

Pacific Agreement on Closer Economic Relations (PACER) Plus National Interest Analysis

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Contents

1 Executive summary	5
1.1 Background	5
1.2 Reasons for New Zealand to become a Party to the Agreement	6
1.3 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand	7
1.4 Measures required in New Zealand to implement PACER Plus	12
1.5 Economic, social, cultural and environmental effects	13
1.6 Consultations	13
1.7 Subsequent changes to PACER Plus	14
1.8 Conclusion	14
2 Nature and timing of proposed treaty action	15
3 Reasons for New Zealand becoming a Party to the Treaty	16
3.1 Background	16
3.2 Direct benefits from enhanced trade and economic links under PACER Plus	16
3.3 Indirect benefits from Pacific economic integration under PACER Plus	18
4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand	19
4.2 Rules of Origin and Origin Procedures	48
4.3 Sanitary and Phytosanitary (SPS) Measures	50
4.4 Technical Regulations, Standards, and Conformity Assessment	51
4.5 Customs Procedures	51
4.6 Investment	52
4.7 Trade in Services	55
4.8 Temporary Movement of Natural Persons Chapter (and Labour Mobility Arrangement)	59
4.9 Development and Economic Cooperation Chapter and Implementing Arrangement	61
4.10 Legal and Institutional Provisions	63
4.11 Labour and environment	65
4.12 Side Letter on the application of PACER Plus between Australia and New Zealand	65

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	66
5.1 Trade in Goods	66
5.2 Rules of Origin and Verification Procedures	68
5.4 Sanitary and Phytosanitary (SPS) Measures	71
5.5 Technical Regulations, Standards and Conformity Assessment Procedures	71
5.6 Trade in Services	72
5.7 Movement of Natural Persons Chapter (and Labour Mobility Arrangement)	76
5.8 Investment	77
5.9 Development and Economic Cooperation	81
5.10 General Provisions and Exceptions	82
5.11 Institutional Provisions	83
5.12 Transparency	83
5.13 Consultations and Dispute Settlement	84
5.14 Final Provisions	84
6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation	85
7 Economic, social, cultural and environmental costs and effects of the treaty action	86
7.1 Economic effects	86
7.2 Social effects	88
7.3 Employment	89
7.4 Social regulation	89
7.5 Immigration	90
7.6 Cultural Effects	90
7.7 Treaty of Waitangi obligations and Māori interests	91
7.8 Environmental Effects	92
7.9 Regulatory Effects	92
7.10 Product Effects	92
7.11 Structural Effects	93
7.12 Scale Effects	93
8 The costs to New Zealand of compliance with the treaty	94
8.1 Summary of Costs	94
8.2 Tariff revenue	95
8.3 Promotion and Outreach Costs	95

8.5 Costs to government agencies of implementing and complying with the Agreement	95
8.6 Costs to businesses of complying with the Agreement	96
9 Completed or proposed consultation with the community and parties interested in the treaty action	96
9.1 Inter-departmental consultation process	96
9.2 Public consultation process	97
9.3 Issues covered in the consultation process	98
10 Subsequent protocols and/or amendments to the treaty and their likely effects	98
11 Withdrawal or denunciation provision in the treaty	99
12 Agency Disclosure Statement	99

1 Executive summary

1.1 Background

Negotiations for the *Pacific Agreement on Closer Economic Relations Plus (PACER Plus)* were launched by Pacific Islands Forum Leaders at their 40th Meeting in August 2009. Underpinning this initiative was recognition by Leaders of the importance of deepening regional trade integration as a means to create jobs, enhance private sector growth, raise standards of living and advance the region's sustainable economic development. In total 15 rounds of negotiations were held, with negotiations substantively concluded by New Zealand, Australia and 12 Forum Island Country Trade Ministers on 20 April 2017 in Brisbane. Once it enters into force, the Agreement will provide a framework for other Forum members, including Fiji and Papua New Guinea, but also potentially its newest members; French Polynesia and New Caledonia, to accede to in the future.

PACER Plus is a plurilateral treaty level agreement negotiated between 14 of the members of the Pacific Islands Forum: Australia, Cook Islands, Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Palau, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. It builds on existing frameworks including the South Pacific Regional Trade Agreement (SPARTECA) 1980, under which New Zealand currently provides duty free treatment to imports of goods from Pacific Island Countries, and the original Pacific Agreement on Economic and Trade Relations (PACER) 2001, a framework agreement among Forum Island Countries leading to the negotiation of PACER Plus. The Agreement will be the first reciprocal trade agreement governing New Zealand's approximately NZD\$654 million of goods and services exports¹ to the Parties and the first trade liberalisation framework governing our trade with 8 non-WTO (World Trade Organisation) member countries Cook Islands, Niue, Nauru, Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, Kiribati and Tuvalu.

PACER Plus is also a landmark development Agreement set firmly within New Zealand's broader foreign policy and development objectives in the region. The linkages between the New Zealand and Pacific communities support improved prosperity through the sending of remittances, business to business activities, and by providing pathways for goods and services exports. Pacific Island countries represent a diversified market for New Zealand exports including manufactured products, while tourism from New Zealand into the Pacific makes a significant contribution to foreign exchange earnings for a number of Pacific Island countries. Labour mobility (through the Recognised Seasonal Employer scheme) already benefits Pacific Island workers and New Zealand's viticulture and horticulture industries, which in turn contribute to the New Zealand Government's ambitious export goals under the Business Growth Agenda and Trade Agenda 2030.

¹ Made up of \$376 million of goods exports (2013 – 2015 average) and \$278 million of services exports (2016 figure).

This National Interest Analysis (NIA) assesses PACER Plus from the perspective of its impact on New Zealand and New Zealanders.

This NIA does not seek to address the impact of PACER Plus on other PACER Plus Parties except to the degree that this is relevant to New Zealand's broader interests in the Pacific.

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

PACER Plus is a landmark trade and development agreement that aims to create jobs and wealth in the Pacific by making it easier for these countries to trade and attract investment. It aims to support regional trade and economic integration that creates jobs, raises standards of living and encourages sustainable economic development in the Pacific. A stable and prosperous Pacific provides direct and indirect benefits for New Zealand. Improved Pacific social and economic well-being reduces risk and delivers opportunities for New Zealand and New Zealanders. Delivery of PACER Plus will contribute to the Trade Agenda 2030, *'Shift one: Trade architecture- building Free Trade agreements and implementing them,'* by securing New Zealand's competitive position in these markets through binding commitments and most-favoured-nation treatment for our trade across the investment, services, and, for the first time in a New Zealand trade Agreement, the goods chapters of the Agreement.

Currently trade with Forum Island Countries can be unpredictable and a trade agreement that is based on the existing multilateral rules based trading system will assist New Zealand in a region where the majority of countries are not WTO members, and therefore are not bound by WTO disciplines including WTO limits on the maximum tariff rate that they can apply. Consequently, PACER Plus seeks to create greater certainty and transparency for New Zealand businesses trading in the region, facilitate the identification of opportunities for joint ventures and new areas of trade in a challenging environment, and preserve New Zealand's position against major competitors from outside of the region in the years to come.

PACER Plus will also increase certainty for New Zealand service exporters and investors. Stronger investment protection rules and basic protections should help make the Pacific a more attractive investment option for New Zealanders. Basic visa access will also be ensured for key employees involved in doing business in the Pacific. Although up-front services and investment commitments are limited, Pacific countries will pass the benefits of any future liberalisation and commitments made in Free Trade Agreements concluded with other partners to New Zealand investors and service exporters due to sound most-favoured-nation commitments.² The Agreement provides some improved access for New

² The most-favoured-nation (MFN) provision in PACER Plus ensures that New Zealand (and Australia) will benefit from any greater liberalisation made by a Forum Island Country Party in future free trade agreements with developed or significant developing countries. Future trade agreements with other Pacific Island countries and territories are exempt from the Most-favoured-nation obligation.

Zealand exporters to Pacific Island country markets, which, although small, present niche opportunities.

New Zealand's approach to PACER Plus reflects our view that this is first and foremost a development agreement. We have been conscious that we are negotiating with small island developing states that are uniquely vulnerable. PACER Plus presents a unique opportunity for the Forum Island Countries (FICs) to increase their participation in the international trading system and use trade as an engine of economic growth and sustainable economic development, which in turn will help alleviate poverty, increase living standards of their people and meet the United Nations sustainable development goals. Greater prosperity and resilience in the region is in New Zealand's wider interests.

The objectives of PACER Plus and the New Zealand Aid Programme are mutually reinforcing. The New Zealand Aid Programme supports sustainable economic development in the Pacific through investments in economic infrastructure, key export sectors including private sector development and trade facilitation, and through increasing opportunities for regional labour mobility. PACER Plus will leverage New Zealand's Overseas Development Assistance (ODA) investments to increase regional trade, investment and labour flows. This will, in turn, build Pacific Island countries' private sectors, create jobs and raise standards of living thus potentially reducing demand that would otherwise impact negatively on other areas of New Zealand's economy such as social and emergency services.

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

PACER Plus will have negligible **tariff revenue implications** for New Zealand given that duty free treatment is already provided to these Pacific Island Countries, under non-reciprocal agreements such as South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) and the WTO Generalised System of Preferences.³ In practice this means the overwhelming majority of exports from PACER Plus Parties already enter New Zealand duty free; of the NZD\$23 million dollars exported from these countries to New Zealand each year, less than NZD\$2 thousand per annum⁴ is payable as duties.

PACER Plus will create greater certainty for New Zealand **goods exporters** by:

- ensuring that New Zealand remains competitive in the future against significant competitors in the region through most-favoured-nation provisions in the

³ Generalised Systems of Preferences are programmes by developed countries which grant preferential tariffs to imports from developing countries. These non-reciprocal programmes are allowable under the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", as adopted under GATT in 1979.

⁴ Based on average import duties collected between 2013 and 2015.

Agreement including, unusually, in the goods chapter.⁵ This means that PACER Plus Parties agree to provide the same tariff concessions to New Zealand exporters that they provide in future free trade agreements with developed or significant developing countries.⁶

- Legally binding in applied tariff rates on the vast majority of trade⁷ and providing a WTO consistent framework for trade. This is of particular importance in relation to six of eight non-WTO members, Tuvalu, Kiribati, Nauru Palau, Republic of the Marshall Islands and Federated States of Micronesia - for these countries PACER Plus will represent the first legally binding commitments made to New Zealand on trade.
- securing legally binding outcomes on 84 percent of New Zealand's exports and (eventual) elimination outcomes on 88 percent of New Zealand's exports. This includes elimination of tariffs on; 99.7 percent of raw hides exports, 97.9 percent of wood, pulp and paper exports, 87 percent of metal and metal product exports, 86 percent dairy exports, 80 percent of meat and meat product exports, 80 percent of fish and fish product exports.
- providing modern and flexible rules of origin to better facilitate trade.

PACER Plus strikes a careful balance between encouraging liberalisation and providing security to the small vulnerable economies in the region. Tariffs will be eliminated 84 percent of New Zealand goods exports over extended timeframes (25 or 35 years and longer for least developed countries that will implement reductions, subject to their graduation to developing country status⁸). While some sectoral outcomes, such as for meat, sit below levels secured in New Zealand's existing Free Trade Agreements, it is important to recall that the countries involved are small vulnerable Pacific Island countries, many of which are not World Trade Organisation members, and that these commitments have been made in the context of a development Agreement.

