

Digital Economy Partnership Agreement

NATIONAL INTEREST ANALYSIS

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Digital Economy Partnership Agreement

National Interest Analysis

June 2020



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Frequently Used Acronyms and Terms

Term	Explanation
DEPA	Digital Economy Partnership Agreement
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
MFAT	Ministry of Foreign Affairs and Trade
NIA	National Interest Analysis
OECD	Organisation for Economic Cooperation and Development
SME	Small and Medium Enterprises
WTO	World Trade Organization

1 Executive summary

Conclusion of the Digital Economy Partnership Agreement (DEPA or the Agreement) comes at a time of considerable disruption to international trade and supply chains due to COVID-19. New Zealand's immediate goal has been to bring the pandemic under control within our borders and to mitigate as far as possible its negative impacts on our people, health systems and the economy. Work is also under way on New Zealand's trade recovery, to help ensure that New Zealand is in the best possible position to emerge from the COVID-19 pandemic as quickly as possible.

Signature and entry into force of the DEPA will form an important component of New Zealand's COVID-19 trade recovery strategy, by contributing to the revitalisation of our trade architecture. New Zealand's trade networks provide predictable rules and other mechanisms to facilitate New Zealand exports of goods and services to markets around the world. COVID-19 demonstrates the value of our digital economy and digital trade, evidenced by New Zealanders' reliance on digital solutions to stay connected and businesses reliance on digital processes to continue to operate despite restrictions. The digital economy is also an opportunity for New Zealand to continue diversifying our exports which will improve our resilience to possible shocks in any one exporting sector. Trade for All operates as a backdrop to New Zealand's COVID-19 response. The Trade for All Advisory Board's recommendations, including on matters relating to the digital economy, will therefore form part of New Zealand's ongoing trade recovery efforts.

Strategically, entry into force of the DEPA will send a strong statement of New Zealand, Singapore and Chile's continued commitment to work together to strengthen the trade architecture that underpins the international rules-based system. Digital trade (digitally-enabled transactions of goods and services, whether digitally or physically delivered) has grown rapidly, racing ahead of existing global trade rules and norms. In the context of the COVID-19 pandemic, this takes on even greater significance as these rules will be more important than ever in assisting with the global economic recovery. The DEPA is a first step towards establishing those rules and best practice for the digital era. It contains a series of modules covering topics relevant to the digital economy and digital trade.

In many cases, DEPA represents the current positions and regulations of New Zealand, Singapore, and Chile on digital trade. Together, the DEPA partners intend to promote the value of these rules in other negotiations and encourage economies to join the DEPA. As a result, the advantages and disadvantages are of modest economic significance, because the commitments match existing policy settings. In the longer term, if the regulatory cooperation efforts under the DEPA modules are successful and rules are adopted more widely, the economic impacts will be greater. Each module could influence wider international rules on digital trade.

The DEPA is part of New Zealand's ongoing response to ever increasing global trade policy turbulence and the changing nature of trade in the digital era that started prior to but has intensified with COVID-19. New Zealand's overarching objectives for the Agreement are to:

- *Co-create and shape global norms for digital trade.* This is an area that is commercially critical to small economies, particularly SMEs and is integral to the Government's productive, sustainable and inclusive economic strategy as well as wider well-being objectives.
- *Create a model digital economy agreement that can act as a pathfinder* for others, raising ambition in other contexts and forums, and that can be integrated into and support processes in the WTO, OECD, APEC and elsewhere.
- *Build confidence on new economy issues* to advance and sustain international trade based on rules and to demonstrate the benefits of working together with others on trade policy at a time when many economies are choosing to go it alone or bilaterally.

This Assessment finds that ratification of the DEPA is in the national interest. The provisions show the importance of digital trade and ensure that New Zealand is able to work closely with likeminded small countries on the development of new rules on emerging issues. The DEPA requires no regulatory change for New Zealand to meet its obligations. Some of the modules reflect New Zealand's existing commitments in other Agreements. While this, therefore, reflects a commitment to existing regulatory settings, there are exceptions that ensure New Zealand retains regulatory policy space. It identifies the areas where Chile, New Zealand, and Singapore will be able to work together under the DEPA as a 'living agreement'. This is an important part of the DEPA's rationale – as our respective approaches to the digital economy evolve, DEPA can also evolve.

The DEPA serves New Zealand's commercial objectives by supporting the development of robust, transparent and compatible international rules, while also safeguarding our ability to regulate for New Zealand's public policy interests, and ensuring that issues of importance to New Zealanders, such as personal privacy, consumer protection, data management, transparency and openness, are appropriately protected. It also contributes to New Zealand's drive for a more sustainable and inclusive economy by recognising the importance of digital innovation and inclusion.

The DEPA is a practical working example of New Zealand's strategy of working with like-minded partners on agreements that are open to others to join in the future, called concerted open plurilateralism. The DEPA can also evolve as digital trade continues to change. It acknowledges that making progress on high quality rules and norms at the WTO may be difficult, but that small economies need to find a way to shape and inform emerging rules and issues. The DEPA demonstrates that small countries can contribute to the evolution of new rules, in this case on digital trade.

2 Nature and timing of proposed treaty action

The Digital Economy Partnership Agreement (DEPA or the Agreement) is a plurilateral treaty-level agreement negotiated between New Zealand, Singapore, and Chile. The Agreement follows New Zealand's principle of concerted open plurilateralism, meaning the DEPA is intended to be expanded to new partners in the future.

The conclusion of substantive negotiations was announced by Ministers of Trade in January 2020. Pending legal verification, the preliminary text of the Agreement has been made available on the MFAT website.

Entry-into-force of the DEPA is subject to the completion of the necessary domestic procedures of at least two of the signatories. The earliest the DEPA could enter into force for New Zealand is the second half of 2020. DEPA will enter into force for subsequent signatories 90 days following the date on which they notify the depositary of the completion of their applicable legal procedures.

There are no regulatory or legislative changes required for New Zealand to ratify DEPA. The legal obligations that would be imposed on New Zealand by DEPA are already captured by our other agreements, including the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).

The Agreement does not apply to Tokelau, the Cook Islands, or Niue.

3 Reasons for New Zealand becoming a Party to the Treaty

The fast-growing digital economy is part of New Zealanders' everyday lives. This became even more pronounced as COVID-19 upended traditional ways of doing business around the globe. The New Zealand Productivity Commission recently stated, "there is little to differentiate the digital economy from the broader economy; in other words, the digital economy is the economy". The digital economy consists of economic activities conducted or facilitated through digital technologies. The DEPA is one of New Zealand's contributions to the global rules which will shape this critical economy.

The digital economy is innately cross-border, which intertwines rules governing digital trade and the digital economy in general. While there is no single accepted definition of digital trade, the Organization for Economic Cooperation and Development (OECD) reports that there is a growing consensus that it encompasses digitally-enabled transactions of trade in goods and services that can either be digitally or physically delivered, and that involve consumers, firms, and governments. For example, digital trade would include the purchase and physical delivery of a paper book through an on-line marketplace as well as the purchase and digital delivery of an e-book. 'Digital trade' and 'e-commerce' are often used interchangeably.

Digital trade is growing exponentially and this creates opportunities and challenges for New Zealanders. Digital trade is especially important for the New Zealand economy as it responds to COVID-19, particularly due to the contribution of SMEs. Digital technologies help these businesses overcome the challenges of scale and distance to enter global markets that were previously only accessible to larger businesses, accelerating their growth. The many benefits for consumers from digital technologies include more convenience, lower prices, more choice and better information. Digital technologies can also potentially support the increased participation in trade by women, Māori and rural communities, helping spread the benefits of trade across our communities and regions – a key aim of New Zealand's Trade for All Agenda. Trade for All operates as a backdrop to New Zealand's COVID-19 response. The Trade for All Advisory Board's recommendations, including on matters relating to the digital economy, will therefore form part of New Zealand's ongoing trade recovery efforts.

The DEPA is a pathfinder agreement which enables New Zealand and our likeminded partners to shape global norms for digital trade. Our current DEPA partners are Singapore and Chile. The Agreement addresses the evolving nature of the digital economy through ambitious commitments in known areas, such as e-invoicing and consumer protection, and formalising mechanisms for

cooperation on emergent issues, such as digital identity. Following New Zealand's strategic objective to promote concerted open plurilateralism, the DEPA is an open agreement. Other likeminded partners may seek to join the Agreement, provided they meet the existing level of commitments. The mechanism for new partners to join the agreement (accession) is to be determined by a joint committee. Accession will greatly enhance the potential of DEPA to influence global norms.

