Office of the Minister for Trade and Export Growth

Chair,
Cabinet

Revised Trans-Pacific Partnership Agreement: Negotiating Mandate

Proposal

1 The new coalition government has expressed concern about investment protocols in trade agreements unduly undermining the sovereign rights of New Zealand governments in the future to govern in the interests of New Zealand. Cabinet approval is accordingly sought for a changed negotiating mandate, in particular for a revised Trans-Pacific Partnership (TPP) Agreement.[1]

Executive summary

2 The two most important changes proposed are to:

a) the overseas investment rules applied to new investments by overseas investors into New Zealand; and

b) investor state dispute settlement (ISDS) provisions.

3 A separate Cabinet paper addresses overseas investment rules. It focuses on overseas purchasers of New Zealand homes and proposes solutions outside of the TPP negotiating process. Further papers are expected on other aspects of overseas investment in the near future.

4 This paper proposes resetting New Zealand's approach to ISDS clauses, both under TPP and other future negotiations.

5 In the wake of the US withdrawal from TPP, New Zealand is engaged in free trade agreement negotiations with Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, and Viet Nam. These 10 economies collectively account for almost 31 percent of New Zealand's total goods exports by value which amounted to NZ$15.2 billion in the year to the end of June. They also account for 31 percent of New Zealand's total service exports by value or approximately NZ$6.8 billion during the same period.[2] Approximately two-thirds (66 percent) of the foreign direct investment in New Zealand was from these economies, and more than half (55 percent) of New Zealand overseas direct investment was in the grouping.[3]

1 Legal privilege is asserted for paragraphs 12 and 26-31 of this paper.

2 Likely to be an underestimate because the figures exclude Chile and Peru where services data is not available.

3 Likely to be an underestimate because the figures exclude Malaysia, Chile, and Mexico where investment data is not available.

6 Based on current trade, a concluded agreement will reduce tariffs for New Zealand exporters by an estimated NZ$92 million in the first year of an agreement coming into force rising to NZ$222 million per year once tariffs have been fully eliminated or reduced. Further detail on New Zealand's interests in the Agreement is provided in Annex I.

7 Negotiations for a revised TPP Agreement may be substantively concluded in time for an announcement by Leaders at the Asia Pacific Economic Cooperation (APEC) Summit in Viet Nam on 10 November. s6(a)

8 The new Agreement will incorporate much of the original TPP text (s9(2)(j) s9(2)(j)), but there will be significant differences with a limited number of provisions suspended, some revised technical provisions, and the Agreement may have a different name.

9 Consensus has already been reached among the 11 Parties to suspend several obligations that attracted domestic criticism in New Zealand and/or were among the main quantifiable costs to New Zealand in the TPP. This includes requirements related to Pharmac, intellectual property provisions with regard to biologic medicines, and one of the two patent term extension obligations.

10 s9(2)(j)

11 In addition, negotiators will seek to make ISDS a voluntary mechanism for New Zealand. This is expected to be very difficult to achieve. As a fall-back position, negotiators will seek to narrow the scope of investment provisions that are subject to ISDS, though this too is expected to be difficult to secure, s6(a)
s6(a)

12 Policy options to ban overseas buyers from purchasing existing New Zealand homes are addressed in a separate Cabinet paper. s9(2)(h)

13 Retaining the Treaty of Waitangi exception is non-negotiable as is sustaining the existing Pharmac model. In addition, protecting market access outcomes is essential. s9(2)(j)
s9(2)(j)
s6(a) s9(2)(j)

s9(2)(j)

Background

14 New Zealand has signed (February 2016) and ratified (May 2017) the TPP Agreement concluded in November 2015 among 12 economies. Despite Japan also having completed its steps to ratify, the decision by the new US Administration in January that the US would not become a Party to the Agreement means the TPP cannot enter into force. In the absence of US participation, it is not possible to meet the required entry-into-force threshold – that is ratification by original signatories that together account for at least 85 percent of their combined gross domestic product in 2013.

15 Following the withdrawal of the US, the remaining 11 signatories have been negotiating a revised TPP in order to secure its regional strategic and economic benefits. Negotiators are meeting in Tokyo, Japan, from 30 October - 1 November and then again in Da Nang, Viet Nam, from 6 November.

16 Trade Ministers from Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, Viet Nam, and New Zealand are due to meet on 8 and 9 November in the margins of the Asia-Pacific Economic Cooperation (APEC) meeting in Da Nang to review officials' work. Depending on progress, Leaders may be able to announce the substantive conclusion of negotiations at a TPP11 Leaders' Summit scheduled for 10 November though this is not necessarily assured.