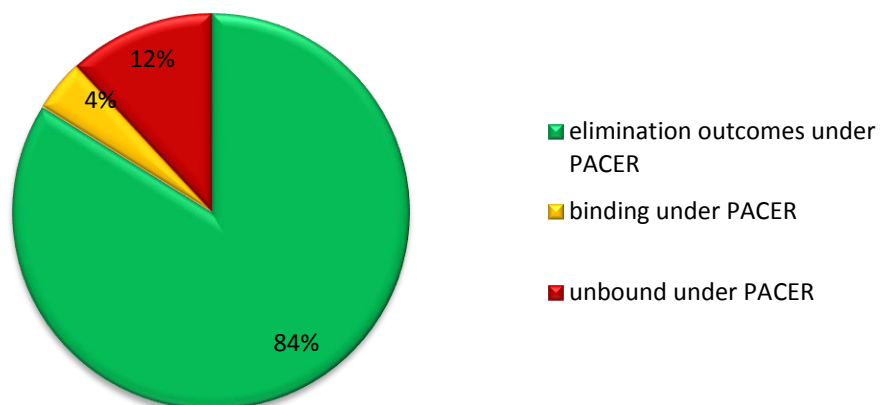
⁵ Under PACER Plus the threshold for application of Most-favoured-nation for trade in goods in the case of a Free Trade agreement between Forum Island Countries and one other country will be 1 percent of world merchandise trade.

⁶ Significant developing countries covered by the most-favoured-nation obligation are those that account individually for more than 1 percent of world merchandise trade. See the Chapter 2, Article 3.2(c)(i).

⁷ 88 percent of New Zealand exports will be bound at current rates with tariffs gradually eliminated on 88 percent of New Zealand exports at the full implementation of PACER Plus.

⁸ The Committee for Development Policy, a subsidiary body of the United Nations Economic and Social Council is mandated to review the category of Least Developed Countries every three years. A country may graduate from LDC to developing country if they meet two of three following criterion for graduation; the income criterion, the Human assets index and/or the Economic Vulnerability Index.

total coverage of New Zealand exports under PACER Plus



In recognition of the unique vulnerabilities of the small island developing Parties involved PACER Plus will be the only New Zealand free trade agreement to include a provision on industry development. The provision provides flexibility to Parties during the transition period for the elimination of tariffs to enable them to support the establishment or expansion of a new industry, or to support an industry destroyed or substantially damaged as a result of hostilities or natural disasters. This flexibility comes at the cost of some increased uncertainty for New Zealand businesses; however such uncertainty is balanced by limitations on use of the measure, for example a requirement for consensus between the Parties for application of a measure through the Joint Committee which will be established to oversee implementation of PACER Plus. The provision is unique to this free trade agreement, but broadly follows examples found in other development agreements in Africa and the Pacific. Its inclusion reflects the special relationship between New Zealand, Australia and the Pacific Island Countries. Clear preambular language is included in the provision which limits precedential implications.

The more liberal **rules of origin** (in particular compared with SPARTECA) will allow the Pacific Parties more freedom in sourcing their inputs from countries other than New Zealand or Australia. Companies supplying input materials for Pacific manufacture will need to remain competitive. However, New Zealand exporters to the Pacific Region are not required to obtain independent certification that their goods are originating, thus reducing compliance costs; and the product specific rules are now more closely aligned with New Zealand's other free trade agreements, thereby reducing administrative costs for compliance and enforcement.

The **Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT)** Chapters do not add any substantive obligations to those Parties, like New Zealand, that are already bound by the WTO, SPS and TBT Agreements. However the non-WTO members are only obliged to adopt or apply compliant measures "to the extent of its capacity". Consequently a degree of uncertainty continues in these areas for New Zealand companies seeking to import from the Pacific. However, a key priority in the

Development and Economic Cooperation package will be to enhance the capacity of Forum Island Country parties to develop and maintain export markets.

Through the **Chapter on Customs Procedures**, PACER Plus Parties are committed to applying international standards and best practices. This will enhance the customs commitments in the region. New Zealand exporters will benefit through increased efficiency at the border and expedited release of goods. This should lead to a lower cost of trade, and simplified customs procedures for traders. However, a number of the Forum Island Country Parties are not signatories to the conventions or agreements that promote international best practices. Hence, they lack the necessary skills and knowledge to implement the provisions embodied in those conventions. These countries may require technical assistance to implement the provisions of this Chapter. New Zealand is expected to assist Pacific customs administrations, subject to available resources and to the extent New Zealand domestic laws permit.

PACER Plus establishes the first treaty-level **framework for investment** in the Pacific region, which safeguards the interests of New Zealand investors in non-services sectors and expands on that already afforded through the General Agreement on Trade in Services for services sectors. This Chapter establishes a credible legal framework with a set of rules based on international best practice, including customary international law, to facilitate investment flows (a key development objective for the Forum Island Countries), and provide for the protection of investments made by New Zealanders. The chapter facilitates the creation of a stable and predictable environment for foreign investment, taking into account national policy objectives and the right of each Party to regulate for public policy purposes.

New Zealand investors will benefit from:

- provisions that enable the free transfer of all payments relating to an investment, including capital necessary for establishing the investment, and the returns generated from that investment, between the Forum Island Countries and New Zealand (Chapter 9, Article 14). These are a significant addition to the current protections available to New Zealand investors;
- commitments to provide protection from arbitrary expropriation and ensure that any expropriation actions are appropriately compensated should they occur;
- provisions to enhance the transparency of Parties' investment regimes, including by requiring the publication of domestic investment measures. This will be a useful mechanism for keeping New Zealand investors abreast of future developments in the Parties' foreign investment frameworks, particularly those countries where gaining information on policy setting has – in the past – been difficult.

The Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands, the Solomon Islands, Tuvalu all maintain the right to screen all foreign investment. PACER Plus is expected to lead to increased transparency which will

help offset the lack of certainty that this represents for New Zealand investors. However, all have undertaken to consider further reform, and should they afford better treatment to investors of another country than that treatment is also afforded to New Zealand investors (subject to limited exceptions).

Samoa, Tonga and Vanuatu have committed not to impose a general investment screening regime (but retain the current exclusion for foreigners to own land).

PACER Plus seeks to facilitate **trade in services** between New Zealand and Forum Island Countries by building on current commitments under the WTO General Agreement on Trade in Services. In particular, Samoa, the Solomon Islands, Tonga, and Vanuatu have offered improvements across a wide range of services sectors (listed in section 4.9 below). New Zealand service suppliers will, for the first time, benefit from commitments made by the non-WTO Member Forum Island Countries. New Zealand service suppliers will be on a level playing field with competitors from Australia, and be entitled to more favourable treatment in comparison to third party competitors without a free trade agreement with the Forum Island Countries.

New Zealand service suppliers will benefit from greater certainty and transparency doing business in Forum Island Countries, with domestic regulation rules that are consistent with WTO standards for sectors where specific commitments have been made. These provisions are consistent with New Zealand's existing regulatory settings and practices and with the approach we pursue in WTO and other free trade agreement negotiations. New Zealand retains the right to regulate and introduce new regulations for the purpose of domestic public policy setting, provided they are not inconsistent with the obligations of this Chapter.

The overall standard of services commitments made by the Forum Island Countries is less than that New Zealand would typically expect in other free trade agreement negotiations. However, the new commitments made are nonetheless commercially significant. Importantly, respectable most-favoured-nation coverage will mean that where improved treatment is afforded to other countries, New Zealand services exporters will also benefit.

The **Movement of Natural Persons Chapter** ensures access for New Zealand business visitors, intra-corporate transferees, contractual service suppliers, installers or servicers and (in some instances) management trainees on professional development, to enter and temporarily stay in the Forum Island Countries. In the case of contractual service suppliers this access may be subject to no suitable local workers being available. It also facilitates New Zealand businesses taking up commercial opportunities under the Agreement in the Pacific region. The availability of clear and up-to-date information about the requirements and conditions for temporary entry for business visitors, combined with reasonably expeditious processing of immigration documents and applications, will facilitate the movement of business people, investors and traders around the region.

New Zealand's commitments are within with our existing immigration policy framework, and are similar to the treatment offered in the ASEAN-Australia-New Zealand Free Trade Agreement.

The **Institutional Provisions Chapter** establishes a Joint Committee to oversee the operation of the Agreement and the associated Development and Economic Work Programme. The obligations in PACER Plus have been drafted so as not to impair the ability of countries to make legitimate public policy, but should there be a situation where such government action (or inaction) would breach an obligation, then the **General Provisions and Exceptions** Chapter provides a safety net. The exceptions cover a wide variety of policy areas that are critical for government to preserve regulatory freedom - including health, environment, security and taxation, as well as to enable New Zealand to be able to meet its obligations to Māori, including under the Treaty of Waitangi. The Party-to-Party **dispute settlement** mechanism is simple, effective, and broadly in line with the principles of the WTO Dispute Settlement Understanding and the dispute settlement provisions found in New Zealand's other trade agreements. There is no Investor-State dispute settlement mechanism in PACER Plus.

Alongside PACER Plus, will be a standalone **Labour Mobility Arrangement**. This will reinforce efforts to support greater labour mobility across the region, facilitating Pacific workers to access temporary employment in New Zealand and Australia in sectors that face labour shortages. This will have economic benefits for New Zealand businesses seeking to export to other regions of the world and for New Zealanders consuming or producing services in Pacific island countries.

There are no commitments to provide access to New Zealand's labour market under the Labour Mobility Arrangement, and any new schemes will continue to be based on the Government's 'New Zealanders first' principle, be employer-driven and within existing policy settings. Therefore the Labour Mobility Arrangement will not have a negative impact on immigration or unemployment in New Zealand.

1.4 Measures required in New Zealand to implement PACER Plus

A very small number of legislative and regulatory amendments are required to align New Zealand's domestic legal regime with the rights and obligations created under PACER Plus and thereby enable PACER Plus to enter into force for New Zealand.

The following changes have been identified as being required:

- an amendment to the Tariff Act 1988 and an Order in Council to enable the application of preferential tariff rates to imported goods of PACER Plus Parties (Parties currently receive duty free treatment under SPARTECA, however a separate legal instrument is required to implement duty free preferences under this Agreement) and to recognise the 12 Forum Island Countries as 'preferential countries' under PACER Plus; and

- an amendment to the Customs and Excise Act 1996 and regulations under the Customs and Excise Act 1996 will be required to implement the agreed rules of origin and new rules on 'goods returned after repair or alteration' (this amendment will be made under the Tariff Act 1988).

The Pacific Agreement on Closer Economic Relations (PACER) Plus Bill was given a priority 3 ranking (to be passed in 2017 if possible) on the 2017 legislative programme.

1.5 Economic, social, cultural and environmental effects

In the year to December 2016 New Zealand exported NZD\$278 million of services to PACER Plus Parties, excluding Australia. This represents 1.3 percent of total services exports. Services make up over 60 percent of Forum Island Country exports and offer greater potential for growth than Trade in Goods, especially in relation to tourism. We can expect two way trade in services to increase. New Zealand companies currently export NZD\$376 million of goods to PACER Plus Parties excluding Australia. Only NZD\$23 million of goods is imported by New Zealand from the PACER Plus Parties. PACER Plus will preserve current New Zealand access to the goods markets of the Parties and may, over the long term, lead to minor increases in the volume of goods trade between the Parties as tariffs reduce the costs of imports for Pacific consumers, and aid for trade and related assistance improves the export capacity of the Pacific Island Countries.