3.1 DEPA as part of New Zealand's trade recovery

Conclusion of the Digital Economy Partnership Agreement (DEPA or the Agreement) comes at a time of considerable disruption to international trade and supply chains due to COVID-19. New Zealand's immediate goal has been to bring the pandemic under control and to mitigate as far as possible its negative impacts on our people, health systems and the economy. Work is also under way on New Zealand's trade recovery, which seeks to ensure that New Zealand is in the best possible position to emerge from the COVID-19 pandemic as quickly as possible.

Signature and entry into force of the DEPA will assist New Zealand's COVID-19 trade recovery strategy, by contributing to the revitalisation of our trade architecture. New Zealand's trade networks provide predictable rules and other mechanisms to facilitate New Zealand exports of goods and services to markets around the world. COVID-19 demonstrates the value of our digital economy and digital trade, and the DEPA with Singapore and Chile will encourage further growth of digital aspects of our trading relationships. The digital economy is also an opportunity for New Zealand to continue diversifying exports which will improve our resilience to possible shocks in any one exporting sector.

Strategically, entry into force of the DEPA will also send a strong statement of New Zealand, Singapore and Chile's continued commitment to work together to strengthen the trade architecture that underpins the international rules-based system. In the context of the current COVID-19 pandemic, this takes on even greater significance as these rules will be more important than ever in assisting with the global economic recovery.

3.2 An opportunity to co-create and shape global norms for digital trade

Global rules and norms on the digital economy are currently in a state of flux. Technology is evolving rapidly and new issues are emerging. The DEPA is an opportunity for New Zealand, alongside Chile and Singapore, to shape rules of digital trade to suit our values and strategic objectives. These include consumer protection, the preservation of personal privacy, a free rules-based trading environment, and ensuring that trade works for all, including Māori, SMEs, and women.

The DEPA can act as an example in other contexts. There is currently a gap in the international trade rules on digital trade. Modern agreements, such as the CPTPP, include provisions on digital and e-commerce. However, they do not examine the wider digital economy or establish dialogue for

discussing emerging issues. It is expected that each DEPA module could influence wider international rules on digital trade.

The DEPA builds on our existing commitments in the CPTPP to attain a new level of ambition on digital trade agreements. New provisions include cooperation on digital identity issues and principles on encouraging a diversity of exporters. The DEPA will be used to raise ambition in other contexts and forums, such as the WTO-based e-commerce negotiations. Larger multilateral fora are our traditionally preferred platform for agreements, because they ensure a broader adoption of rules. These fora, however, can be less ambitious than smaller agreements because they require consensus among more members. Anything we can do to raise the ambition in these multilateral dialogues is a significant contribution to global norms. It is often New Zealand's policy entrepreneurship that secures us a 'seat at the table.'

A comprehensive agreement on open digital trade rules is commercially critical to small economies. New Zealand digital exporters are also typically smaller than those in other advanced economies. They are, therefore, more susceptible to changes in international rules and variation among domestic policy settings. Recognising the importance of collaboration, the DEPA is open for expansion in scope and membership. The DEPA will be open to WTO members who can meet the standards. Economies that join in the future will increase the export opportunities for New Zealand businesses and amplify the effectiveness of the DEPA in shaping rules globally.

3.3 Build confidence on new economy issues

The DEPA advances and sustains the rules-based order for trade and demonstrates the benefits of working together with others. Global trade turbulence, including the COVID-19 pandemic, and a resurgence in protectionism creates uncertainty for New Zealand businesses. Both are a threat to New Zealand's continued economic prosperity. It is important for New Zealand and other like-minded partners to continue pressing for ambitious agreements to advance our free trade and Trade for All agendas. The DEPA is especially important, because it focuses on relatively new and evolving trade issues. It demonstrates that partners can continue to address new trade policy frontiers despite global trends towards protectionism.

3.4 Create opportunities for a range of New Zealand businesses

Inclusive trade is central to the DEPA. The Agreement contains modules to promote digital inclusion and cooperation on SMEs. The Trade for All Advisory Board's report recommends more action to support Māori and SME exporters. The Parties have agreed to cooperate on digital inclusion, including participation of women, rural populations, low socio-economic groups, and Indigenous Peoples. These provisions are the first of their kind and provide an opportunity, with effective implementation, to ensure inclusive trade remains front of focus for the DEPA partners.

3.5 Consequences of New Zealand not joining the Agreement

New Zealand's participation in the DEPA is a further rejection of increasing protectionism in the global trade environment. While limited to the digital economy, if New Zealand were to not join, it could damage our wider reputation and hinder our ability to influence negotiations in line with our strategic objectives, including in the WTO-based discussions on e-commerce. It would leave FTA chapters on e-commerce to advance New Zealand's digital interests, which are typically more limited in scope than a standalone agreement on the wider digital economy. Provisions on digital inclusion, inclusive trade and SMEs may be particularly vulnerable to exclusion from specific e-commerce chapters in FTAs, while they remain key Trade for All objectives.

Without the Agreement, we are more vulnerable to damaging protectionist trends in the digital economy. Through the DEPA, New Zealand has a platform to craft global rules in a way that suits our interests. It's also an opportunity to provide certainty to business on the future regulatory environment, enhancing their competitiveness.

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

This section of the NIA outlines the advantages and disadvantages that would accrue from the Agreement and related instruments entering into force for New Zealand. Each sub-section considers a specific module (chapter) in the Agreement. It concludes that it is in New Zealand's national interest for the Agreement to enter into force. The counterfactual for comparison is if the Agreement did not enter into force.

At this stage, the DEPA is a strategic tool. It represents the current positions and regulations of New Zealand, Singapore, and Chile on digital trade. Together, the DEPA partners intend to promote the value of these rules in other negotiations and encourage economies to join the DEPA. As a result, the initial advantages and disadvantages of the modules are of modest economic significance, because the commitments match existing policy settings. However, in the longer term, if the regulatory cooperation efforts under the DEPA modules are successful and rules are adopted more widely, the economic impacts will be greater.

4.1 Business and Trade Facilitation

The Business and Trade Facilitation module promotes the adoption and use of technology to facilitate trade. Using digital technologies, such as e-invoicing, is often more efficient and cheaper than other forms of transactions. The DEPA:

- promotes paperless trading by making e-versions of trade administration documents available and equivalent to paper documents in most situations.
- requires the legal frameworks that govern electronic transactions within DEPA partners to be consistent with internationally developed model frameworks.
- sets up faster customs procedures for express shipments, while maintaining appropriate customs control and selection.
- confirms that DEPA partners should not impose customs duties on electronic transmissions.
- supports the growth of e-payments. The DEPA recognises that payment technology is evolving so promotes transparency and a level playing field. The DEPA allows regulation in special circumstances or to respond to a balance of payments crisis.

4.1.1 Advantages

International trade costs in the Asia-Pacific can be reduced by 26% through the adoption of paperless trade facilitation measures.¹ The importance of paperless trade facilitation has become vital to trading in light of COVID-19 as it prevents delays and promotes remote working approaches. Other advantages of paperless trading include; prevention of fraud and other illegal activities through an automated, secure certificate data exchange method; advanced risk assessment; quicker clearance of consignments; and the availability of efficient, same-time information.

The strong provisions on interoperability and cooperation in the DEPA are likely to create a larger impact for New Zealand. A reduction in trade costs has both direct and indirect effects. Current exporters may benefit from lower costs, enabling greater profitability and more competitive pricing. This has the potential to constitute a major advantage over foreign competitors who still rely on older or incompatible systems. Current or new exporters may diversify their existing markets to include current or future DEPA partners. Diversification boosts global market share and improves resilience to shocks in any particular economy. Consumers also stand to benefit from reduced trade costs. Through the coordination of our own import procedures with exporting economies, the price of imports is likely to decrease.

