rules we have secured which facilitate New Zealand-specific preferential access to a
range of key markets. This has been achieved through our expanding FTA network which currently covers 56% of our exports, rising to 65% once CPTPP enters into force. This year is crucial. Our priorities need to be launching the negotiations with the EU. We also need to conclude the Pacific Alliance FTA; and push for the conclusion of or at least a significant breakthrough in the mega-plurilateral Regional Comprehensive Economic Partnership (RCEP - which crucially includes India). Alongside this we need to be prepared to take full advantage of emerging opportunities such as with the UK and Mercosur, as well as through non-traditional trade policy forums like the Commonwealth. We should also look to swiftly expand the membership of existing agreements. In particular, CPTPP represents an opportunity to extend its high quality rules by encouraging the membership of economies as diverse as Colombia, Korea and the UK. Alongside this, we will need to work to ‘upgrade’ - with an eye to relevant sensitivities on both sides - existing agreements with Singapore, China and ASEAN.

80. It is important to note, however, that an FTA-focused strategy is very much a 'second-best' alternative to a functioning global rules-based system. FTAs risk creating discord in international trade law; accelerate the continued negative impact of trade diversion; and are a disincentive to non-discriminatory liberalisation. This flows from the construction of protective rents, exclusive benefits created by preferences and by the proliferation of rules that create differing obligations and higher transaction costs for companies. They are also unable to meaningfully address pervasive trade distorting agricultural subsidies which require multilateral solutions. New Zealand is also particularly vulnerable to competitive disadvantage as a result of FTAs that our competitors may secure, but are more difficult for us to obtain, as was the case in Korea and Japan until recently.

81. Notwithstanding the well-known challenges of prosecuting a strategy centred on second-best preferential trade arrangements and for want of a meaningful credible alternative, we may need to be thinking about how to advance our interests in a non-linear and creative way. Consequently, while we may no longer be able to take for granted continuing market access expansion at the global level, we should continue to actively support any initiatives to that end, including where necessary through active regional bilateral and plurilateral negotiations that shore up and, where possible, improve our access.

82. On all of these issues we are not alone. Many countries - large and small - share our perspectives and concerns. There are a number of trade-related likeminded coalitions that we have to draw on, including through the Cairns’ Group of agricultural exporters\(^\text{15}\), partners in our bid to address fisheries subsidies\(^\text{16}\) at the WTO and fossil fuel\(^\text{17}\) subsidies (as well as environmentally harmful subsidies more generally), the Small Advanced Economies' Initiative (SAEI)\(^\text{18}\), the CER-ASEAN

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\(^{15}\) The Cairns’ Group is chaired by Australia and includes Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, Uruguay, and Vietnam.

\(^{16}\) The Friends of Fish grouping in Geneva is chaired by New Zealand and includes Argentina, Chile, Iceland, New Zealand, Norway and Peru

\(^{17}\) The Friends of Fossil Fuel Subsidy Reform is led by New Zealand and includes Costa Rica, Ethiopia, Denmark, Finland, Norway, Sweden and Switzerland

\(^{18}\) The SAEI is led by New Zealand (which hosts a small three person Secretariat) and comprises Denmark, Finland, Ireland, Israel, Singapore and Switzerland.
Integration Partnership Forum and most recently the coalition we are building on the Progressive Trade for All Agenda with Chile and Canada which we want to expand. In addition, we have a set of regional and global ‘public good’ institutions which also provide a means to mitigate the risk of a fracturing of the international trading architecture. These include APEC which we will be hosting in 2021 and the OECD. Other non-traditional trade policy forums like the Commonwealth may also be considered as part of our portfolio of hedging arrangements.

Advancing ‘Open Plurilateralism’

83. Much of the above represents an intensification or acceleration of existing work. There is, however, a new organising construct which may help us better position ourselves against the possibility of a slow disintegration of the trade rules-based system. This is the concept of ‘open plurilateralism’ which involves a more deliberate structured focus and emphasis by New Zealand on plurilateral processes and instruments. These could cover, for example, the more traditional preferential free trade agreements, like CPTPP, RCEP and AANZFTA where we can be more active in expanding their memberships. Other plurilateral instruments may also provide a vehicle to advance our economic and sustainability-related objectives like: environmental goods, electronic commerce, environmentally harmful subsidies (including fisheries subsidies - on which we continue to seek a multilateral breakthrough as a first priority); fossil fuel subsidies; agricultural subsidies; and investment incentives. Some of the latter are unlikely to meet the WTO criteria of a free trade agreement and commitments would therefore need to be automatically extended to all WTO Members as a result of the Most Favoured Nation (MFN) rule.