PACER Plus is expected to have an overall net benefit to New Zealand socially due to the anticipated net economic benefits of PACER Plus; enhanced people to people relationships; and the reduction somewhat in the growth of potential demand in the future for New Zealand social services from nearby Pacific countries. Social regulation and employment and immigration policy settings are not affected by PACER Plus. PACER Plus will not impede New Zealand's current or future ability to meet its obligations to Māori, including under the Treaty of Waitangi. Nor will it prevent domestic changes that might be made in the future, including in relation to the protection of indigenous flora and fauna or Treaty of Waitangi settlements. PACER Plus is expected to enhance the existing fabric of relationships that New Zealand has with Forum Island Countries and with Pasifika communities in New Zealand.

PACER Plus will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided that they are applied to meet a legitimate objective and are not implemented in a discriminatory fashion.

1.6 Consultations

Public outreach and consultation has taken place throughout the negotiation of PACER Plus, including with key stakeholders on negotiating objectives. When negotiations first commenced in 2009, a number of public submissions were received from a variety of organisations and individuals from involved in education, business, development, trade union, social services and church based organisations. Over the years, interest has not been wide spread but it has been steady.

The negotiation of PACER Plus (and associated Arrangements and side letters) was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade. The inter-agency team comprised officials from the Ministry of Business, Innovation and Employment and the New Zealand Customs Service. Other relevant departments and agencies were also regularly consulted during the negotiations in the preparation of New Zealand's position, notably the Ministry of Primary Industries and the Inland Revenue Department. The Department of the Prime Minister and Cabinet and the Treasury were also regularly consulted on the free trade agreement process.

1.7 Subsequent changes to PACER Plus

PACER Plus may only be amended by agreement in writing by the Parties. New Zealand would consider proposed amendments to PACER Plus on a case-by-case basis. Any decision to accept an amendment would be subject to the normal domestic approvals and procedures for entering into a multilateral treaty.

Any Party may withdraw from PACER Plus by giving six months advance notice in writing to the other Parties (Chapter 15, Article 11.1). If more than half of the Parties have notified their withdrawal from PACER Plus pursuant to Article 11.1, the Agreement shall terminate (Chapter 15, Article 11.2).

Chapter 9, Article 11.2(b) sets out a form for non-WTO Parties to notify their measures that do not comply with the Agreement on Trade-Related Investment Measures within two years of the date of entry into force of PACER Plus. Notification of such measures does not represent a breach of the obligations of the Agreement; they amount to greater transparency in notifying non-conforming measures. The notification of such measures is not a treaty-level action for New Zealand, as it will not change New Zealand's obligations. Therefore Cabinet will not need to be informed each time a Party notifies their measures.

A key amendment that New Zealand will seek in future is to the membership of the Agreement. New Zealand is encouraging other Pacific Island Forum members to join PACER Plus; specifically Fiji and Papua New Guinea who have been part of these negotiations and new members, French Polynesia and New Caledonia. These four countries comprise New Zealand's four largest trading partners in the region so would have a demonstrably positive effect on the potential trade benefits of PACER Plus for New Zealand exporters.

1.8 Conclusion

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

2 Nature and timing of proposed treaty action

The *Pacific Agreement on Closer Economic Relations Plus (PACER Plus)* is a plurilateral treaty level agreement negotiated between 14 members of the Pacific Islands Forum: Australia, Cook Islands, Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Palau, Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

PACER Plus negotiations were substantively concluded on 20 April 2017, with legal verification concluded on 24 May 2017. Signature will take place on 14 June in Nuku'alofa, Tonga.

As per Chapter 15, Article 8, Entry into Force is subject to the completion of the internal requirements (i.e. domestic legal procedures) of the Parties and will occur 60 days after the date on which at least eight Parties have notified the Depositary in writing of the completion of these requirements. For any Party that has not completed its internal requirements by this date, PACER Plus shall enter into force 60 days after the date on which it has notified the Depositary in writing of the completion of its internal requirements.

It would be preferable for New Zealand to complete internal requirements for entry into force of the Agreement and notify the Depositary as such as soon as possible after signature on 14 June. Officials expect that New Zealand will be able to inform the Depositary of the completion of our domestic requirements by late 2018. As the New Zealand General Election is being held on 23 September 2017, with the House rising on 17 August 2017, 22 June 2017 is the last possible day for PACER Plus to be presented to the House in order to allow 15 sitting days before the House rises.

New Zealand and Australia have also agreed in an associated *New Zealand-Australia Side Letter: Application of PACER Plus between Australia and New Zealand* (Side Letter) that the obligations in PACER Plus will only apply to a limited extent between the two countries. The Side Letter will enter into force on the date on which the Pacific Agreement on Closer Economic Relations Plus enters into force for both Australia and New Zealand.

PACER Plus and the accompanying Side Letter will not apply to Tokelau.

3 Reasons for New Zealand becoming a Party to the Treaty

3.1 Background

PACER Plus negotiations were launched by Pacific Islands Forum⁹ Leaders at their 40th Meeting in August 2009. Underpinning this initiative was recognition by Leaders of the importance of deepening regional trade integration as a means to create jobs, enhancing private sector growth, raising standards of living and advancing the region's sustainable economic development.

3.2 Direct benefits from enhanced trade and economic links under PACER Plus

PACER Plus is a landmark trade and development agreement that aims to deepen regional economic integration in support of sustainable economic development. The Agreement reinforces the New Zealand Aid Programme's investments in sustainable economic development in the Pacific. As these benefits are indirect they are discussed in the next section.

New Zealand currently exports NZD\$376 million annually of goods to PACER Plus Parties excluding Australia. Trade in the Pacific can be unpredictable, many countries in the region are not WTO members, and therefore are not bound by WTO disciplines including WTO limits on the maximum tariff rate that they can apply.

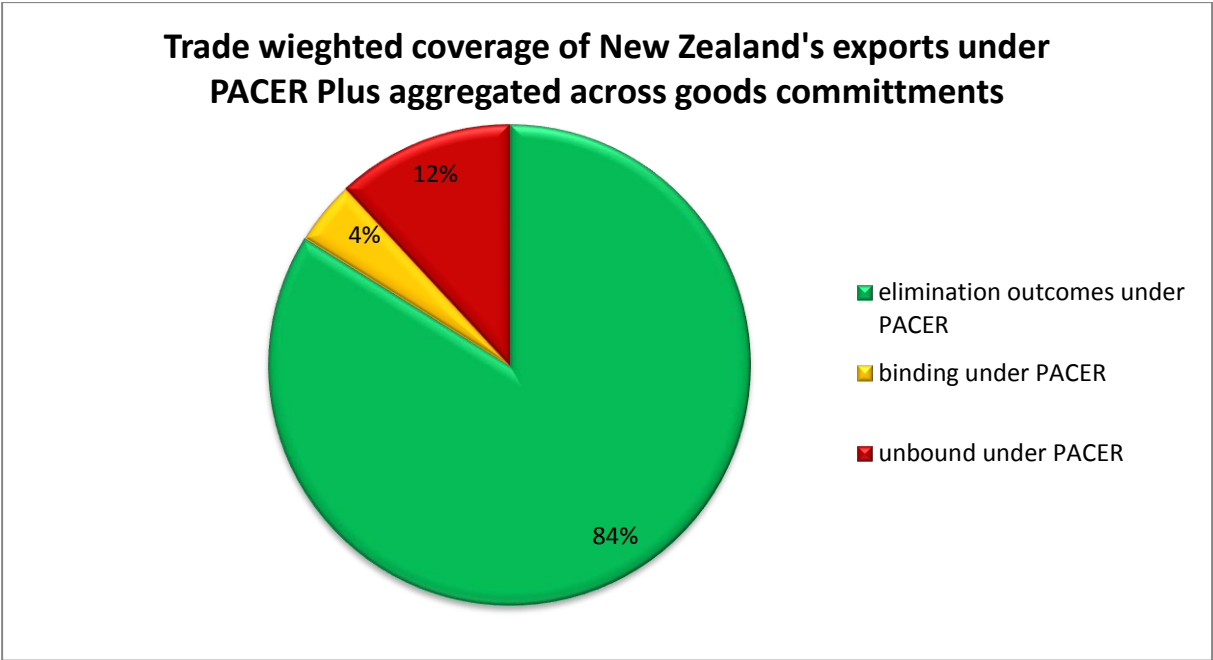
PACER Plus will create greater certainty for New Zealand goods exporters by:

- Ensuring that New Zealand remains competitive in the future against significant competitors in the region through most-favoured-nation provisions in the Agreement including, unusually, in the goods chapter. This means that PACER Plus Parties agree to provide the same tariff concessions to New Zealand exporters that they provide in future free trade agreements with developed or significant developing countries.¹⁰
- Legally binding in applied tariff rates on the vast majority of trade and providing a WTO consistent framework for trade. This is of particular importance in relation to the eight PACER Plus Parties that are not WTO members, the Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of the Marshall Islands and Tuvalu - for these countries PACER Plus will represent the first legally binding commitments made to New Zealand on trade.
- Providing modern and flexible rules of origin that will facilitate trade

⁹ Membership of the Pacific Islands Forum at that time comprised: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Republic of the Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. New Caledonia and French Polynesia became full members in September 2016 and are not part of the negotiations.

¹⁰ Significant developing countries covered by the most-favoured-nation obligation are those that account individually for more than 1 percent of world merchandise trade. See the Chapter 2, Article 3.2(c)(i).

PACER Plus strikes a careful balance between encouraging liberalisation and providing security to the small vulnerable economies in the region. Tariffs will be eliminated on 84 percent of New Zealand exports to PACER Plus Parties at the full implementation of the Agreement over periods of 25 to 35 years and longer for least developed countries.



The gradual elimination of most tariffs should provide a platform for sustainable growth in trade within the region while allowing time for implementation assistance and aid for trade under the Agreement to equip Forum Island Country Parties to take advantage of the benefits of PACER Plus. Some countries will not implement commitments (apart from tariff bindings) until at least 10 years after entry into force providing for appropriate measures to be taken to safeguard government revenue through, for example, introduction of Value Added Tax, or excise duties, where these are not currently in place. Least developed countries will not start implementing reductions until the later of their graduation from least developed country status or 10 years after entry into force of the Agreement.

PACER Plus will also increase certainty for New Zealand service exporters and investors. Stronger investment protection rules should help attract more investment to the Pacific and ensure basic protections for investors. Market access outcomes will also help expand services trade in the region. Basic visa access will also be ensured for key employees involved in doing business in the Pacific. Although up-front services and investment commitments are limited, Pacific countries will pass the benefits of any future liberalisation and commitments made in Free Trade Agreements concluded with other partners to New Zealand investors and service exporters due to sound most-favoured-nation commitments.