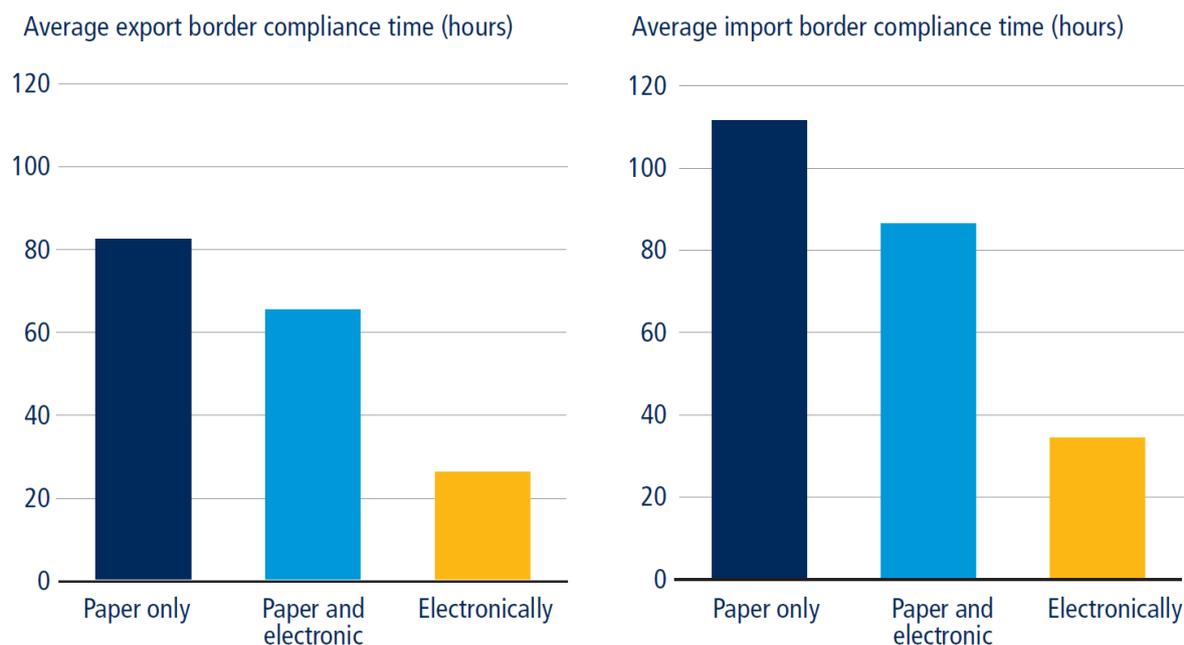
E-invoicing is one area where substantial reductions in costs are possible. E-invoicing will reduce business costs by no longer requiring paper-based or printable PDF invoices to be sent. This will eliminate the need for manual entry of invoices into the recipient's accounting system.

Digitalisation of customs procedures may also lead to significant efficiency gains. A 2017 OECD report indicates that electronic customs procedures reduce the joint export-import border compliance time by approximately 70%.² Exporters will benefit from reduced costs and more responsive production times, especially when transporting perishable goods. Consumers will benefit from faster shipping times for goods purchased from overseas.

The DEPA also recognises the importance of e-payments and while it does not contain strong disciplines at this stage, this is an important step forward. COVID-19 has seen a rise in e-payments (and in some cases a reduction in barriers to conducting e-payments) and the DEPA provides an advantageous platform for New Zealand to discuss these issues with our partners.

¹ Duval, Y., Utoktham, C. and Kravchenko, A (2018). "Impact of implementation of digital trade facilitation on trade costs", ARTNeT Working Paper Series, No. 174, January 2018, Bangkok, ESCAP.

² Ferro, C., Youbi, M., Saltane, D., Mugica, I. (2017). Trading Across Borders; Technology gains in trade facilitation. *Doing Business 2017*. OECD



Source: OECD Doing Business 2017

4.1.2 Disadvantages

The module is likely to require a modest degree of reallocation of resources from existing budgets to meet the cooperation and collaboration obligations (particularly for MFAT). There are otherwise no disadvantages from adopting this module.

4.2 Treatment of Digital Products and Related Issues

DEPA Parties' affirm their existing levels of commitments relating to the Treatment of Digital Products and Related Issues in this module. These include provisions preventing the imposition of customs duties on electronic transmissions (commonly held to encompass anything from software and emails to e-books and digital music) and protecting the integrity of cryptography. The Parties further agree that customs duties shall not be imposed on electronic transmissions between Parties, including content transmitted electronically. This provision does not prevent internal taxes or charges being imposed that are otherwise consistent with the Agreement.

4.2.1 Advantages

The prohibition of customs duties within this module is a significant and tangible benefit for New Zealand. Customs duties on goods exports damage the competitiveness of New Zealand and reduce economic efficiency globally. The DEPA prohibits their use on electronic transmissions between New Zealand, Singapore, and Chile. Given the DEPA's status as a pathfinder agreement, it also sets a precedent for other frameworks to reject such customs duties.

Other articles in the module reaffirm the Parties' existing level of commitments on cryptography and non-discriminatory treatment of digital products. While these provisions do not create new obligations, they set a high standard for new partners who wish to accede to the DEPA in future. For New Zealand, Singapore, and Chile, the highest level of commitment is in the CPTPP. New DEPA partners who are considering accession must be prepared to commit to a similar level.

4.2.2 Disadvantages

There are few disadvantages to New Zealand in this module. Customs duties on electronic transmissions prohibited by the DEPA may otherwise have been a source of revenue to the Crown.³ This is not a significant disadvantage given the DEPA replicates commitments New Zealand has made elsewhere and studies, including by the OECD,⁴ show this potential revenue must be balanced with the costs that come with charging such customs duties, including lower productivity and greater costs for businesses wanting to operate digitally. The WTO has had a time-bound moratorium on the charging of customs duties on electronic transmissions since 1998, which is typically renewed every two years. We have also secured a permanent moratorium in some of our FTAs.

Other articles reaffirm existing commitments, rather than create new enforceable obligations through the DEPA.

4.3 Data Issues

The DEPA module on Data Issues recognises that data is at the heart of digital trade and the wider digital economy. There is great potential for data to drive innovation and support well-being in New Zealand. Many modern businesses are built solely on the basis of data. Trade and production are now heavily dependent on moving, storing, and using data, increasingly across borders. Fundamentally, the module requires DEPA partners to have legal frameworks in place to protect personal information. These frameworks may use different legal approaches, however the Parties are obliged to pursue interoperability and exchange information. The DEPA adds to other international discussions on privacy by setting out the principles that underpin strong protection frameworks including transparency, data quality and accountability. The module further affirms the Parties' levels of commitments relating to transmission of information and location of computing facilities. These rules recognise the value of information flows and the development of new technologies and services.

³ There is no revenue lost because New Zealand has existing commitments not to impose customs duties.

⁴ See for example, [https://one.oecd.org/document/TAD/TC/WP\(2019\)19/FINAL/en/pdf](https://one.oecd.org/document/TAD/TC/WP(2019)19/FINAL/en/pdf).

4.3.1 Advantages

The DEPA is a tool to help New Zealand take our principles on privacy to the world stage. New Zealand has long valued personal information protection. The Privacy Act 1993 provides robust domestic rules to protect New Zealanders, which will be further enhanced to reflect the digital age in the Privacy Bill 2018. The DEPA reflects the principles of New Zealand's law, while ensuring each Party retains the right to implement regulations that best suit their context. These principles include transparency, individual participation, and data quality. New Zealand will be better positioned to advance our principles in other agreements using the DEPA as a tool. This will ensure that New Zealanders data is better protected while stored and used abroad, which is increasingly common in our interconnected world.

The Parties further affirm their existing commitments and protections for policy space for government to regulate to address legitimate policy concerns, including on data localisation. Similar to in other modules, these provisions set a high standard for countries interested in acceding to the Agreement.

4.3.2 Disadvantages

This module may require ongoing allocation of resources to ensure New Zealand is sharing information with DEPA partners (particularly through MFAT).

Concerns have been raised generally⁵ about the potential for data-related rules to impact on the Government's right to regulate. The risk of the module impacting on Government's right to regulate is low. The obligations all sit within New Zealand's current policy settings and established FTA practice, meaning that there will be no additional encroachment on New Zealand's domestic policy space. In addition, DEPA contains a number of exceptions, agreement wide, that preserve the Government's right to regulate.

4.4 Wider Trust Environment

The DEPA recognises that cyber security is integral to the digital economy and the Parties will continue to consider cyber security as we work together on new and emerging issues. The Wider Trust Environment Module is also about a safe and secure online environment. While the DEPA does not have specific rules on the trust environment, the DEPA Parties will continue to consider this issue as new areas emerge.