84. Open plurilateralism has a deliberately global focus and hinges on three interrelated elements. First, it is an instrument open to all that can meet the standard established through the agreement (e.g. CPTPP or a possible agreement on ecommerce, environmentally harmful subsidies) – i.e. it is a genuinely ‘open accession’ agreement. Second, for those cases which do not meet the criteria for a FTA, the negotiation of the instrument is undertaken in a way that supports and complements the multilateral trading system, i.e. it is a building block, not a stumbling block. This means it needs to contain WTO-plus commitments which are extended to the wider WTO membership (even if some WTO members will not be in the agreement) and is plurilateral, i.e. with as many participants as possible. Third, the plurilateral instrument should contain institutional mechanisms that ensure the agreement can be closely aligned and, over time, integrated into the WTO. Focusing the instrument on the WTO (as in the approach adopted for the Information Technology Agreement) is an important signal of support for the multilateral trading system.

85. Taken together we propose that the framework for pursuing New Zealand’s trade policy be informed by the following five elements:

- **Defence of the ‘rules-based system’**: This means a re-doubling of our current efforts with likeminded WTO-based ‘Friends of the System’ as a kind of rear-guard action to protect what we have. In addition we need to work in parallel with others to make clear to the major economic powers that the system matters to us and should matter to them. In concert with our efforts to defend the existing system, we also need to commence work - again with likeminded
countries - to develop options for a Plan B second-best approach to the global rules-based system;

- **Embed New Zealand in the emerging regional economic architecture.** Ratifying and bringing CPTPP into force as soon as possible is crucial. Additionally, we need to work to conclude the Pacific Alliance and conclude or at least get a significant breakthrough in the RCEP negotiations this year - even where that may entail some difficult choices. Launching the EU FTA is also now a matter of urgency. We also need to pursue other opportunities as they emerge, including for instance, a possible negotiation with Mercosur and the UK;

- **Develop the Progressive and inclusive Trade for All agenda.** As you will have seen from recent announcements, the Government is embarking on a process to ask New Zealanders what is essential for them in future trade talks. Our aim is to ensure our trade policy can contribute to delivering sustainable, progressive and inclusive economic development for the benefit of all New Zealanders. We will also want to expand international support for this agenda as we did in CPTPP with Chile and Canada through the Joint Declaration on Progressive and Inclusive Trade (Annex 5);

- **Supporting regional and global public goods** which can sustain and support the rules-based system by building coalitions of like-minded countries such as through the Cairns' Group, the coalition supporting our work on fossil fuel and fisheries subsidy reform, those working with us on the Progressive Trade for All Agenda as well as engaging more actively in existing institutions like APEC, OECD and non-traditional trade policy forums like the Commonwealth; and

- **Open-plurilateralism** – advancing this concept as an active deliberate and structured process of engagement, including with CPTPP partners in particular, to accelerate the consideration of new members as soon as possible. In the meantime, we should also be prepared to creatively engage on a range of plurilateral approaches and instruments for issues as diverse as fossil fuel subsidy reform; disciplining investment incentives; e-commerce and so on.

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<tr>
<td>16 February</td>
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<td>Māori health professionals and researchers</td>
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<td>19 February</td>
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<td>Following legal verification and translation, the full CPTPP text is released together with the New Zealand Government’s National Interest Analysis (NIA).</td>
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<td><strong>CPTPP: 8 March 2018</strong></td>
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<td>CPTPP is signed by Trade Ministers in Santiago, Chile</td>
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**Forthcoming Outreach Events**

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<td>30 May</td>
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Annex 2: Outreach and Engagement on CPTPP since the commencement of negotiations in late May 2017

**CPTPP: June-October 2017** – Updates provided through media, through MFAT’s website and through targeted email (pānui) to iwi Māori.

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### Annex 3: Outreach and Engagement specifically on Overseas Investment since December 2017

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<tr>
<td>Late December/ January</td>
<td>Wellington</td>
<td>Treasury meet with some individual submitters to the Select Committee, with the Chair of the Select Committee’s permission, to discuss their submissions.</td>
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<tr>
<td>January</td>
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<td>Phone discussions with Hui invitees</td>
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<td>Crown/Māori Hui</td>
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<td>17 January</td>
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<td>14 February</td>
<td>Wellington</td>
<td>Select Committee Residential Initial Briefing</td>
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<tr>
<td>22 February</td>
<td>Wellington</td>
<td>Select Committee Residential Oral Hearings</td>
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<td>27 February</td>
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Annex 4: ISDS safeguards

The safeguards in CPTPP which protect the New Zealand Government’s right to regulate and seek to prevent unwarranted ISDS claims include:

- Exceptions to limit the scope of the Investment 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.
- 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.
- Imposing a high burden of proof on investors to establish a breach of investment obligations such as ‘expropriation’ or ‘minimum standard of treatment’. The investor has the burden of proving all elements of its claims under CPTPP.
- 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 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.
- Limiting the types of monetary awards and damages that can be made against the Government. New Zealand cannot face claims for punitive damages and costs can also be awarded against an investor if their claim is ultimately unsuccessful.
- The Government is expressly permitted to make a counterclaim and obtain damages when the investor is in the wrong under a covered investment agreement.
- Procedures that allow CPTPP Parties to issue interpretations of CPTPP provisions that are binding 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 Government. Any preliminary objections from the Government, like that the claim goes beyond a tribunal’s jurisdiction or is manifestly without legal merit, must be resolved before the full arbitration commences.
**Annex 5: Joint Declaration on Investor State Dispute Settlement issued by Canada, Chile and New Zealand on 8 March, Santiago, Chile**

New Zealand, Canada and Chile intend to work together on matters relating to the evolving practice of investor state dispute settlement (ISDS), including as part of the ongoing review and implementation of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). In this work, New Zealand, Canada and Chile together:

- Reaffirm the right of each Party to regulate within its territory to achieve legitimate policy objectives such as safety; the protection of health, the environment or public morals; social or consumer protection; or the promotion and protection of cultural diversity;
- Recognise the strong procedural and substantive safeguards that are included in the Investment Chapter of the CPTPP;
- Recognise the important role of civil society and other interested groups on public policy matters relating to ISDS;
- Intend to consider evolving international practice and the evolution of ISDS including through the work carried out by multilateral international fora;
- Intend to promote transparent conduct rules on the ethical responsibilities of arbitrators in ISDS procedures, including conflict of interest rules that prevent arbitrators from acting, for the duration of their appointment, as counsel or party appointed expert or witness in other proceedings, pursuant to Article 9.22.6 of the CPTPP; and
- Recognise the need to ensure that small and medium-sized enterprises (SMEs) are able to fully benefit from the protections of the investment chapter, and intend to promote rules that reduce the costs of dispute settlement for SMEs.
Annex 6: Joint Declaration on Fostering Progressive and Inclusive Trade

New Zealand, Canada and Chile confirm our shared commitment to working together to help make international trade policies more progressive and inclusive in order to ensure that the benefits of trade and investment are more broadly shared, which can have a positive impact on economic growth and helps to reduce inequality and poverty.

New Zealand, Canada and Chile confirm our shared commitment to the 2030 Agenda for Sustainable Development.

We also commit to working together to deliver on our expectations that trade can contribute to the achievement of sustainable development and solutions for global issues of concern including with regard to gender equality, Indigenous Peoples, domestic regional economic development, Small and Medium Enterprises (SMEs), labour rights, environment and climate change.

To this end, New Zealand, Canada and Chile will work together to:

- Affirm the inherent right of each Participant to regulate within its territory to achieve legitimate public policy objectives such as the protection of health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity;
- Uphold our respective commitments for an ambitious and effective implementation of the Paris Agreement and support the achievement of Sustainable Development Goal 13 (Climate Action);
- Reaffirm our intention to work together in the transition to a low emissions and resilient economy, helping our collective and individual actions to combat climate change thereby contributing to achieving the collective long-term temperature goal of the Paris Agreement, and reducing the adverse effects of climate change;
- Implement our obligations under the Convention on the Elimination of all Forms of Discrimination Against Women and work towards gender equality and the empowerment of women and girls;
- Contribute to achieve the objectives of Goal 5 of the Sustainable Development Goals in the United Nations 2030 Agenda for Sustainable Development, in particular in areas related to gender equality and empower all women and girls;
- Affirm the objectives of the Declaration on the Rights of Indigenous Peoples adopted by the United Nations on 13 September, 2007;
- Affirm the right of each Party to preserve, develop and implement its cultural policies for the purposes of enriching its cultural identity and the diversity of cultural expressions in all its forms, given the essential role that culture plays in society, supporting social and economic prosperity, and in the lives of individuals;
• Reaffirm our commitments to international standards on corporate social responsibility of enterprises which provide guidelines to enterprises with respect to the environment, labour, human rights, community relations and anti-corruption efforts, such as the OECD Guidelines for Multinational Enterprises;

• Respect and promote internationally-recognized labour rights and principles, as set out in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work of 1998. This includes the right to freedom of association and collective bargaining, the abolition of child labour, the elimination of discrimination in respect of employment and occupation, and the elimination of forced or compulsory labour;

• Promote acceptable conditions of work regarding minimum wages, hours of work and occupational safety and health;

• Examine ways to address the range of barriers that limit opportunities for women, indigenous peoples and SMEs in international trade;

• Improve the policy environment for SME innovation and promote SME growth through innovation, including to strengthen the digital competitiveness of SMEs in order to access the opportunities offered by the internet and the digital economy;

• Share information to help develop the regional economies within our countries to ensure they benefit from the opportunities of international trade; and

• Within three years of the entry into force of the CPTPP examine the effectiveness of the Agreement with respect to sustainable development, gender, indigenous peoples, domestic regional economic development, SMEs, labour rights, the environment and climate change.