3.3 Indirect benefits from Pacific economic integration under PACER Plus

New Zealand's approach to the PACER Plus negotiations has been firmly set within our broader foreign policy and development objectives for the Pacific. New Zealand has a clear interest in a prosperous and sustainable Pacific given our geographic location and strong people-to-people links. Approximately 60 percent of New Zealand's Official Development Assistance (ODA) is directed towards the Pacific, with a focus on sustainable economic development outcomes.

New Zealand's Aid Programme supports sustainable economic development in the Pacific through investments in economic infrastructure, key export sectors including private sector development and trade facilitation, and through increasing opportunities for regional labour mobility. PACER Plus will provide a platform to leverage New Zealand's ODA investments to increase trade, investment and labour flows that will build Pacific Island countries' private sectors, create jobs and raise standards of living.

Alongside PACER Plus, a Labour Mobility Arrangement aims to support Pacific workers to access temporary employment in New Zealand and Australia in industries that face labour shortages. Existing seasonal employment arrangements in horticulture and viticulture have proven to be a 'triple-win', with benefits for New Zealand export businesses, Pacific workers, and their countries, with remittances providing a significant contribution to Pacific Island countries' economies.

The World Bank estimates that remittances were worth USD\$628 million to the Pacific in 2015.¹¹ Pacific workers employed in New Zealand's Recognised Seasonal Employer RSE scheme remit up to NZD\$41 million per year. For some Pacific Island Countries, remittances are a primary source of foreign exchange, for example in Samoa remittances account for up to 20 percent of GDP. Further, the World Bank reports that in 2010 Tongan seasonal workers remitted \$5.3 million, equivalent to half of Tonga's annual export earnings; and ni-Vanuatu seasonal workers remitted \$9.7m equivalent to a quarter of Vanuatu's annual export earnings. Further the remittances were equivalent to 42-47 percent of New Zealand's bilateral aid to these countries.¹²

While New Zealand's RSE scheme is an existing policy outside of PACER Plus, New Zealand has undertaken to facilitate increased labour mobility opportunities for PACER Plus Parties including facilitating participation in RSE for those that do not currently participate (Federated States of Micronesia, Palau and Republic of the Marshall Islands), and trialling opportunities in new sectors that face persistent skills shortage in New Zealand. For example, New Zealand has two labour mobility pilots under way in the construction and fisheries sectors. Exploring opportunities in semi-skilled sectors will provide greater benefits for Pacific workers including higher incomes, industry training

¹¹ World Bank Annual Remittances Data (updated Oct 2016):

<http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>

¹² World Bank (2010) Pacific Possible: Labour Mobility

and development opportunities and the opportunity to acquire New Zealand qualifications.

The framework of rules established through PACER Plus will also help to encourage Pacific countries' economic development towards a pathway that is open to trade and compatible with the international trading system. Increased regulatory certainty around services and investment rules, for example, will help to create domestic environments that are more conducive to trade and investment with both Parties and non-Parties. For the eight non-WTO members, conformity with the WTO consistent standards set by PACER Plus, and the gradual liberalisation of their economies may provide a pathway for future accession by these countries to the WTO. This may be further facilitated by the aid for trade and development assistance which will accompany the PACER Plus Agreement.

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

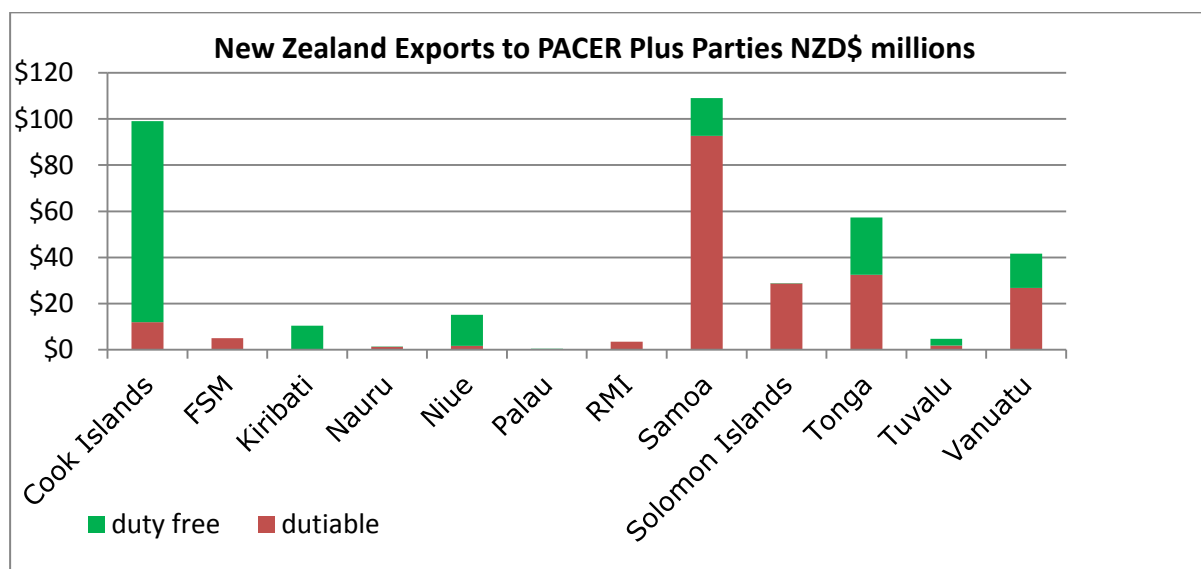
Chapter specific advantages and disadvantages are discussed below. However a few general points should be noted if the Agreement entered into force without New Zealand. If this happened and Australia proceeded to ratify New Zealand would be at a disadvantage in the Pacific Against our largest and nearest competitor in the region. On average between 2013 and 2015 Australia exported NZD\$455 million to the PACER Plus Parties (excluding New Zealand), representing 0.2 percent of their average exports to the world over this period, while the Pacific represents a small market for Australia this trade is larger than New Zealand's own exports to these Parties by one fifth and is concentrated on a similar range of products. A price differential caused by the phasing in PACER Plus commitments on Australian, but not New Zealand exports could have devastating consequences for New Zealand exporters over the long term potentially resulting in loss of market share. If Australia also did not ratify the current competitive balance in the region would persist. In either case existing trade arrangements with the Forum Island Countries would continue, as would our broader bilateral and regional development and programmes in the region.

Not being party to PACER Plus could potentially collapse the development and economic cooperation element of the Agreement – this depends on Australia and New Zealand for its funding and our agencies would be an integral part of its successful delivery. We can expect potentially severe repercussions for our bilateral relationships with all the countries involved – including our most important bilateral partner – Australia. We risk being disadvantaged if the Forum Island Countries successfully conclude negotiations with the European Union or with major developing country competitors. Our goods and services exporters to the region would continue to operate with the current levels of certainty, transparency and compliance requirements. We risk any or all of our four largest trading partners in the region joining the Agreement and giving preferential treatment to PACER Plus parties – including to Australia. PACER Plus entering into force for New Zealand will preserve our competitive neutrality with Australia, and secure our

competitive position in the future with respect to significant competitors through most-favoured-nation provisions.

4.1 Trade in Goods

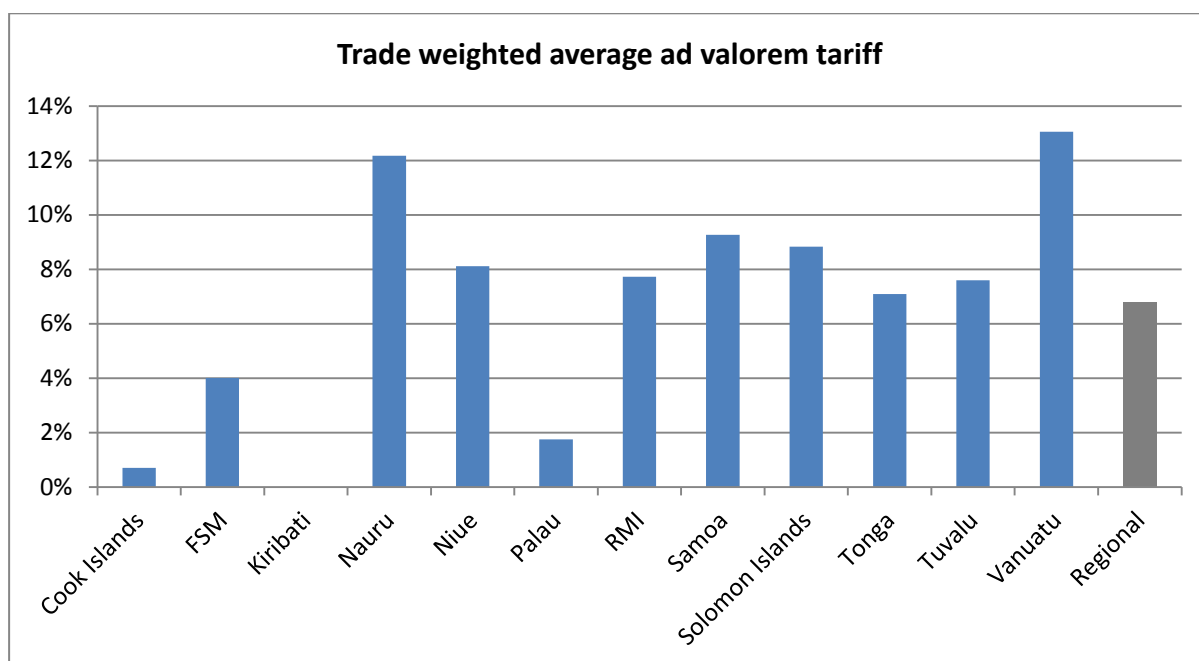
New Zealand exported an average of just under \$376 million in goods to PACER Plus Parties (excluding Australia) per annum between 2013 and 2015,¹³ representing 0.7 percent of New Zealand's total goods exports to the world over this period. New Zealand exports a different mix of goods to the Pacific than it does to the world as a whole. While New Zealand does export a wide range of agricultural products such as beef, dairy and horticultural products, processed and manufactured products are also important components of our trade profile. Chemicals and chemical products, machinery and equipment, furniture, minerals and mineral products, plastics, petroleum, confectionary and textiles are all more significant exports in this market than they are our global export markets.



The majority of this trade goes to Samoa, the Cook Islands, Tonga, Vanuatu and the Solomon Islands. At present New Zealand exports face an average ad valorem tariff of 6.8 percent and attract duties estimated at NZD\$24 million annually¹⁴ in PACER Plus markets. In the most highly protected market, Vanuatu, the average duty applied to New Zealand exports exceeds 13 percent. Substantial tariff barriers also exist in the Republic of Marshall Islands, Samoa, the Solomon Islands and Tonga.

¹³ All figures provided for goods exports and goods market access outcomes in this document are based on three years averages between 2013 and 2015, unless otherwise specified. Australia, to which New Zealand already has duty free access under the Australia New Zealand Closer Economic Relationship Agreement, is excluded from all calculations unless otherwise specified.