⁵ See for example, the Trade for All Advisory Board report, <https://www.tradeforalladvisoryboard.org.nz/wp-content/uploads/2019/11/FINAL-with-cover-Trade-for-All-report.pdf>

4.4.1 Advantages

Cyber threats are often global. Collaboration between DEPA partners ensures that critical security resources are not tied up duplicating work completed by others. Collaboration mechanisms further enable New Zealand to access a wide pool of talent and expertise to develop an effective response to significant threats. Cooperation on workforce development could be beneficial for New Zealanders who provide or may provide cyber security services abroad. It is also important for SMEs that may not have the same existing levels of capability.

4.4.2 Disadvantages

There are no disadvantages to this module.

4.5 Business and Consumer Trust

The Business and Consumer Trust module aims to make it easier for businesses and consumers to take advantage of the opportunities from digital trade. Online Consumer Protection rules ensure consumers have the information to trade with confidence and have access to appropriate redress if things go wrong. The DEPA provides for:

- Measures to minimise unsolicited commercial electronic messages (or SPAM), including requiring the consent of recipients to receive commercial electronic messages.
- Laws to protect consumers online. These must allow for consumers to seek redress when goods are either unsatisfactory or inconsistent with the supplier's claims.
- Recognition of the benefits of access and use of the internet through a set of specific principles. These do not include net neutrality.

4.5.1 Advantages

Online consumer protection is a recent addition to trade agreements. The provisions in DEPA reflect the importance of protections in the Consumer Guarantees Act 1993 for online commercial activities across the DEPA economies. The DEPA requires that parties have laws or regulations to proscribe fraudulent, misleading or deceptive conduct that causes harm to online consumers. Both New Zealand exporters and consumers stand to benefit significantly. Exporters are held to a high standard of consumer protection in New Zealand. In other markets with less stringent requirements, they may be less competitive as a result. The DEPA levels the playing field ensuring our firms can compete. Consumers will also benefit from access to recourse for unsatisfactory or misleading products. There are currently no international rules requiring recourse for consumers of online products. A redress mechanism creates a strong incentive for exporters to sell products of a consistent, high standard.

SPAM is an inconvenience for New Zealanders and a source of economic inefficiencies. The DEPA requires parties to maintain measures to minimise SPAM. The Unsolicited Electronic Messages Act

2007 already exceeds the standards prescribed in the DEPA. However, much of the SPAM received by New Zealanders stems from foreign jurisdictions where New Zealand regulations are not legally enforceable. International agreements, like the DEPA, are needed to protect consumers from SPAM and other cross-border issues.

4.5.2 Disadvantages

There are no disadvantages to this module, as provisions align with existing commitments and New Zealand's regulatory settings.

4.6 Digital Identities

Digital identity (e.g. national business numbers) is a new issue for trade agreements. There is no one approach to digital identity, but the DEPA Parties recognise that cooperation will increase regional and global connectivity. The provisions in this module clearly recognise that digital identities are an important part of the digital economy. They also enable the DEPA Parties to work together on digital identity issues. Future work could include the exchange of knowledge and expertise relating to digital identity policies and regulations, technical implementation, security standards, and user adoption.

4.6.1 Advantages

Cooperation on digital identities will increase regional and global connectivity. Greater connectivity is especially important for New Zealand's trade given our distance from major economies. Secure and interoperable standards for digital identities are likely to produce more specific benefits to New Zealanders than overarching increases in connectivity. Consumers could see a reduction in digital identity fraud and businesses should be able to conduct more legal transactions electronically. The DEPA allows for any particular implementation of digital identities and there are many examples of effective uses globally. Estonia, for example, allows for e-residents to found an Estonian company and conduct other legally binding transactions remotely. As a result, ease of doing business was boosted dramatically. This NIA does not endorse any particular model, yet this is just one of many possibilities. During the COVID-19 pandemic, reliance on paper-based identity documents has potentially prevented transactions, which could have been facilitated remotely through the use of digital identities.

4.6.2 Disadvantages

Measures on digital identities are new and have not been tested extensively in other agreements. As a result, this module adopts a 'first step' approach rather than establishing firm rules for digital identity. There is also no particular approach to regulating or establishing digital identity required by the Agreement, rather Parties agree to promote interoperability between their respective regimes. Finally, a specific provision is included to confirm Parties' ability to regulate in our peoples' interests.

4.7 Emerging Trends and Technologies

The DEPA covers some emerging trends and technologies, but acknowledges that there is more to know before trade rules can be developed among the DEPA partners. The DEPA is a living agreement and is able to evolve as new technologies emerge, and new challenges arise. The DEPA provides an important vehicle for New Zealand to discuss new issues with close partners. Areas where DEPA Parties will look to deepen their cooperation include: financial technology (FinTech), including by involving FinTech businesses; artificial intelligence (AI), including by working together to promote the adoption of ethical and governance frameworks; government procurement, including by considering impact of greater digitisation of procurement processes; and competition policy.

4.7.1 Advantages

The DEPA formalises a mechanism for cooperation on emerging issues in the digital economy. Many such issues benefit from international cooperation. Competition policy, for example, can lead to significant trade-distorting effects. Enforcing competition regulations can also be more difficult online. Cooperation on policy enables countries to maintain a level playing field internationally. The other areas of cooperation in this module can lead to similar benefits.

Agreeing to this module will ensure New Zealand has a strong international voice on new areas of the digital economy as they emerge. Innovative solutions co-created within the DEPA have the potential to contribute to other international conversations. As such, this module forms an integral part of New Zealand's overall strategic objective in pursuing the DEPA.

4.7.2 Disadvantages

This module covers only a small range of emerging trends and technology. This may lead to a focus on these issues rather than new issues not yet identified. There is, however, an important counterbalance in the Agreement. A Joint Committee is established through the DEPA, which will consider potential amendments. The preamble of the Agreement also acknowledges the need for the DEPA to evolve.

New Zealand recognises that prioritising certain areas is necessary with limited resources. However, of all the provisions in the DEPA, this module could be most amenable to expansion. DEPA Parties will be required to remain alert and responsive to new issues to prevent the risk of being focused on older issues, rather than seizing the initiative on new issues.

4.8 Innovation and the Digital Economy

The Innovation and the Digital Economy module recognises the importance of technological innovation, creativity, and technology as a means to achieve social and economic welfare. The module recognises the importance of a rich and accessible public domain; looks to the future of data

innovation and sets a framework for future work on data-sharing projects; and promotes open government data, including by providing that the DEPA Parties strive towards open data when information is made available to the public.

4.8.1 Advantages

Technological innovation is a significant driver of productivity growth. Data is an especially fruitful area for technological advances. This module encourages the sharing of a wide range of data and its use for projects to promote innovation. Data-driven innovation may be a source of productivity growth for New Zealand, which has been low since the 2008 Global Financial Crisis.⁶ The DEPA's provisions on data innovation could form a substantial contribution towards restoring New Zealand's previous levels of productivity growth. This potential for productivity is an important component of New Zealand's trade recovery from the impacts of COVID-19.

4.8.2 Disadvantages

The provisions in this module create obligations to endeavour to cooperate, rather than take any particular actions. This ensures New Zealand is able to respond appropriately as our context requires. The provisions have been designed to preserve New Zealand's right to regulate. For example, Article 9.5 relating to open government data applies to the extent that a Government chooses to make information available to the public.

4.9 Small and Medium Enterprises Cooperation

The DEPA sets up a framework for cooperation, enabling New Zealand to test ideas and promote business, particularly our SMEs, with DEPA partners. The digital economy allows SMEs to connect with their target market quickly and easily. SMEs will have easy access to information about regulations that concern their business when operating in DEPA partners through the Agreement. The Parties also want to make links between SMEs. There will be a Digital SME Dialogue held after entry into force to promote the benefits of the DEPA.

4.9.1 Advantages

Trade opens a much larger market for New Zealand firms. SMEs generally have a lower capacity to seek or employ specialist trade expertise. Article 10.3 requires Parties to maintain comprehensive public information for SMEs to best utilise opportunities within the DEPA. A single source of DEPA

⁶ Nolan, P., R., Pomeroy and G. Zheng. (2019). Productivity by the numbers: 2019. New Zealand Productivity Commission. Available from www.productivity.govt.nz

information for SMEs will cut down on costs for firms. Consumers are also likely to benefit from the increasing variety of digital trade from DEPA partners as their SMEs also take advantage of the Agreement.