17 New Zealand may be approached to co-chair the TPP Ministerial meeting and potentially the Leaders' Summit. This recognises our role as TPP Depositary.[4] New Zealand's Trade Minister co-chaired an equivalent meeting in May.

Comment

18 Even without the US, a TPP11 Agreement would provide us with preferential access for the first time into Japan, the world's third-largest economy and our fifth-largest export market in the year to June 2017, as well as Canada (our 13th largest export market), Mexico (21st), and Peru (46th).

19 The Agreement would also provide some of the best access of any New Zealand free trade agreement in respect of services, investment and government procurement delivering benefits for businesses over and above some of the commitments in our existing free trade agreements with Chile, Singapore, Malaysia, Viet Nam and Brunei.

20 TPP's labour and environment outcomes are the most comprehensive New Zealand has achieved in a free trade agreement. Both of these are legally enforceable, for the first time. This will help raise labour and environment standards in the region and reduce the impact of unfair practices. The Agreement is also a world first in including a prohibition on granting or maintaining subsidies that contribute to illegal,

4 As Depositary, New Zealand is responsible for receiving and circulating specified notifications and requests made under TPP, as well as other responsibilities in helping to administer the Agreement.

unreported or unregulated (IUU) fishing or that negatively affect stocks that are in an overfished condition as part of a number of other obligations to help deter IUU fishing.

Controversial rules suspended

21 The revised TPP11 Agreement will be a standalone treaty that incorporates most of the original TPP, but with some significant differences. These changes include:

- suspension of a limited number of rules s6(a) s6(a)
- a simplified entry into force provision so the revised Agreement will not be reliant on every Party ratifying it as is the case with the existing Agreement;
- an accession provision to allow membership to expand over time; and
- an as yet undecided new name.

22 s9(2)(j)

23 Several provisions that attracted domestic criticism in New Zealand during the previous TPP process have already been agreed for suspension. This includes removing an obligation for Pharmac to make administrative changes for greater transparency, including a new review mechanism, at an upfront cost of NZ$4.5 million and NZ$2.2 million per year thereafter. It is also important to note that Pharmac's structure has been protected. 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, will not be affected by the revised Agreement.

24 Other issues that will also be suspended at this stage are requirements for:

- new biological pharmaceuticals to be afforded either eight years' data protection, or five years along with other measures to provide additional effective market protection[6];
- the term of a patent to be extended to compensate for any unreasonable delays in the patent examination process.

25 Consensus may also be reached among the 11 Parties to suspend a number of other provisions at the next negotiating meeting on 30 October. s9(2)(j)

s6(a)

s6(a)

Investor State Dispute Settlement

s6(a)

6 Biologics are medicines made from the protein-producing cells of living organisms. They can face competition from their generic biosimilars.

26 Officials advise that there are two main impediments to carving out ISDS from the new Agreement:

- Explicit opposition s6(a) because ISDS is a commercial priority for them; and
- An unwillingness from others to engage in these discussions because time is limited.

27 Notwithstanding these challenges, and if Ministers agree, New Zealand's negotiators will seek to make ISDS a voluntary mechanism for New Zealand in the revised Agreement during the forthcoming meetings on 30 October. s9(2)(j)

28 At the same time, s9(2)(j) negotiators will also work to build a coalition of TPP partners to narrow the scope of the ISDS mechanism in the revised Agreement by removing coverage of investment agreements and investment authorisations.[9] s6(a)
s6(a) .

29 s9(2)(j) It is also possible that if we insist on a voluntary ISDS approach, other partners will move on with the Agreement without New Zealand's participation. s6(a)
s6(a). Officials will, however, strive to secure an improved ISDS outcome for New Zealand.

Screening overseas investors in residential land

30 s9(2)(h)

s9(2)(j)

9 In general terms, an investment authorisation is an authorisation granted by an authority to an investor of another Party, and an investment agreement is an agreement between a central government authority and an investor or covered investment of another Party, but there are a range of qualifications to this. These terms are specifically defined in Article 9.1 of the TPP.

s9(2)(h)

31 s9(2)(h)

32 s9(2)(h)

33 Officials advice to the Foreign Affairs Defence and Trade Select Committee with respect to new rules and categories of control for overseas investment in residential land under the Korea-New Zealand FTA was: "[i]n respect of the KNZFTA, the consistency of measures which seek to alter the rules in respect of foreign investment would hinge on the specific facts of the measure and their application. The current operation of the Overseas Investment Act is not impacted by the FTA, including the requirement for consent for the acquisition of sensitive land."[10] s9(2)(h)

34 s9(2)(h)

10 See MFAT Advice to FADTC "Supplementary Information on the Free Trade Agreement between New Zealand and the Republic of Korea" p 5, provided on 8 May 2015.