¹⁴ Based on average goods exports between 2013 and 2015, and applicable tariff rates in each PACER Plus Party (excluding Australia)



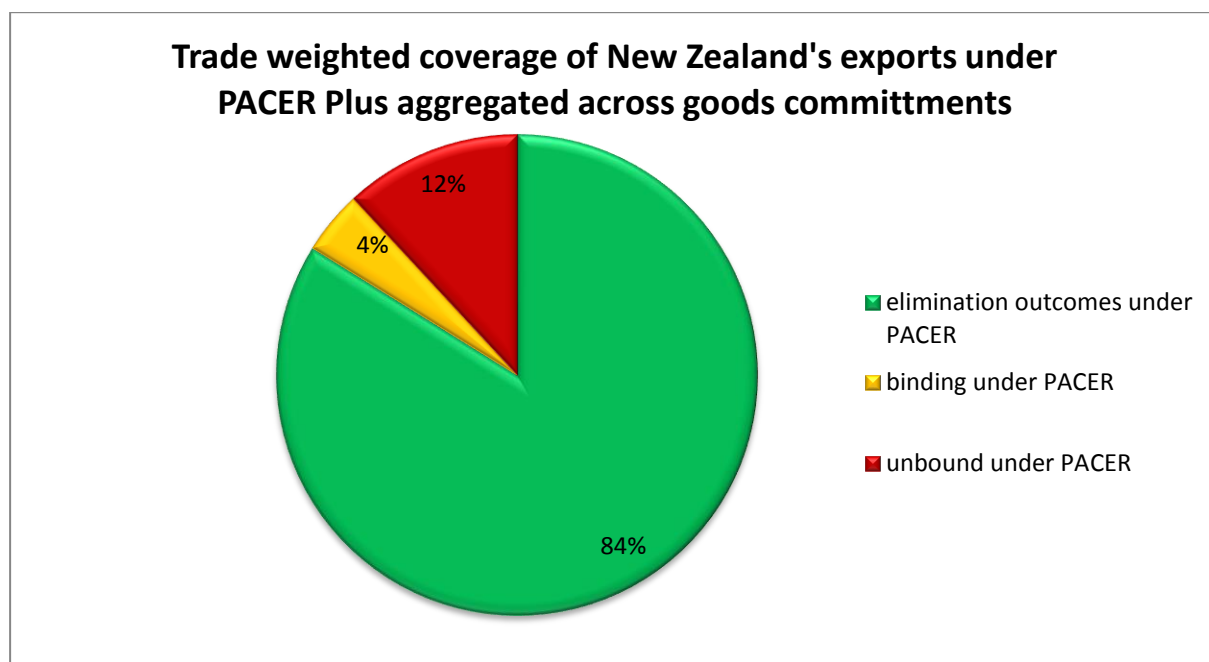
Goods from Pacific Island Countries already enter New Zealand and Australia duty free under the South Pacific Regional Trade and Economic Agreement (SPARTECA) of 1980 or the Generalized System of Preferences (GSP) which is available for Least Developed and selected Less Developed Countries. Additionally, Niue and the Cook Islands retain guarantees, currently enacted under Section 108 of the Customs and Excise Act 1996, that provide them with duty free access for their goods into New Zealand which were made when these countries became self-governing.¹⁵

In the absence of PACER Plus New Zealand does not enjoy preferential access for its exports to Pacific Island Countries. As more than half of PACER Plus Parties are not WTO members, to a large extent New Zealand's export interests in the region do not benefit from any agreed framework of trade rules. PACER Plus will, therefore, constitute a comprehensive regional trade framework that will increase certainty for New Zealand businesses and support the Pacific to expand and diversify trade.

While economic integration for the Pacific has proceeded at a slower pace than other parts of the world, Interim Economic Partnership Agreements were concluded by Fiji and Papua New Guinea with the European Union in 2012. Overtime, further liberalisation in the region is anticipated as countries negotiate free trade agreements and integrate more fully with the world economy and the Asia Pacific region. In that context PACER Plus secures New Zealand interests in the Pacific and provides a balanced, development focused transition towards greater liberalisation, while providing time for the small vulnerable nations in the Pacific to adjust.

¹⁵ Customs and Excise Act 1996,
<http://www.legislation.govt.nz/act/public/1996/0027/latest/DLM378695.html>

PACER Plus will represent the first reciprocal trade arrangement between New Zealand and the Pacific building on the existing non-reciprocal SPARTECA and PACER¹⁶ framework. It will provide tariff bindings on 88 percent of New Zealand's exports to Parties, and, at the full implementation of the Agreement eliminate tariffs on 84 percent of New Zealand exports. Tariffs will be eliminated over extended timeframes of 25 or 35 years. Timeframes for tariff elimination for least developed countries will depend on their date of graduation from least developed status¹⁷.



18

New Zealand's interests will also be protected through the most-favoured-nation provision secured in the trade in goods chapter, which mirrors the approach taken by other developed countries in their development agreements, such as the European Union's Economic Partnership Agreements with Africa, and their Interim Partnership Agreements with Fiji and Papua New Guinea. This is the first time this outcome has been secured in a New Zealand Free Trade Agreement and means that New Zealand businesses will remain competitive in the region if Forum Island Countries Parties move to conclude free trade agreements with any of our significant commercial competitors in the region.

Eight of the Forum Island Country Parties are not WTO members; therefore this Agreement will provide greater certainty and also be instrumental in securing and

¹⁶ PACER is a non-reciprocal agreement signed by Pacific Island Forum members in 1980. It set out the process that triggered what became the PACER Plus negotiations.

¹⁷ The Committee for Development Policy, a subsidiary body of the United Nations Economic and Social Council is mandated to review the category of Least Developed Countries every three years. A country may graduate from LDC to developing country if they meet two of three following criterion for graduation; the income criterion, the Human assets index and/or the Economic Vulnerability Index.

¹⁸ Based on the total value of New Zealand trade liberalised across the offers of the 12 Forum Island Countries.

enhancing New Zealand market access to these non-WTO member countries: the Cook Islands, Niue, Nauru, the Republic of the Marshall Islands, the Federated States of Micronesia, Palau Kiribati and Tuvalu..

Advantages

4.1.1 Market access outcomes

The following tables provide a summary of market access outcomes by country, and by sector. These outcomes are variable given the different trade profiles and pre-existing levels of liberalisation of each respective country. The flexibilities in coverage provided to Forum Island Countries are made possible by a most-favoured-nation provision which will ensure that New Zealand is treated no less favourably than other significant competitors in the future. The most-favoured-nation provision applies to all products irrespective of whether elimination or binding outcomes are secured within scheduled tariff commitments. Commitments made under PACER Plus represent a common offer to the Parties¹⁹.

¹⁹ The commitments made to New Zealand are the same as those given to Australia and the other Forum Island Countries, in other words each country has tabled a common offer to all Parties.

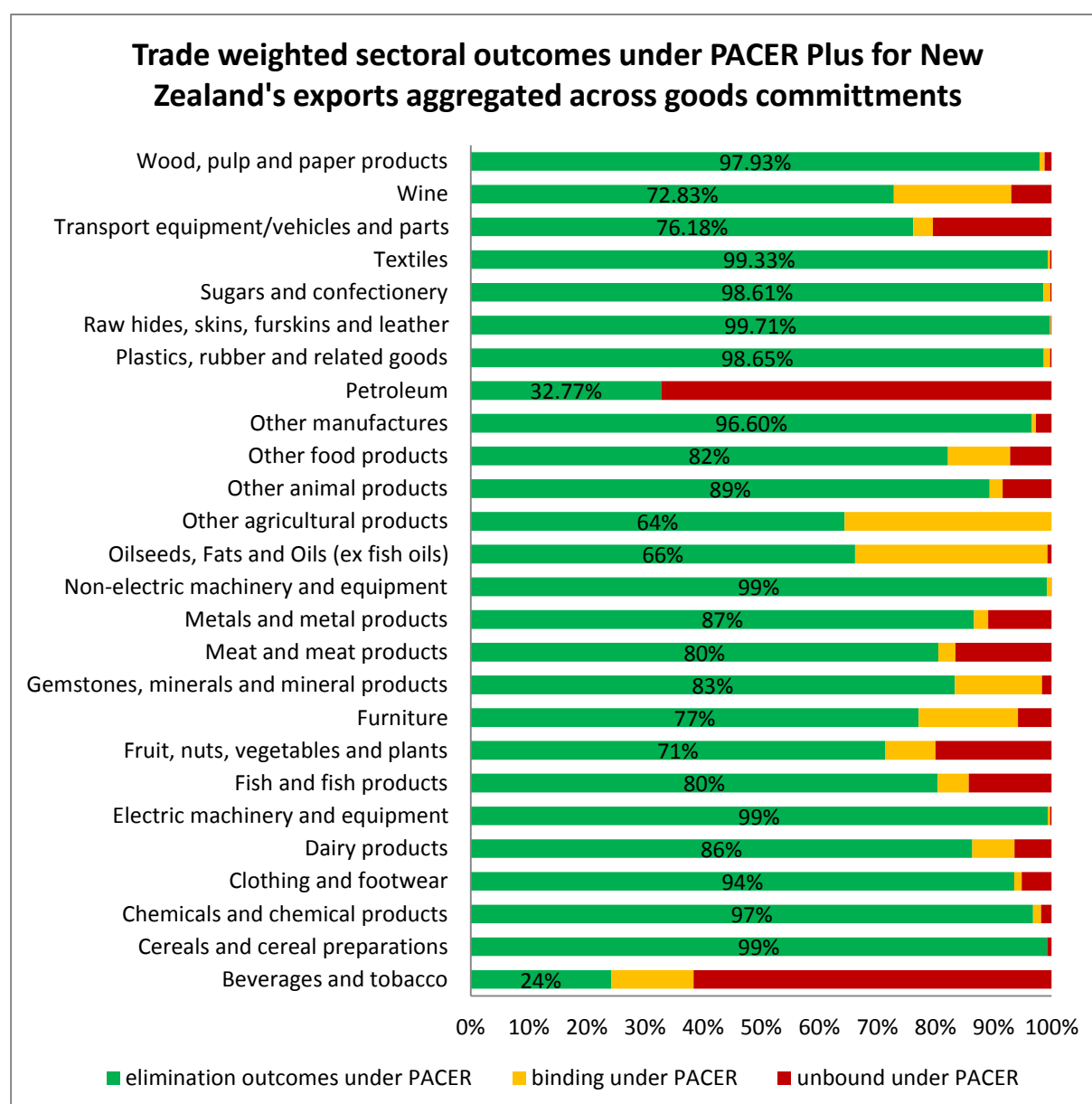
Table 4.1: Tariff Elimination by country²⁰

Party	Average New Zealand exports (2013-2015) NZD\$	% of trade liberalised at full implementation	% of trade bound or duty free at full implementation
Elimination commences on entry into force and is complete within 25 years of entry into force			
Samoa	109 million	86.64%	97.54%
Cook Islands	99 million	74.36%	74.36%
Tonga	57 million	91.69%	97.06%
Niue	15 million	89.63%	89.63%
Kiribati²¹	10 million	96.30%	96.30%
Elimination commences 10 years after entry into force			
FSM	4.9 million	98.15%	98.15%
RMI	3.5 million	84.26%	84.26%
Nauru	1.3 million	94.24%	94.38%
Palau	0.4 million	98.41%	99.81%
Elimination commences on graduation from Least Developed Country status or 10 years after entry into force whichever is later			
Vanuatu	42 million	80.20%	82.81%
Solomon Islands	29 million	82.70%	82.70%
Tuvalu	4.7 million	97.42%	97.87%

²⁰ The methodology used to calculate coverage of New Zealand's goods exports is necessarily conservative given the availability of trade data in the Pacific. New Zealand export data was the most reliable basis for producing an estimate, therefore, in estimating liberalisation under PACER Plus, New Zealand has taken the lowest quality outcome across an individual Harmonized Commodity Description and Coding System (HS) 6 digit split and applied this treatment across an entire HS 6 digit subheading.