Without adequate information SMEs may miss opportunities as their resources focus on core business needs rather than trade policy. The DEPA takes steps to propagate opportunities to SMEs. This module has real potential to accrue benefits to SMEs in responding the COVID-19 crisis as it will provide a channel of engagement, supported by Government, to international export markets that would not otherwise be available. It will be important that New Zealand to effectively implement this module to make this a reality for firms.

4.9.2 Disadvantages

There are no substantial disadvantages to New Zealand from this Module.

4.10 Digital Inclusion

The DEPA module on Digital Inclusion is the first of its kind. The DEPA Parties want to expand and facilitate digital economy opportunities to the benefit of all people. Importantly for New Zealand, the DEPA provides a platform for enhancing cultural and people-to-people links, including between Indigenous Peoples. The Agreement also preserves the ability of the Crown to meet its Treaty obligations to Māori. Te Taumata were especially engaged in the formation of this module.⁷ They have already proposed specific projects to support Māori business through the DEPA, including a digital platform to distribute and promote Māori exports.

4.10.1 Advantages

The DEPA promotes cooperation on matters related to digital inclusion, including with Māori. Te Taumata has identified the need to expand Māori capability to engage with trade issues, which has become more pronounced in the context of COVID-19. It also impressed the need for a shift from reactionary to strategic thinking and the importance of active leadership for Māori trade. The DEPA can contribute to all three issues. This module enables cultural exchange and people-to-people links. It also suggests certain measures, such as sharing of best practices and addressing barriers to opportunities. Each of these areas may be used to strategically and actively promote Māori trade.

⁷ Te Taumata is a unique engagement model with Māori that provides a dedicated platform for deeper discussion with Māori/iwi stakeholders on priority trade policy issues. Te Taumata draws on the extensive skills, experiences and connectivity of its members, who are involved in a diverse range of Māori business, international trade, academia, treaty claims and community development. Te Taumata is chaired by Chris Karamea Insley (Te Whānau-ā-Apanui, Ngāti Porou).

The digital inclusion module recognises the importance of expanding and facilitating digital trade opportunities for everyone. It also highlights the importance of access to the digital economy. This includes women, rural populations, and low socio-economic groups. The digital economy is an especially important sector to promote inclusion. Low initial capital costs enable disadvantaged groups to access trade where they may otherwise be excluded. Through the DEPA's status as a pathfinder agreement, others may also be prompted to adopt digital trade inclusion provisions in international agreements. This will increase the effectiveness of existing measures, such as those in the DEPA, through cooperation with a broader group of partners.

4.10.2 Disadvantages

This module uses a cooperation approach to commitments on digital inclusion. This allows DEPA Parties to take measures they feel are most effective in their individual contexts. This module will, therefore, require New Zealand to take an active leadership role for implementation. MFAT will be required to continue resourcing matters relating to inclusive trade to ensure this implementation is effective.

4.11 Exceptions

The DEPA contains an important set of exceptions that make it clear that the Agreement does not prevent Parties from taking certain measures in certain circumstances. These exceptions acknowledge the regulatory right of the Parties to adopt or enforce measures to deal with a crisis or to achieve certain priority policy outcomes, even if these measures may affect their DEPA obligations. The exceptions contain disciplines to ensure that they cannot be abused for trade protectionist purposes.

As with all of New Zealand's contemporary trade agreements, the DEPA includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. The DEPA also contains a creative arts exception. The DEPA contains further exceptions for taxation; monetary, exchange rate, and prudential policy; measures to safeguard the balance of payments; and national security.

4.12 Transparency

Access to information is especially important in digital trade. An increasing number of smaller firms are trading in more markets with more complex transactions. The DEPA Transparency module promotes openness by ensuring laws and regulations relating to the digital economy be promptly published and made available.

4.12.1 Advantages

This module will ensure that the provisions in the DEPA are implemented fully and fairly by Parties. It also ensures clarity for New Zealand exporters on how the DEPA is operated in other jurisdictions and ensures access to impartial tribunals on matters related to the Agreement.

4.12.2 Disadvantages

New Zealand already meets the requirements of this Module with its existing policy settings. Therefore, no additional costs are incurred.

4.13 Dispute Settlement, Joint Committee, and Other Legal Provisions

The DEPA includes a Dispute Settlement module, which will provide efficient, fair, and transparent processes for resolving disputes between governments. There are three levels to the mechanism: consultation, mediation, and panel arbitration. A Party may initiate a dispute at any time. The mechanism is designed to minimise the need for formal arbitration. An emphasis is placed on resolving disagreements during the consultation phase. There is no provision for an investor-state dispute mechanism.

The DEPA also contains other legal provisions. These include processes for amendments, contact points, withdrawal from the agreement, and accession. There is also provision to establish a joint committee within a year of entry into force. The committee will be the functional body to consider any matter relating to the implementation of the Agreement and any ways to further enhance the DEPA. It is envisioned that this committee will establish subsidiary bodies to implement specific aspects of the Agreement, including on SME and digital inclusion cooperation.

4.13.1 Advantages

A dispute settlement mechanism is essential to ensure the full implementation of the DEPA and ensure that disagreements between governments are handled fairly and efficiently. Consultation and mediation allow for less formal settlements of disputes. Formal proceedings often strain bilateral relationships. Many disputes may even be solved faster through consultations.

The joint committee has a mandate to establish subsidiary bodies to implement specific aspects of the Agreement. These bodies have a more specialised structure and can be more agile than the full committee. Industry groups, academics, and iwi can also input through the subsidiary bodies, while the joint committee is reserved for government-level consultation.

The article relating to accession ensures that the DEPA will be open for other WTO members to join. This is an extension of New Zealand's strategy of concerted open plurilateralism. Signing up more members enhances the effectiveness of the Agreement in crafting global rules and norms. The DEPA

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

is one instrument of New Zealand's overall strategy and will enable us to influence global rules on digital trade in tandem with our partners.

4.13.2 Disadvantages

A dispute settlement mechanism reduces the ability of future Governments to deviate from the provisions agreed in the DEPA without withdrawing from the Agreement entirely. Other Parties can bring disputes against New Zealand where we deviate from our obligations. At the same time, New Zealand obtains this ability with respect to DEPA partners.

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

Module 2 Business and Trade Facilitation

Paperless Trading

Article 2.2 contains obligations that support the digitisation of the trade administration process. Under this Article each Party is required to make administration documents public in an electronic form and to accept electronic submission of such documents. This Article also requires the Parties to establish a “single window” that allows traders to submit documentation or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. The Parties are further required to endeavour to establish a seamless interconnection of their respective single window that facilitates the exchange of data related to trade administration documents and to develop systems that support the exchange of data relating to trade administration documents and electronic records used in commercial trading activities between relevant authorities.

Domestic Electronic Transaction Framework

Under Article 2.3 each Party is required to maintain a domestic legal framework governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce 1996 or the United Nations Convention on the use of Electronic Communications in International Contracts 2005. Parties are also required to avoid any unnecessary regulatory burden on electronic transactions and facilitate input from interested persons in the development of regulatory frameworks for electronic transactions.

Logistics, E-invoicing and Express Shipments

The Parties are required to endeavour to share best practices and general information regarding the logistics sector, including information related to last mile deliveries; the use of electric, remote

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controlled and autonomous vehicles; facilitating the availability of cross-border options for the delivery of goods and new logistics delivery and business models (Article 2.4).

Under Article 2.5 each Party agrees to ensure that the implementation of measures related to e-invoicing in its territory is designed to support cross-border interoperability. The Parties also agree to cooperate on initiatives that support the adoption of e-invoicing by businesses, including through promoting the existence of infrastructure that supports e-invoicing and awareness building and capacity building.

Under Article 2.6 the Parties are required to adopt or maintain customs procedures for express shipments that:

- Provide for information necessary to release an express shipment to be submitted and processed before the shipment arrives;
- If possible, allow a single submission of information to be made covering all goods contained in an express shipment;
- Provide for the release of certain goods with a minimum of documentation, to the extent possible;
- Provide for the express shipments to be released within six hours after submission of the necessary customs documents in normal circumstances; and
- Apply to shipments of any weight and value.