Other changes to overseas investment regime

35 s9(2)(h)

36 s9(2)(h)

37 s9(2)(h)

Retaining other outcomes

38 The Treaty of Waitangi exception in New Zealand's free trade agreements will be retained in this new Agreement. This exception is a strong and unique provision which protects Māori interests by providing flexibility for the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty, without being obliged to offer equivalent treatment to persons of other countries. The clause is self-judging; it is for New Zealand to determine what measures it deems necessary to accord more favourable treatment to Māori. The Waitangi Tribunal, in its consideration of the same clause in the context of TPP in WAI 2522, considered that the clause protects Māori interests

39 s6(a), s9(2)(j)

s6(a)

s9(2)(h)

s6(a) The concern is that reopening the market access outcomes to renegotiation would unravel the agreement altogether. s6(a), s9(2)(j)

Outlook for Da Nang

40 s6(a)

41 s6(a)

42 Many exporters would be significantly disadvantaged should a new Agreement go ahead without New Zealand. In that situation some of our closest competitors would enjoy sustained preferential access over New Zealand in key Asia-Pacific markets. We are not engaged in any negotiations that would provide an alternative pathway to a free trade agreement with Canada. s9(2)(j)

s6(a), s9(2)(j)

s9(2)(j)

s9(2)(j)

Substantive conclusion of negotiations

43 s9(2)(j)

s9(2)(j)

44 After signing, several domestic steps, including Parliamentary treaty examination in New Zealand, would be needed to ratify the new Agreement. Signalling that joining a consensus on substantive conclusion is not the same as agreeing to ratify s6(a)

45 A separate Cabinet Paper will be prepared that canvasses options to add value to any outcome including on progressive and inclusive trade elements such as: trade and gender; trade and indigenous issues; trade and climate change; and trade and regional economic development. s9(2)(g)(i)

Consultation

46 The Treasury, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Ministry for the Environment, Ministry of Health, Pharmac, New Zealand Customs Service, and Te Puni Kōkiri were consulted in the preparation of this paper.

Financial implications

47 Costs associated with New Zealand's participation in these negotiations are being met through existing baselines, primarily the existing interagency Trade Negotiations Fund administered by the Ministry of Foreign Affairs and Trade. The Ministry of Foreign Affairs and Trade received funding through Budget 2017 to progress free trade agreement negotiations and implementation.

48 There will be future implications for departmental resources and implementation costs of a new Agreement among the 11, but these are currently uncertain. We expect costs to be lower under a new Agreement compared to the original TPP because of the likely suspensions. Ministers will be kept informed of likely fiscal implications of the final agreement. Agencies will manage the costs associated with implementation through existing baselines or through cross-agency reprioritisation. Ministers will have the opportunity to consider any residual funding requirements through the annual Budget process.

Human rights

49 The proposals contained in this Cabinet paper relating to screening of overseas investors in residential land have implications concerning consistency with the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993. As noted in the separate Cabinet Paper on this topic, a final view as to whether the proposals appear to be consistent with the Bill of Rights Act will be possible once the legislation has been drafted. Officials from the Ministry of Justice and The Treasury will work together on this issue s9(2)(h)

Legislative implications

50 There are no legislative implications arising from this paper. However, legislative changes will be required before New Zealand can ratify a new agreement. Ministers will be updated as these become apparent, but it is anticipated these will be in line with the changes already undertaken to ratify the original Agreement.

Regulatory impact analysis

51 A Regulatory Impact Statement is not required at this stage as there are no legislative or regulatory implications arising from this paper. If and when further decisions are sought from Ministers that require consideration of legislative or regulatory options for implementation, assessments of regulatory impact will be provided. An extended National Interest Analysis (incorporating a Regulatory Impact Analysis) will be presented to Cabinet when negotiations have concluded and the text of any new agreement is submitted for approval for signature.