²¹ Kiribati has access to extended phase outs under the agreed modalities; however given it is current duty free, where a commitment is made this is binding from entry into force.

The table below provides further detail on aggregate sectoral outcomes under PACER Plus. Overall New Zealand has secured binding and elimination outcomes on the majority products of export interest to us. This includes elimination of tariffs on 98 percent of wood, pulp and paper exports, 87 percent of metal and metal product exports, 86 percent of dairy exports, 80 percent of meat and meat product exports²². Reflecting our unique trade profile in the Pacific New Zealand also secured elimination of tariffs on 99 percent of non-electric and electric machinery and equipment and rubbers and plastics, 97 percent of chemicals and chemical products, and other manufactures, 83 percent of gemstones, minerals and mineral products and 82 percent of other food products²³. Taken together, these account for more than 70 percent of trade flows to the Parties.



²² These products account for 60 percent of New Zealand's global goods exports

²³ These products account for 35 percent of New Zealand's goods exports to the Parties

While some sectoral outcomes, e.g. on meat sit below levels secured in New Zealand's existing free trade agreements, it is important to recall that the countries involved are small vulnerable Pacific Island Countries, many of which are not WTO members, and that these commitments have been made in the context of a development agreement.

4.1.2 Most-favoured-nation treatment

A major outcome from this Agreement is that it provides a guarantee that New Zealand goods exporters will receive the same market access treatment into Forum Island Countries as exporters from our likely main competitors in the future. Given the development focus of PACER Plus, and the unique circumstances and vulnerabilities of the Forum Island Countries, this outcome has been achieved through securing a most-favoured-nation clause, rather than through accelerated and comprehensive tariff elimination outcomes. The most-favoured-nation clause will ensure that where a Forum Island Country Party enters into a trade agreement with a significant competitor, New Zealand businesses will receive tariff treatment no less favourable than treatment provided to that competitor under the Agreement. In other words, New Zealand exporters will benefit from any tariff commitments, including tariff reductions and elimination outcomes, made by PACER Plus Parties to significant third parties in the future. Securing most-favoured-nation treatment provides the basis for the extensive flexibilities which have been given to Pacific Island Countries under the Agreement.

Under PACER Plus the threshold for application of most-favoured-nation in the case of a free trade agreement between Forum Island Countries and any other country will be 1 percent of world merchandise trade. In addition to this requirement, in the case of a free trade agreement between Forum Island Countries and a group of other countries, the group may not exceed 4 percent of world merchandise exports. Forum Island Countries may also enter into trade agreements exclusively with other Pacific Island Countries and territories and, may grant preferences pursuant to the WTO Hong Kong Ministerial Declaration of 2005 on measures in favour of least developed countries and related WTO decisions, without passing on preferences to Australia and New Zealand.

This is the first time such an outcome has been secured by New Zealand in the goods chapter of a free trade agreement and reflects the priority New Zealand attached to such a provision given the long tariff phase out periods for the Forum Island Country parties. However, this is an approach consistent with that adopted in other development focused agreements such as the European Union Economic Partnership Agreements, which aim to facilitate "South South" trade between small developing countries.

4.1.3 Other benefits of PACER Plus for goods market access

The Chapter on Trade in Goods (Chapter 2) will also provide greater certainty to New Zealand businesses including through:

- legally binding in the currently applied Other Duties and Charges of Kiribati and Tuvalu at current rates (Chapter 2, Article 3.1.b and Annex 2-A.II).

- legally binding in conformity with WTO Agreement in respect of the adoption or maintenance of any measure within the purview of the General Agreement on Tariffs and Trade (GATT) Article XI, including its Interpretative Notes and including also with respect to tariff in transit. No Party may apply measures prohibited under Article 4.2 of the Agreement on Agriculture or Article 11.1(b) of the Agreement on Safeguards or apply any prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, on importation or exportation that are otherwise prohibited under GATT 1994 or other provisions of the WTO Agreement.
- incorporating WTO disciplines on most-favoured-nation treatment and national treatment in accordance with Articles I and III of GATT 1994 in respect of internal taxes, charges, laws, regulations and requirements within the scope of Article III of GATT 1994 (Chapter 2, Article 6). This will ensure that New Zealand exports are treated no less favourably than domestic products or third party exports in PACER Plus markets.
- incorporating WTO disciplines with respect to trade remedies under Articles VI and XVI of GATT 1994 the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures (Chapter 2, Article 10). When applying anti-dumping or countervailing measures, non-WTO Member Parties shall comply with these relevant provisions.
- providing disciplines with respect to duties charged on goods re-entered after repair or alteration. Such duties may only be charged on the cost of repair or alteration and may not exceed the duty which would be applied if the product was imported for the first time (Chapter 2, Article 4).
- providing a review mechanism two years from the date of initial application of the most-favoured-nation provision. This ensures that the provision remains fit for purpose, for example by providing for the thresholds to be lowered to cater for significant changes in the trade profiles of our competitors. This review and implementation of any resulting recommendations are subject to consensus between the Parties through the Joint Committee, which means that benefits of the provision cannot be adjusted without our explicit agreement. (Chapter 2, Article 16).
- establishing clear disciplines on adoption of amendments to the Harmonised Commodity Description and Coding System which ensure that technical revisions are carried out on a neutral basis without impairing market access conditions (Chapter 2, Article 17).

These benefits are of crucial importance in the case of the eight Forum Island Countries that are not WTO members; the Cook Islands, Niue, Nauru, the Republic of the Marshall Islands, the Federated States of Micronesia, Palau, Kiribati and Tuvalu. PACER Plus for

these countries represents the first commitments made to New Zealand on the above WTO based trade related disciplines.

4.1.4 Country specific outcomes

Interpreting Market Access Outcomes

The tables in this section use the 'baskets,' negotiated as part of the modalities for PACER Plus to describe the outcomes on New Zealand's exports. These are explained below:

A: duty free on entry into force of PACER Plus

B05: phased reductions, duty free in the 5th year of implementation

B10: phased reductions duty free in the 10th year of implementation

B15: phased reductions duty free in the 15th year of implementation

C: bound at the base rate for 10 years from the start of implementation, elimination by the 25th year of implementation

D: bound at the base rate

E: unbound

Tx: bound at the base rate for x years from the start of implementation duty free in year x of implementation

Implementation of scheduled commitments will vary between the countries as set out in the below table:

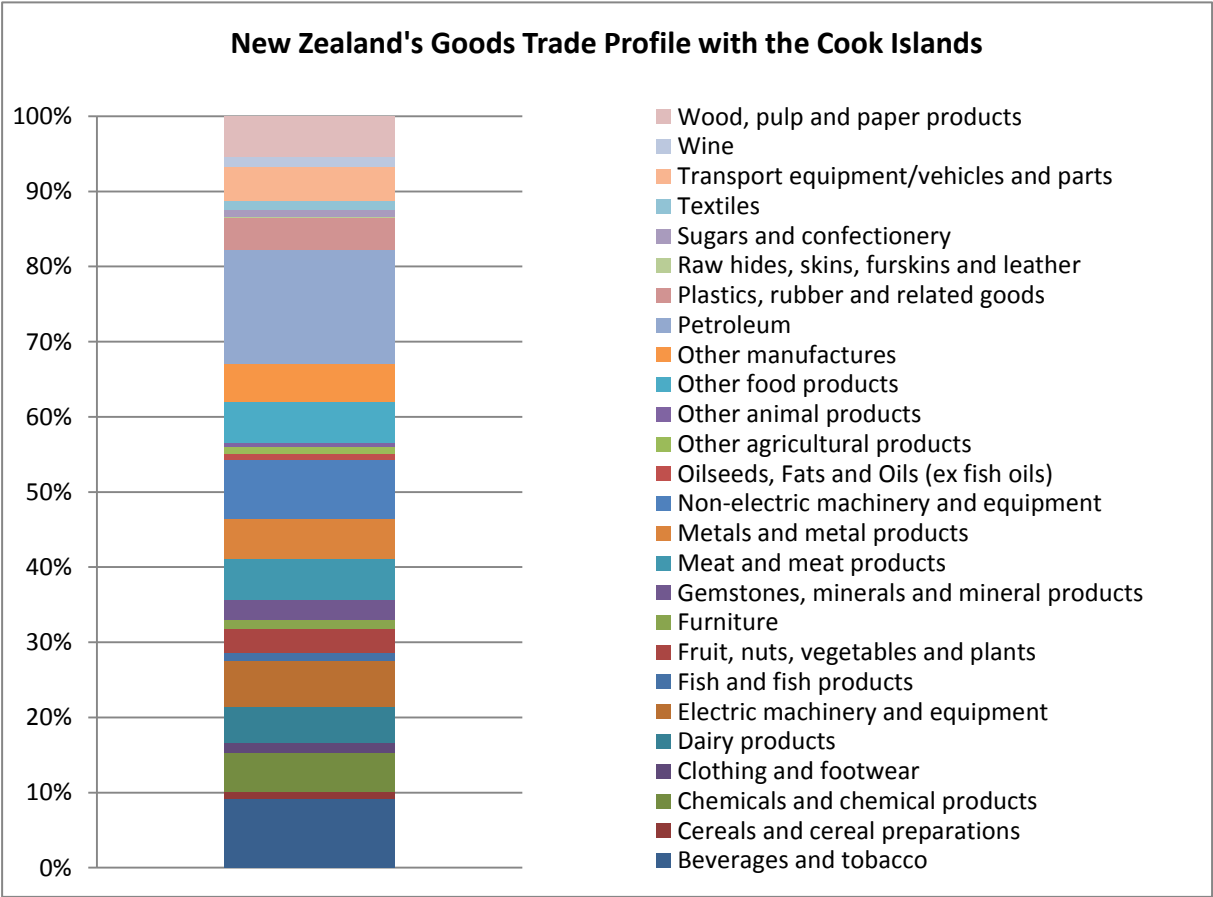
Implementation from entry into force	Samoa, Tonga, Cook Islands, Niue, Kiribati
Implementation from 10 years after entry into force	Federated States of Micronesia, Nauru, Palau, Republic of the Marshall Islands
Implementation commences on the later of 10 years after entry into force (year 11) or graduation from least developed country status	Vanuatu, Solomon Islands, Tuvalu