If these procedures are not applied to all shipments, they must be provided through a separate and expedited procedure applying to express shipments. Under this Article the Parties are also required to provide for a *de minimis* shipment value for which customs duties are not to be collected, aside from restricted or controlled goods. The Parties must review this *de minimis* threshold periodically.

Electronic Payments

Under Article 2.7 the Parties agree to support the development of efficient, safe and secure electronic payments by fostering the adoption of internationally accepted standards; promoting the interoperability and the interlinking of payment infrastructures and encouraging useful innovation and competition in the payments system.

To this end, the Parties agree to:

- Endeavour to take into account internationally recognised payment standards to enable greater interoperability between payment systems;
- Endeavour to promote the use of Application Programming Interface (API) and to encourage financial institutions and payment service providers to make available APIs of their financial products, services and transactions where possible to facilitate greater interoperability and innovation in the electronic payments eco-system; and

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- Endeavour to enable cross-border authentication of persons and businesses using digital identities.

Treatment of Digital Products and Related Issues

Under Article 3.2 Customs Duties cannot be imposed on electronic transmissions, which includes the content, between a person of one Party and a person of another Party. This does not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically.

The Parties also affirm commitments they have made in other Agreements related to the non-discriminatory treatment of digital products, and information and communication technology products that use cryptography.

Data Issues

Under Article 4.2 the Parties are required to adopt or maintain a legal framework that provides for the protection of the personal information of the users of electronic commerce and digital trade. The Parties are required to adopt non-discriminatory practices when protecting users of electronic commerce from personal information protection violations that occur in the Party's jurisdiction. Each Party is required to publish information on the protections it provides, including how individuals can pursue remedies and how businesses can comply with legal requirements.

Under Article 4.2 the Parties are further required to pursue the development of mechanisms to promote compatibility and interoperability between their regimes for protecting personal information and to exchange information on how these mechanisms are applied in their respective jurisdictions. The Parties are also required to encourage adoption of data protection trustmarks by businesses that would help verify conformance to personal data protection standards and best practices and to exchange information and share experiences about the use of these trustmarks. The Parties must endeavour to mutually recognise other Parties' data protection trustmarks as a valid mechanism to facilitate cross-border information transfers while protecting personal information.

The Parties also affirm commitments they have made in other Agreements related to the cross-border transfer of information by electronic means and location of computing facilities.

Wider Trust Environment

Under Article 5.2 the Parties agree to endeavour to cooperate to advance collaborative solutions to global issues affecting safety and security online.

Business and Consumer Trust

Unsolicited Commercial Electronic Messages

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Each Party is required by Article 6.2 to have measures in place that require suppliers of unsolicited commercial electronic messages to enable recipients to prevent ongoing receipt of those messages, require recipients' consent to receive those messages, or otherwise provide for the minimisation of unsolicited commercial electronic messages. Parties must provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with these measures. Parties also agree to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Online Consumer Protection

Each Party is required under Article 6.3 to have consumer protection laws against fraudulent, misleading or deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities. The Parties are also required to have laws that require goods and services are of acceptable quality at the time of delivery and to provide consumers with appropriate redress when they are not. The Parties further agree to promote cooperation on matters of mutual interest related to misleading and deceptive conduct and to endeavour to explore the benefits of mechanisms to facilitate the resolution of claims over electronic transactions.

Digital Identities

The Parties agree to endeavour to promote interoperability between their respective digital identity regimes.

Emerging Trends and Technologies

Financial Technology Cooperation

Under Article 8.1 the Parties are required to promote co-operation between the Parties' respective financial technologies industry.

Artificial Intelligence (AI)

Under Article 8.2 the Parties agree to endeavour to promote the adoption of ethical and governance frameworks that support the trusted, safe and responsible use of AI (AI Governance Frameworks). In developing AI Governance Frameworks the Parties are required to endeavour to take into consideration internationally recognised principles or guidelines, including: explainability, transparency, fairness and human centred values.

Government Procurement

Under Article 8.3 the Parties agree to undertake cooperation activities to explore how greater digitisation of procurement processes and greater digitisation of goods and services impacts on existing and future international procurement commitments.

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Cooperation on Competition Policy

Under Article 8.4 the Parties agree to cooperate, as appropriate, on issues of competition law enforcement in digital markets in a manner consistent with their respective laws regulations and policies.

Innovation and the Digital Economy

Data Innovation

Under Article 9.4 the Parties agree to endeavour to cooperate on data sharing projects and mechanisms and proof of concepts for new uses of data.

Open Government Data

Under Article 9.5 each Party agrees to, to the extent that they make government data available, endeavour to make that data available as open data. Open data is defined to mean digital data that is made available with the technical and legal characteristics necessary for it to be freely used, reused, and redistributed. The Parties are also required to endeavour to cooperate to identify ways in which they can expand access to open data, with a view to enhancing and generating business activities.

SME Cooperation

General Principles and Cooperation to enhance Trade and Investment Opportunities for SMEs in the Digital Economy

Article 10.1 requires the Parties to foster close cooperation on the digital economy between the Parties' SMEs and also requires the Parties to cooperate in promoting jobs and growth for SMEs. Under Article 10.2 the Parties are required to cooperate with the other Parties to exchange information and best practices in leveraging digital tools and technologies to improve SMEs access to capital and credit, participation in government procurement opportunities and other areas that could help SMEs adapt to the digital economy.

Information Sharing

Under Article 10.3 the Parties are required to establish or maintain a publicly accessible website containing information regarding the Agreement and to regularly review the website to ensure that it is up to date.

Digital SME Dialogue

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Under Article 10.4 the Parties are required to convene a Digital SME Dialogue that promotes the benefits of the Agreement for SMEs and relevant collaboration efforts and initiatives between the Parties arising from the Agreement.

Digital Inclusion

Under this Module the Parties are required to cooperate on matters relating to digital inclusion, including the participation of women, rural populations, low socio-economic groups and Indigenous Peoples in the digital economy.

Joint Committee and Contact Points

The Joint Committee

Having established the Joint Committee in Article 12.1, Article 12.2 sets out the functions of the Joint Committee to be to:

- consider any matter relating to the implementation or operation of the Agreement, including the establishment of subsidiary bodies and the terms of accession;
- consider any proposal to amend or modify this Agreement;
- consider ways to further enhance digital economy partnership between the Parties;
- develop arrangements for implementing this Agreement;
- establish the Rules of Procedure for arbitral panels; and
- take any other action as Parties may agree.

Article 12.3 requires the Committee to take decisions by consensus. Consensus will be deemed to exist where no Party present at any meeting when a decision is taken formally objects to the proposed decision. Article 12.4 states that the Joint Committee shall meet within one year the date of entry into force of the Agreement. It also provides that the Joint Committee or any subsidiary body established under the Agreement may establish rules of procedure for the conduct of its work.

Cooperation and Implementation of the Agreement

Under Article 12.5 the Parties are required to cooperate in order to facilitate the implementation of this Agreement and to maximise the benefits arising from it.

Contact Points

Under Article 12.6 each Party is required to designate a central contact point to facilitate communications between the Parties on any matters covered by this Agreement.

Transparency

Publication

National Interest Analysis

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Article 13.2 requires that each Party publish or otherwise make available its laws, regulations, procedures and administrative rulings of general application with respect to any matter covered by the Agreement.

Administrative Proceedings and Review and Appeal

Each Party is required to, where warranted, provide impartial administrative proceedings and reviews and appeals in accordance with its laws (Articles 13.3 and 13.4).

Notification and Provision of Information

Article 13.5 requires that where a Party considers that an actual or proposed measure might materially impact the operation of the Agreement or otherwise substantially impact another Party's interest under the Agreement that Party notifies the interested Party, to the extent possible, of the actual or proposed measures. Article 13.5 further requires Parties to provide information and respond to questions pertaining to any actual or proposed measure when requested.

Dispute Settlement

The Dispute Settlement Module provides mechanisms for the settlement of disputes arising under the Agreement through arbitration and mediation. These mechanisms provide effective, efficient and transparent processes to settle any disputes with a focus on co-operation and consultations to arrive at a mutually satisfactory resolution to any matter covered by the Agreement. The procedures for the mediation and arbitration mechanism are contained in annexes to the Dispute Settlement Module. Annex 14-A sets out the provisions that are not subject to the Dispute Settlement Module.