Gender implications

52 No gender implications statement is required.

Disability perspective

53 No disability perspective statement is required.

Publicity

54 The Prime Minister and Minister for Trade and Export Growth will be the primary spokespeople for any new Agreement. The Ministry of Foreign Affairs and Trade would lead domestic engagement to ensure that all interested New Zealanders have the opportunity to discuss issues of interest. In the wake of WAI 2522, and assurances given to Māori in that process, active engagement with Māori including iwi and claimants is envisaged. We will keep relevant Ministers updated, as appropriate, on these plans.

Recommendations

55 The Minister for Trade and Export Growth recommend(s) that the Committee:

1 Note that separate advice is being provided to Cabinet on banning overseas buyers from purchasing existing New Zealand homes;

2 Agree that New Zealand's negotiating approach to the inclusion of investor state dispute settlement (ISDS) clauses be essentially reversed in the TPP negotiations and future negotiations for other trade agreements;

3 Note officials assess that it will be very difficult to change or renegotiate already agreed outcomes on ISDS under the TPP Agreement;

4 Agree that negotiators should nevertheless seek to make ISDS voluntary for New Zealand through a series of reciprocal bilateral side agreements where possible;

5 Agree that negotiators should simultaneously seek to narrow the scope of ISDS in the new Agreement;

6 s9(2)(j)

7 Note that Annex I contains an outline of New Zealand's interests in the Agreement;

8 Note that we are entering into the final phase of negotiations toward a revised 11-member TPP Agreement;

9 Note that, with the withdrawal of the United States from TPP, negotiators are revising the original Agreement, s6(a)

10 s9(2)(j)

11 Note that the approach by all Parties to date has been not to renegotiate provisions or market access, but only suspend specific rules provisions s9(2)(j)

12 Note that the Treaty of Waitangi exception in New Zealand's free trade agreements is a non-negotiable provision that will be retained in this new Agreement;

13 Note that this exception is a strong and unique provision which protects Māori interests by providing flexibility for the Government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty, without being obliged to offer equivalent treatment to persons of other countries;

14 Note that the labour and environment outcomes will be the most comprehensive New Zealand has achieved in a free trade agreement with both of these legally enforceable for the first time;

15 Note that the Agreement will also be a world first in including a prohibition granting or maintaining subsidies that contribute to illegal, unreported or unregulated (IUU) fishing or that negatively affect stocks that are in an overfished condition;

16 Note that 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, will not be affected by the revised Agreement;

17 Note that progress is being made in suspending several provisions that attracted domestic controversy including provisions that imposed costs on New Zealand, including:

- an obligation for Pharmac to make administrative changes for greater transparency, including a new review mechanism, which has an upfront cost of NZ$4.5 million and NZ$2.2 million per year thereafter;
- a requirement to provide new biological pharmaceuticals with either eight years' data protection, or five years along with other measures to provide additional effective market protection;
- a requirement to extend the term of a patent to compensate for any unreasonable delays in the patent examination process.

18 Agree that negotiators will not accept any reduction to our market access outcomes;

19 s9(2)(j)

20 Authorise the Prime Minister, Minister for Trade and Export Growth, Minister of Finance, and the relevant portfolio Minister(s) to have delegated authority to make final decisions about substantively concluding negotiations for the Agreement;

21 s9(2)(j)

22 Note that agencies, led by the Ministry of Foreign Affairs and Trade, will conduct extensive consultation with Māori and wider civil society prior to signature and ratification of the agreement;

23 Note that if a new Agreement among the 11 economies is concluded, Cabinet approval will be sought to sign this treaty;

24 Note that the new Agreement and the accompanying National Interest Analysis will be examined by the House of Representatives in accordance with Standing Orders;

25 Note that the cost of the negotiating process is being met from departmental baselines, and implementation costs are expected to be modest and, where possible, met from baselines or through cross-agency reprioritisation; and

26 Note that Ministers will be informed of developments in negotiations that are likely to result in fiscal implications, and will be invited to consider any residual funding requirements through the Budget process.

Hon David Parker

Minister for Trade and Export Growth

Annex I – Summary of New Zealand interests in TPP11

56 s9(2)(g)(i)

57 In the meantime, independent and publicly available results from economic modelling by Japan's National Graduate Institute of Policy Studies' suggest that the 11-member FTA would boost New Zealand's gross domestic product 4.3 percent after 10 years compared to a baseline projection.[12] This research found that GDP outcomes for New Zealand would not be significantly different between the two Agreements. This is primarily because the loss of access for New Zealand exporters into the US market is offset by gains in having less US competition in other TPP markets. Taking a conservative approach, and applying this finding to MFAT's earlier modelling, indicates an increase of NZ$2.5 billion 10 years after entry into force.