Countries which commence reductions on entry into force of the Agreement

The Cook Islands

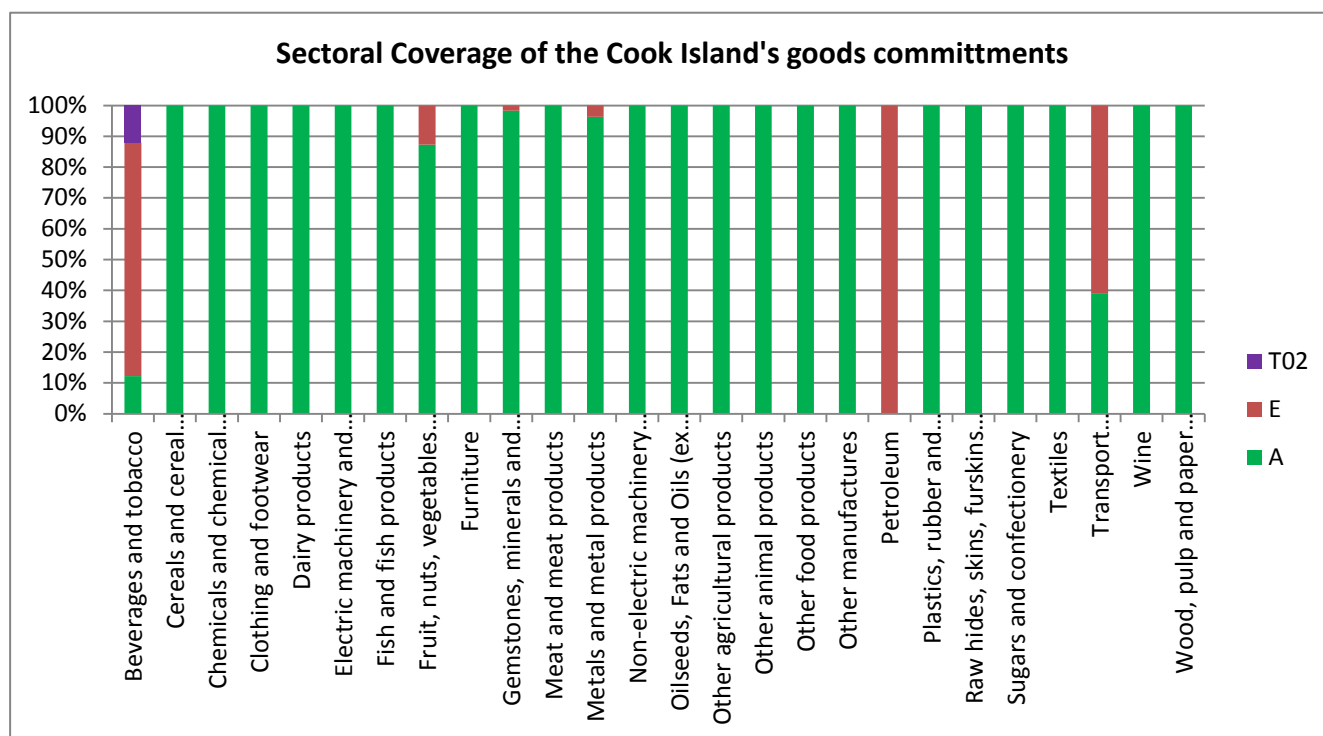
The Cook Islands **is** already a relatively open market. New Zealand exports to the Cook Islands face an average ad valorem tariff of 0.7 percent. Tariffs or equivalent excise are primarily charged on fuel, tobacco, alcohol, vehicles and related parts, pearls as well as some seasonal tariffs on fruit and vegetables. The Cook Islands, in addition to accessing SPARTECA preferences, also has a constitutional commitment from New Zealand that preserves duty free access, established in 1964 when the Cook Islands became self-governing.

New Zealand’s largest exports to the Cook Islands are petroleum (15 percent), beverages and tobacco (9 percent), electric machinery and equipment (6 percent), meat and meat products (5 percent), wood pulp and paper products (5 percent), chemicals and chemical products (5 percent), metals and metal products (5 percent), other manufactures (5 percent), and transport equipment/vehicles and parts (5 percent).



Under PACER Plus the Cook Islands will bind in current duty free treatment and eliminate tariffs on 74.4 percent of New Zealand exports, including binding in current duty free treatment for dairy, meat (including poultry), seafood, wood, and wine. The major exclusion from commitments is petroleum which accounts for 15 percent of

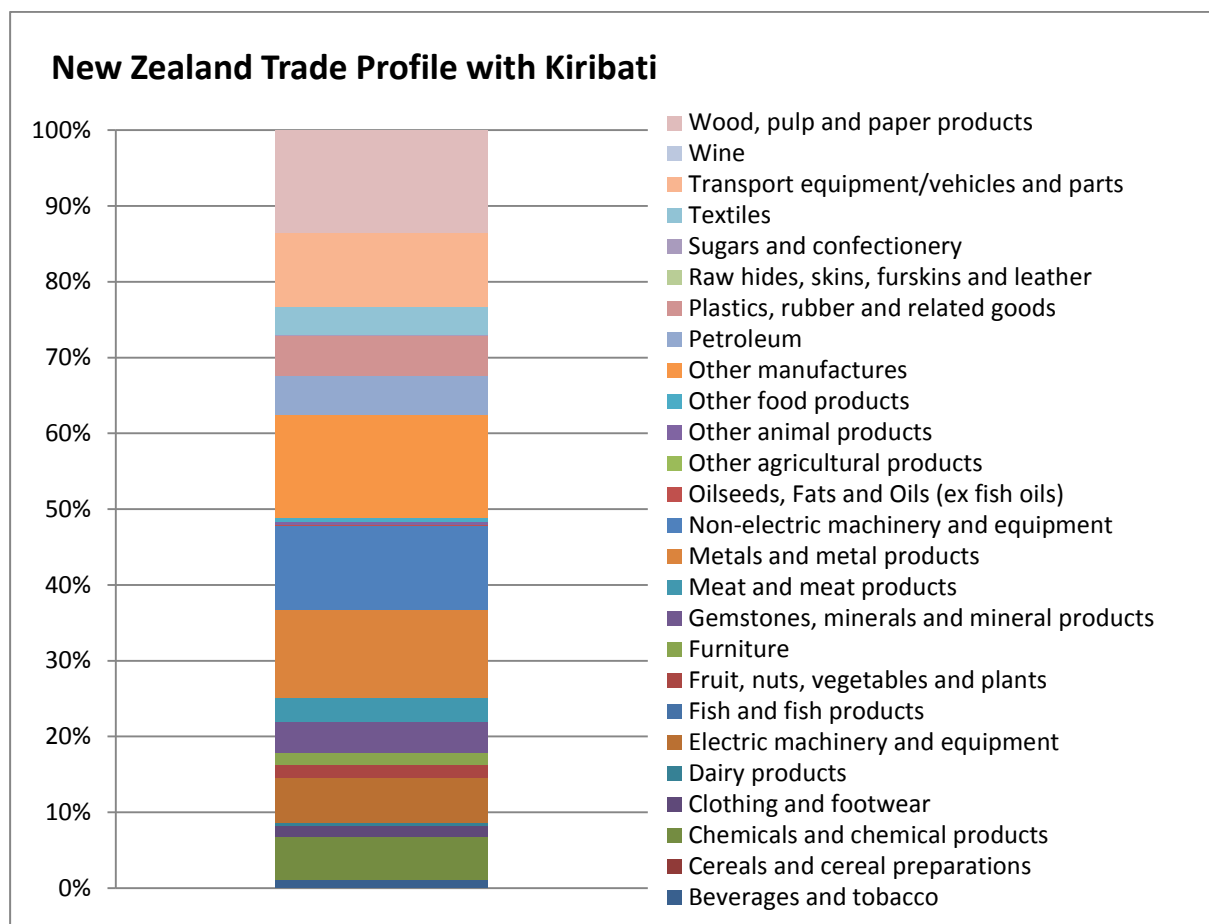
New Zealand's exports to the Cook Islands, alcoholic beverages, except for wine are also excluded from coverage under PACER Plus as are a range of vehicles.



This estimate of coverage of these commitments is slightly conservative because trade data is only available at the Harmonised Commodity Description and Coding System (HS) 6 digit level, and the Cook Islands has in some instances made split commitments, providing for 'seasonal bindings' on some vegetables and fruit. 40 tariff lines are subject to this treatment including; carrots and turnips, cucumber, cauliflower, aubergines, sweet corn and avocados, and are bound at duty free in the off season, (1 December to 31 August) and unbound the rest of the year (1 September to 30th November). This partial coverage is not included in the estimated 74.4 percent coverage of New Zealand exports.

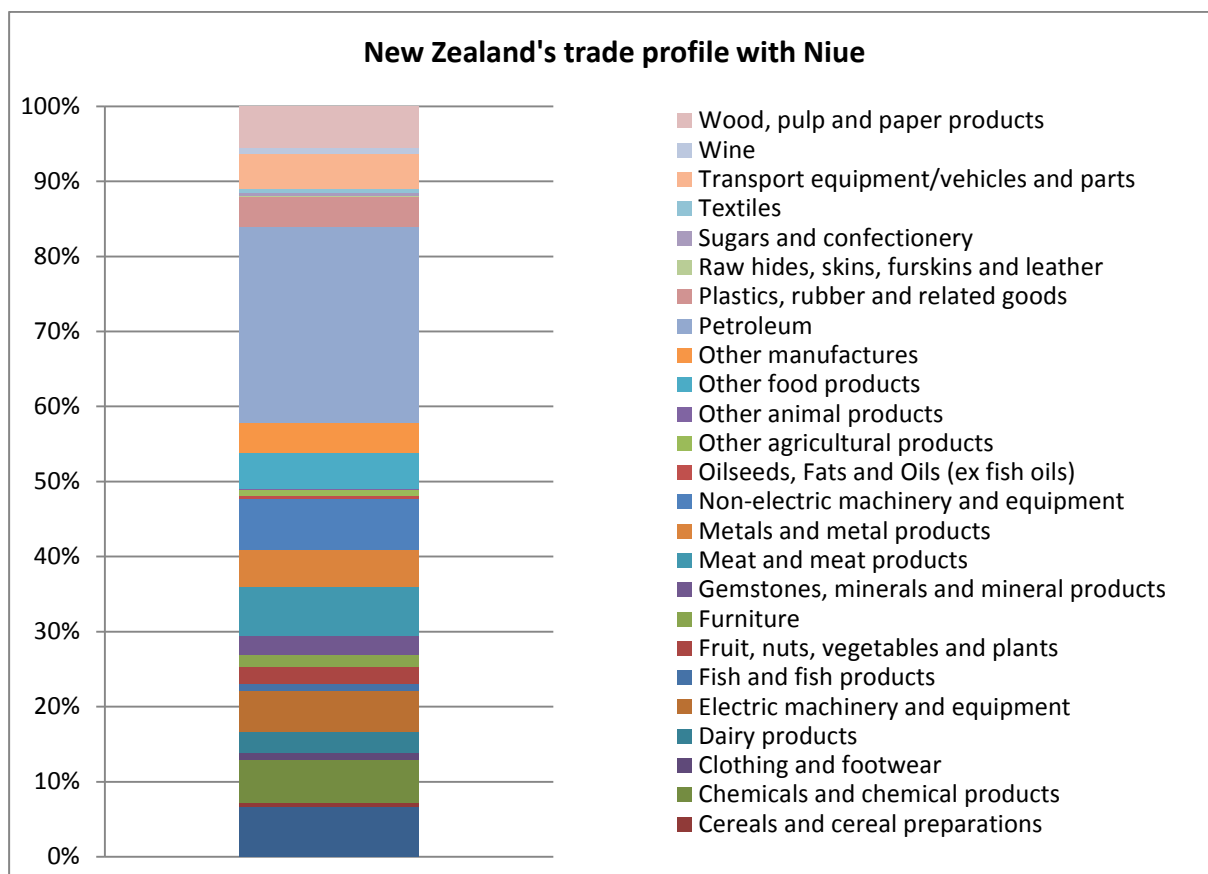
Kiribati

Kiribati is a unique case; in 2014 it unilaterally removed its customs duties, and now provides duty free access to all New Zealand exports. Under PACER Plus Kiribati will bind in this duty free treatment on 96.3 percent of New Zealand's exports, but will retain policy space on the remaining 3.7 percent which remain unbound under the Agreement.