Mediation Mechanism (Annex 14-B)

The mediation mechanism outlines procedures for the initiation of a mediation procedure, the selection of a mediator and the rules of the mediation procedure. The mediation mechanism applies across all the obligations in the Agreement. Participation in a mediation procedure is voluntary and Parties may withdraw from mediation at any time.

Arbitration Mechanism (Annex 14-C)

The arbitration mechanism sets out a process for state-to-state dispute settlement under DEPA. The first step in bringing a state-to-state dispute is to request formal consultations as provided for in Article 14C.1. If the disputing Parties are unable to resolve the matter through those consultations, the Party that requested consultations may request the establishment of a panel to make findings and determinations on the issue. The disputing Parties may also request that the panel make specific recommendations regarding resolution of the dispute.

At any time during the dispute settlement process, the disputing Parties may agree to utilise an alternative method of dispute resolution such as good offices or conciliation to try and find a

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solution to their dispute (Article 14.4). In order to ensure fairness and independence of the panel, each of the disputing Parties has the opportunity to appoint one panellist, with the third panellist (the chair) chosen by agreement of the Parties where possible. The chair cannot be a national of or employed by the disputing Parties. If the Parties cannot agree on appointment of the chair either Party may request that the Director General of the WTO make the appointment.

When a panel makes findings and determinations that a measure is inconsistent with a Party's obligations under the Agreement, or that a Party has otherwise failed to carry out its obligations under the Agreement, the responding Party is required to, whenever possible, eliminate the non-conformity. The responding Party must do so within a reasonable period of time if it is not practicable for it to comply immediately (Article 14C.12). The disputing Parties must endeavour to agree on a reasonable period of time, but if they are unable to do so, the matter may be referred to the panel chair to determine a reasonable period through arbitration.

Exceptions

General Exceptions

Article 15.1 applies the General Exceptions that are found in Article XX of GATT and Article XIV of GATS across the Agreement. The effect of such incorporation is that, provided such measures are not used for trade protectionist purposes, the Agreement will not prevent any Party from taking measures (including environmental measures) necessary to protect human, animal or plant life or health, or public morals. Article 15.1 also elaborates on the GATT exception relating to the protection of national treasures of artistic, historic or archaeological value in a manner that serves to underscore the importance New Zealand attributes to the protection of its natural heritage and culture.

Security Exception

The security exception in Article 15.2 provides that a DEPA Party cannot be required to provide or allow access to any information where it determines that to do so would be contrary to its essential security interests. In addition, the exception ensures that a DEPA Party may apply any measure that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace and security, or the protection of its own essential security interests.

Treaty of Waitangi

The effect of the Treaty of Waitangi exception is that, provided measures are not used for trade protectionist purposes, DEPA will not prevent New Zealand from taking measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by DEPA, including in fulfilment of its obligations under the Treaty of Waitangi. The text also specifies that interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations

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arising under it, shall not be subject to the dispute settlement provisions of the Agreement (Article 15.3).

Prudential Exception and Monetary Exchange Rate Policy and Measures to Safeguard Balance of Payments

Article 15.4 provides that DEPA will not prevent the Parties from taking measures for prudential reasons, including for the protection of investors and others owed a fiduciary duty by a financial service supplier, or to ensure the integrity and stability of the financial system. It also provides that nothing in the Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. Article 15.6 provides that DEPA will not prevent the Parties from taking actions necessary to respond to a serious balance of payments or external financial difficulties.

Taxation Exception

Article 15.5 provides that nothing in the Agreement shall apply to taxation measures and nothing in the Agreement shall affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency between DEPA and a tax convention, the Taxation Exception provides that the tax convention shall prevail to the extent of the inconsistency.

Final Provisions

Depositary

Article 16.1 establishes New Zealand as the Depositary for the Agreement and sets out the functions of that role.

Entry into Force, Amendment, Accession and Withdrawal

Article 16.2 provides that the Agreement will enter into force 90 days after the date on which at least two signatories have notified the depositary in writing of the completion of their applicable legal procedures. The Agreement will enter into force for subsequent signatories 90 days following the date on which they notify the depositary of the completion of their applicable legal procedures.

Article 16.3 provides that the Parties may agree to amend the Agreement. Article 16.4 provides for the Parties to agree on the accession of on terms approved by a decision of the Joint Committee. Article 16.5 provides the ability for Parties to withdraw from the Agreement. Withdrawal shall take effect six months following the date in which an instrument of withdrawal is provided to the Depositary. If a Party withdraws, the Agreement shall remain in force for the remaining Parties.

Article 16.6 provides that nothing in the Agreement shall be construed to require a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the

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legitimate commercial interests of particular enterprises, public or private. Article 16.7 provides that where a Party designates information shared under the Agreement as being confidential the receiving Parties must maintain the confidentiality of that information. If such information is to be disclosed by the receiving Party in order to comply with domestic legal requirements they are required to consult with the Party who provided the information prior to disclosure.

Electronic Signature

Article 16.9 provides that the Agreement may be signed electronically by the Parties. It also clarifies the Parties understanding that the electronic signing of this Agreement shall carry the same weight and legal effect as affixing hand-signed wet-ink signatures on treaties under international law.

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

The obligations in the Agreement are met by New Zealand's existing domestic legal and policy regime. In summary, this is because New Zealand already has an open economy that places few barriers in the way of digital trade. Additionally, New Zealand already has a number of commitments in the CPTPP and the Singapore-New Zealand CEP Upgrade that cover commitments in the DEPA.

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

7.1 Economic effects

The DEPA is expected to provide small but net positive impacts on the New Zealand economy, largely from the enhanced trade facilitation measures. While modest now, the net economic impacts may grow over time if and when further economies join the agreement. Formal economic modelling of the DEPA has not been undertaken. This is due to the primarily cooperative nature of the DEPA.

The main economic impact is expected to come from the business and trade facilitation measures that promote the adoption and use of technology to facilitate trade. These measures are expected to reduce the administrative burden and resulting costs for trading businesses associated with exchanging trade administration documents and invoices. These types of costs are relatively higher for SMEs, who have a smaller resource base to deal with them.

For both exporting and importing firms, reducing trade related costs will improve competitiveness and profitability. Consumers may also benefit if lower trade costs are passed through into lower prices. Faster customs procedures will also provide small economic benefits to businesses and their customers.

Most businesses that choose to will be able to adopt to e-invoicing and electronic trade documents with minimal changes to existing internal IT systems and business processes. However, some businesses may need to invest in their systems and processes in order to access these benefits. This may entail some additional cost to those businesses.

Other modules of the DEPA may provide more certainty to businesses in a range of digital areas, enabling them to make trade and related investment decisions with more confidence. However, the limited number of Parties to the DEPA and the nature of many of the modules, which either codify existing provisions in other trade agreements or provide scope for further discussions on key issues, mean that this certainty effect is likely to be quite small. In the longer term, if the regulatory cooperation efforts under the DEPA modules are successful and rules are adopted more widely, the economic impacts will be greater.

7.2 Social effects

The impact of DEPA on employment is expected to be negligible.

The small positive economic impacts of DEPA are likely to be particularly important to exporting SMEs, who typically face similar fixed costs to trade as larger companies but have fewer internal resources to respond to them. Reducing some of these trading costs will improve the competitiveness and profitability of exporting SMEs. It is also anticipated that the benefits to SMEs may accrue over time, particularly as there is provision for a SME Dialogue as part of the DEPA. This will enable DEPA partners to understand directly what provisions would benefit SMEs in the future.

The DEPA is expected to have a negligible impact on other outcomes include health, social regulation, immigration and human rights.

7.3 Effects on Māori

As the founding document of New Zealand, the Treaty of Waitangi is fundamental to the on-going relationship between the Government and Māori. Like New Zealand's other FTAs, the DEPA has protection to ensure that the unique relationship between the Crown and Māori is preserved. This has been achieved by ensuring that the obligations in the DEPA do not impede the Crown's ability to fulfil its obligations under the Treaty of Waitangi.

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

Article 15.3 contains the Treaty of Waitangi exception. This exception specifically refers to the Treaty of Waitangi, and applies to the entire Agreement. It allows New Zealand to adopt any measure that it deems necessary to afford more favourable treatment to Māori in respect of the matters covered by the Agreement.