58 Tariffs on all products of New Zealand's trade interest will be eliminated, except certain dairy products in Japan, Canada, and Mexico; and beef into Japan where the tariff will be substantially reduced. Based on current trade, this will reduce tariffs for New Zealand exporters by an estimated NZ$92 million in the first year of an agreement coming into force rising to NZ$222 million per year once tariffs have been fully eliminated or reduced. This compares to an estimated NZ$4.2 million of foregone annual tariff revenue once New Zealand has eliminated all its duties required under the Agreement.

59 New Zealand dairy exporters s9(2)(g)(i) with an estimated NZ$83 million in tariff reductions through preferential access to new quotas into Japan alone.

60 Tariffs on beef exports to Japan will reduce from 38.5 percent to 9 percent, the s9(2)(j) allowing New Zealand exporters to immediately correct the advantage Australia currently enjoys through its bilateral Japan-Australia FTA. This has been exacerbated recently as New Zealand frozen beef exports face a snapback duty of 50 percent as WTO safeguard levels have been triggered, while Australian exporters continue to trade with a preferential tariff as its trade sits outside the WTO volumes.[13] Japan's recently concluded Economic Partnership Agreement with the EU would increase the pressure on a range of New Zealand exporters in that market should it enter into force before an Agreement including New Zealand can be realised.[14]

12 *Emergent Uncertainty in Regional Integration – Economic Impacts of Alternative RTA Scenarios,* GRIPS Discussion Paper 16-28, January 2017, author: Kenichi Kawasaki: https://ideas.repec.org/p/ngi/dpaper/16-28.html; https://ideas.repec.org/p/ngi/dpaper/16-27.html.

13 Under the original Agreement, if total beef imports to Japan from all TPP Parties reach more than 590,000 tonnes in the first year then the applied tariff will go from the preferential rate to 50 percent. The safeguard" volume will rise and "snapback" duty rate decrease gradually over 24 years.

14 The EU-Japan FTA has been politically concluded and is not yet in force.

61 In other examples, all tariffs for New Zealand kiwifruit will be eliminated at entry into force, including duty free access to Japan – Zespri's largest market – representing tariff reductions of more than NZ$25 million. All tariffs on New Zealand wine will be eliminated, including immediate duty free access to Canada – New Zealand's 4th-largest wine market. While all tariffs on New Zealand apples will be eliminated within 11 years levelling the playing field with Australian apple exporters which currently enjoy preferential access into Japan. Full tariff outcomes by sector are summarised in Table 1.

Table 1: Estimated Tariff Savings by Sector under TPP-11

Sector	Annual NZ exports (2012-14 average)	Estimated TPP-11 duties paid annually	Estimated tariff savings per year (once fully implemented)
Dairy	$1,273 million	$117 million	$86 million
Meat	$554 million	$82 million	$65 million
Horticulture	$557 million	$33 million	$33 million
Other Agriculture	$186 million	$18 million	$10 million
Forestry	$594 million	$11 million	$11 million
Fisheries	$206 million	$9 million	$9 million
Wine	$112 million	$4 million	$4 million
Industrials	$1,116 million	$3 million	$3 million
Textiles	$44 million	$1 million	$1 million
Total	$4,642 million	$278 million	$222 million

62 Beyond the individual economic gains, proceeding with the Agreement will establish a platform of high quality rules and standards to encourage trade and investment in the Asia-Pacific at a time when the global trading system is under pressure. The Agreement's rules will help harmonise rules across a group of Asia-Pacific economies providing greater certainty and reducing compliance costs for New Zealand businesses trading in the region. For example, the prohibition on the use of agricultural export subsidies; rules of origin procedures that allow for trans-shipment and streamlined procedures for traders to claim tariff preferences; and new regulatory coherence disciplines should, over time, lead to more consistent and transparent approaches to regulation.