As noted elsewhere, engagement with Te Taumata was critical to ensuring the DEPA included provisions on digital inclusion and inclusive trade. It is expected that the DEPA could have significant impact for Māori as an increasing number of businesses seek to take up digital solutions, particularly as a result of COVID-19. It will be important that MFAT continue to advance these interests in the implementation of DEPA to ensure the positive effects are realised.

7.4 Cultural effects

The DEPA is not expected to have any negative cultural effects. Indeed, DEPA includes certain safeguards to ensure that New Zealand preserves the ability to pursue certain cultural policy objectives, such as supporting creative arts and taking measures in relation to Māori, including in fulfilment of Treaty of Waitangi obligations.

DEPA incorporates the GATT exception (GATT Article XX (f)) that Parties may take measures necessary to protect national treasures or specific sites of historical or archaeological value, providing that such measures are not used for trade protectionist purposes. DEPA elaborates further that Parties may take measures in support of creative arts of national value and that this may include a range of artistic activity, for example, theatre, dance and music, literature, indigenous traditional practice and digital interactive media. The DEPA also incorporates a specific creative arts exception.

7.5 Environmental effects

The impact of DEPA on the environment is expected to be negligible. There is no specific module on digital trade and environment. There may be benefits to the environment as a result of the broader transformation to digital trade as envisaged by DEPA's wider context. However, the World Economic Forum has noted a range of challenges to be addressed for that full potential to be realised, including in relation to energy use and e-waste.⁸

⁸ See <http://reports.weforum.org/digital-transformation/enabling-the-transition-to-a-sustainable-world/>

8 The costs to New Zealand of compliance with the treaty

At this point in time, all costs associated with the implementation of the Agreement are expected to be met through reallocating existing resources and agency baseline funding. Following ratification of the Agreement, government agencies would work with the private sector and others to best leverage the opportunities that arise from the DEPA. The Trade Negotiations Fund has a funding pool dedicated to FTA promotion which would be used for such activities.

A number of commitments in the Agreement establish mechanisms that allow for future cooperation between New Zealand, Chile and Singapore in areas of mutual interest. Cooperation proposals are expected to be developed over time through these mechanisms and are expected to fall within the scope of existing departmental activity and may require additional resources or a reallocation of resources within departments. Where possible, these will be funded from baselines, and Cabinet approval will be sought for any additional resources.

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

9.1 Engagement overview

The negotiation of DEPA was conducted by the Ministry of Foreign Affairs and Trade, in consultation with other agencies.

The negotiations were launched in May 2019. From this time, MFAT ran a consultation programme to raise public awareness of the negotiations and to seek stakeholder views. This programme used online communication channels, supported by roadshow-style presentations and discussions with stakeholders.

The communications programme supporting the consultations included:

- A call for submissions on the DEPA immediately after launch of negotiations
- An ongoing call for submissions throughout the negotiating period
- Specific engagement with Māori
- Discussions with key stakeholders
- Ongoing presentations on the negotiations as part of the wider trade policy consultations with interested parties between June and November 2019
- Regular updates on the MFAT website, providing information about the negotiations (including following most negotiating meetings) supported by social media outreach
- Updating the MFAT website with the text that New Zealand had proposed for discussion in the DEPA negotiations
- Regular updates on the negotiating process, emailed to stakeholders

9.2 Submissions process

The consultation process elicited submissions from individuals, organisations and businesses. Comments were received from:

- WeCreate
- New Zealand Council of Trade Unions
- Professor Jane Kelsey
- Export NZ
- Chartered Accountants Australia and New Zealand
- Fonterra
- Information Technology & Innovation Foundation

9.3 Engagement with Māori

The DEPA is one of the first Agreements where MFAT has worked in collaboration with te Taumata.⁹ Engagement with te Taumata was critical to ensuring the DEPA included provisions on digital inclusion and inclusive trade. This engagement identified a range of known Māori interests and considered the DEPA's potential impact on such interests. As noted below, there were specific discussions with Māori interest groups.

9.4 Public Engagement Sessions

Invitations to public events are sent out by host organisations (Export NZ offices or chambers of commerce) to their local members and advertised through MFAT's website, promotion on social media and emails/newsletters to stakeholders. There were 15 general meetings and 2 meetings with Māori focus. There were also specific sessions with stakeholders. There were 12 general meetings and 1 Māori focus. MFAT also hosted a specific briefing for the technology sector in Auckland.

9.5 Summary of Issues Raised

A range of comments were received on the DEPA through both written comments and face to face meetings. General themes of comments include:

⁹ Te Taumata is a unique engagement model with Māori that provides a dedicated platform for deeper discussion with Māori/iwi stakeholders on priority trade policy issues. Te Taumata draws on the extensive skills, experiences and connectivity of its members, who are involved in a diverse range of Māori business, international trade, academia, treaty claims and community development. Te Taumata is chaired by Chris Karama Insley (Te Whānau-ā-Apanui, Ngāti Porou).

- Those who supported the negotiations noted that the discussions are timely given New Zealand's changing export mix, and will encourage further development of higher value services-based trade.
- On the other hand, some raised a concern that digital economy agreements have broad social and developmental impacts that are not predominantly commercial. Some were of the view that digital economy provisions should not be part of free trade and investment commitments.
- Many groups noted that the digital economy potentially opens up opportunities for the Trade for All agenda, supporting SMEs, women in trade, Māori business and supporting the growth of Pacific Island countries through e-commerce.
- There was a view that failure to seize the initiative with an ambitious DEPA will hold back New Zealand's digital competitiveness. New Zealand's firms already face considerable barriers trying to engage in digital trade with China, India, and many other countries. CPTPP was an ultimately positive development for digital trade protections. However, more needs to be done to achieve a larger, more seamless digital market for New Zealand firms.
- There was recognition that policy approaches appear to have been driven by specific e-commerce platforms, or individual countries, rather than through a global or multilateral approach.
- A number noted that size and relative influence of large platforms was an important factor in the digital economy. Platforms' roles in key markets can mean that there is little room to negotiate or shape these terms for exporters (including through fees and algorithms).
- There was also the view that large platforms can undermine employment relationships, increasing insecurity, weakening minimum wage laws, making collective bargaining difficult or impossible, and increasing the likelihood of discrimination.
- On a similar topic, there was a view that platforms should be subject to competition policy disciplines that ensure a more level playing field for SMEs (enhance transparency, support consumer choice, and competition).
- There was interest in ensuring protection of personal information. Some noted that the diversity of regulatory approaches, interoperability and standards, or approaches to personal data protection and privacy globally adds complexity and uncertainty, and significantly increases compliance costs for a company which operates across multiple jurisdictions.
- On the same topic, some noted that privacy and data protection safeguards should appropriately balance privacy rights and encourage innovation in the use of data sets. Connected to this, comments raised the importance of sovereignty, control and jurisdiction of data.

- The primary objective should be to ensure that the digital economy is used to enhance New Zealanders' wellbeing. The methods may include the regulation of the use of digital technologies; whether or not those are a 'barrier to trade' is secondary.
- Provisions should allow for regular opportunities for review and enhancement with appropriate private sector input, recognising the potential growth and rapid evolution in supply chain and e-commerce technology.
- There were also comments about considering New Zealand's own domestic policy settings (for example in relation to customs, biosecurity, food safety and tax) to enable businesses to capture the value generated through cross-border e-commerce channels, whilst maintaining our regulatory standards and reputation as a reliable trading partner and producer of high-quality, safe and suitable products.
- Some suggested that the title of this proposed agreement is unclear. Why use term "digital" in preference to "E-commerce" which has been used in other negotiations.

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

The DEPA includes a procedure for it to be amended, in accordance with each Party's domestic procedures. Given DEPA is intended to be a living agreement, it is possible that this amendment procedure will be used to ensure that DEPA remains up to date and reflects emerging technologies. It is not yet known what amendments might be taken up by DEPA partners.

The Parties may agree, in writing, to amend this Agreement. When so agreed, by all Parties and approved in accordance with the applicable legal procedures of each Party, an amendment shall enter into force 60 days after the date on which the last Party has notified the Depositary in writing of the approval of the amendment, in accordance with their respective legal procedures, or on such other date as the Parties may agree.

11 Withdrawal or denunciation provision in the treaty

Any Party may withdraw from the DEPA by providing written notice of withdrawal to the Depositary (Article 16.5). The withdrawal would take effect six months after notice is provided. If a Party withdraws, the Agreement would remain in force for the remaining Parties.