63 Realisation of the Agreement would signal a continued political commitment to regional economic integration s6(a)

s6(a)

64 It is envisaged that longer term membership would expand to include other economies and, in so doing, further increase the value of the Agreement for New Zealand exporters, and better align regional rules and trading standards. s6(a)

65 s6(a)

Cabinet

Minute of Decision

Revised Trans-Pacific Partnership Agreement: Negotiating Mandate

Portfolio Trade and Export Growth

On 31 October 2017, Cabinet:

1 **noted** that agreement is sought to an amended negotiating mandate for a revised Trans-Pacific Partnership (TPP) Agreement;

2 **noted** that Cabinet has taken separate decisions on banning overseas buyers from purchasing existing New Zealand homes [CAB-17-MIN-0489];

3 **agreed** that New Zealand's negotiating approach to the inclusion of investor state dispute settlement (ISDS) clauses be essentially reversed in the TPP negotiations and future negotiations for other trade agreements;

4 **noted** that officials have assessed that it will be very difficult to change or renegotiate already agreed outcomes on ISDS under the TPP Agreement;

5 **agreed** that negotiators should nevertheless seek to make ISDS voluntary for New Zealand through a series of reciprocal bilateral side agreements where possible;

6 **agreed** that negotiators should simultaneously seek to narrow the scope of ISDS in the new Agreement;

7 s9(2)(j)

8 **noted** that Annex I attached to the submission under CAB-17-SUB-0488 contains an outline of New Zealand's interests in the Agreement;

9 **noted** that New Zealand is entering into the final phase of negotiations toward a revised 11-member TPP Agreement;

10 **noted** that, with the withdrawal of the United States from TPP, negotiators are revising the original Agreement, s6(a)

11 s9(2)(j)

12 **noted** that the approach by all Parties to date has been not to renegotiate provisions or market access, but only suspend specific rules provisions s9(2)(j)

13 **noted** that the Treaty of Waitangi exception in New Zealand's free trade agreements is a non-negotiable provision that will be retained in this new Agreement;

14 **noted** that the Treaty of Waitangi exception is a strong and unique provision which protects Māori interests by providing flexibility for the government to implement domestic policies in relation to Māori, including in fulfilment of the Crown's obligations under the Treaty, without being obliged to offer equivalent treatment to persons of other countries;

15 **noted** that the labour and environment outcomes will be the most comprehensive New Zealand has achieved in a free trade agreement with both of these legally enforceable for the first time;

16 **noted** that the Agreement will also be a world first in including a prohibition granting or maintaining subsidies that contribute to illegal, unreported or unregulated (IUU) fishing or that negatively affect stocks that are in an overfished condition;

17 **noted** that 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, will not be affected by the revised Agreement;

18 **noted** that progress is being made in suspending several provisions that attracted domestic controversy including provisions that imposed costs on New Zealand, including:

18.1 an obligation for Pharmac to make administrative changes for greater transparency, including a new review mechanism, which has an upfront cost of NZ$4.5 million and NZ$2.2 million per year thereafter;

18.2 a requirement to provide new biological pharmaceuticals with either eight years' data protection, or five years along with other measures to provide additional effective market protection;

18.3 a requirement to extend the term of a patent to compensate for any unreasonable delays in the patent examination process;

19 **agreed** that negotiators will not accept any reduction to our market access outcomes;

20 s9(2)(j)

21 **authorised** the Prime Minister, Minister of Foreign Affairs, Minister for Trade and Export Growth, Minister of Finance, and relevant portfolio Minister(s) to have delegated authority to make final decisions about substantively concluding negotiations for the Agreement;

22 s9(2)(j)

23 **noted** that agencies, led by the Ministry of Foreign Affairs and Trade, will conduct extensive consultation with Māori and wider civil society prior to signature and ratification of the agreement;

24 **noted** that if a new Agreement among the 11 economies is concluded, Cabinet approval will be sought to sign the treaty;

25 **noted** that the new Agreement and the accompanying National Interest Analysis will be examined by the House of Representatives in accordance with Standing Orders;

26 **noted** that the cost of the negotiating process is being met from departmental baselines, and implementation costs are expected to be modest and, where possible, met from baselines or through cross-agency reprioritisation;

27 **noted** that Ministers will be informed of developments in negotiations that are likely to result in fiscal implications, and will be invited to consider any residual funding requirements through the Budget process;

28 **invited** the Minister of Trade and Export Growth to report back to Cabinet with further advice on the following matters:

28.1 the proposed work on a new progressive and inclusive trade agenda;

28.2 the process following the conclusion of negotiations on a revised TPP Agreement;

28.3 s9(2)(j)

Michael Webster
Secretary of the Cabinet

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Prime Minister
Minister of Foreign Affairs
Minister of Finance
Minister for Trade and Export Growth