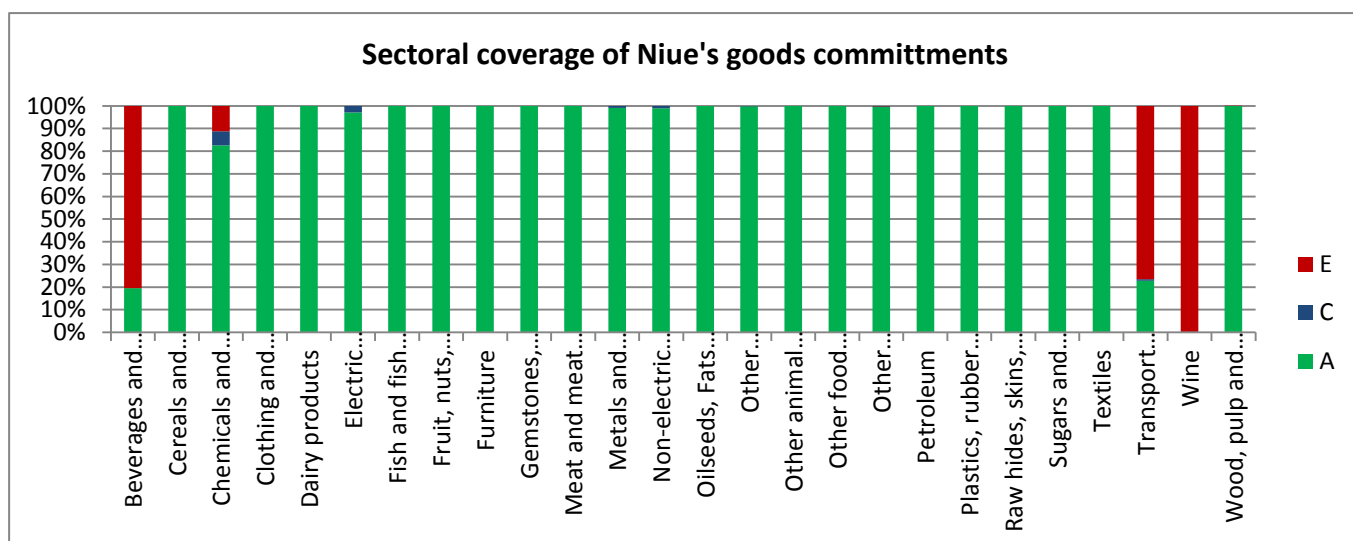


Niue

On average between 2013 and 2015 New Zealand exported NZD\$15 million per annum to Niue; these exports face an average applied tariff of 8.1 percent. Despite the high average applied tariff, 89 of New Zealand exports actually enter duty free, 7.5 percent of trade faces tariffs of 3 to 60 percent while 3.6 percent of trade faces tariffs of 90 to 530 percent. Almost all products subject to tariffs are beverages, tobacco and wine. New Zealand's single largest export to Niue is petroleum, some NZD\$3.3 million is exported annually, other significant exports include coniferous wood and prefabricated buildings, all of these products currently enter duty free as do dairy, meat, fishery products, and vegetables. Niue, in addition to accessing SPARTECA preferences, also has a constitutional commitment from New Zealand that preserves duty free access, established in 1974 when Niue became self-governing. Given the already liberal nature of the Niue economy PACER Plus primarily serves to bind in current duty free treatment.

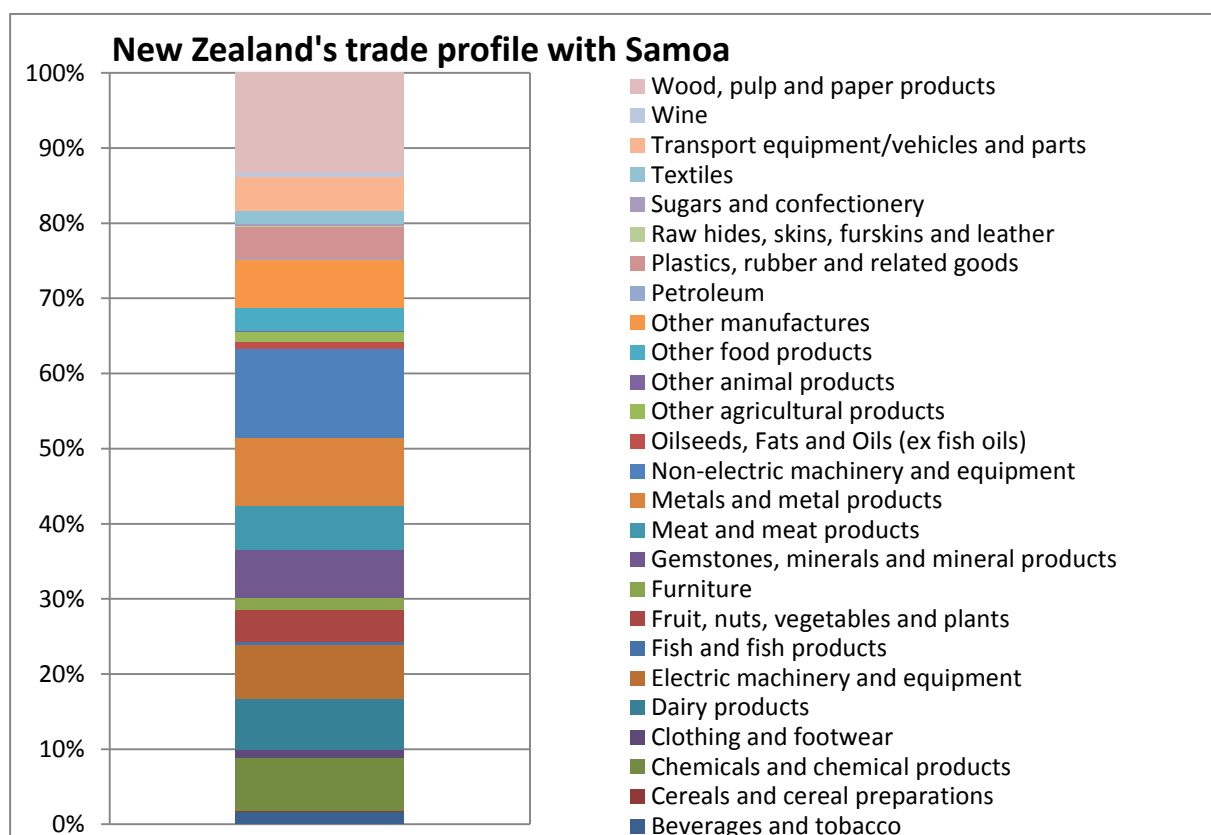


Under PACER Plus Niue will eliminate remaining tariffs on a range of products including cosmetics such as a shampoo, and a range of machinery and electronics and bicycles. Tariffs remain in place on alcohol, some transport equipment and motor vehicles, and some cosmetics such as perfume lip and eye makeup. The vast majority of trade (89 percent) is bound in as duty free on entry into force of the Agreement, an additional 0.6 percent will be duty free within 25 years of entry into force of PACER Plus bringing total coverage under the Agreement to 89.6 percent.

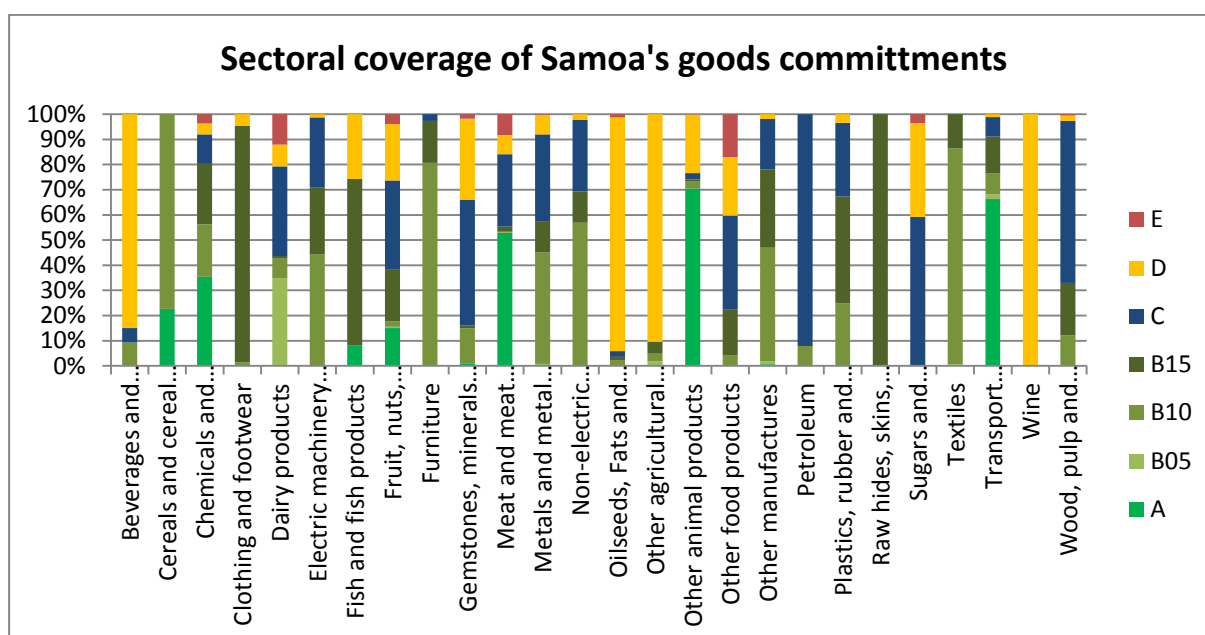


Samoa

New Zealand's exports to Samoa exemplify the unusual trade profile that New Zealand has with Pacific Island Countries. New Zealand's most significant exports to Samoa are wood, pulp and paper products (13 percent) non-electric machinery and equipment (12 percent) metals and metal products (9 percent), electric machinery and equipment (7 percent), chemicals and chemical products (7 percent), dairy (7 percent), meat and meat products (6 percent), other manufactures (6 percent) and gemstones, minerals and mineral products (6 percent). The average tariff applied on New Zealand exports by Samoa is 9.3 percent, the majority face tariffs of 8 to 20 percent such as those applied on wood, fruit and vegetables and some meat products.



Just under 98 percent of New Zealand's exports will be either bound at current rates or subject to elimination outcomes under PACER Plus. Samoa has committed to the elimination of tariffs on 87 percent of New Zealand exports on a trade value basis and will implement all commitments within 25 years of entry into force of the Agreement. A further 11 percent will be bound at current rates. Outcomes include elimination of tariffs on products of high interest to New Zealand such as elimination of duties on 97 percent of New Zealand's wood exports, 92 percent of New Zealand metal and metal products exports 79 percent of New Zealand's dairy exports, and 84 percent of New Zealand's meat and meat products exports.

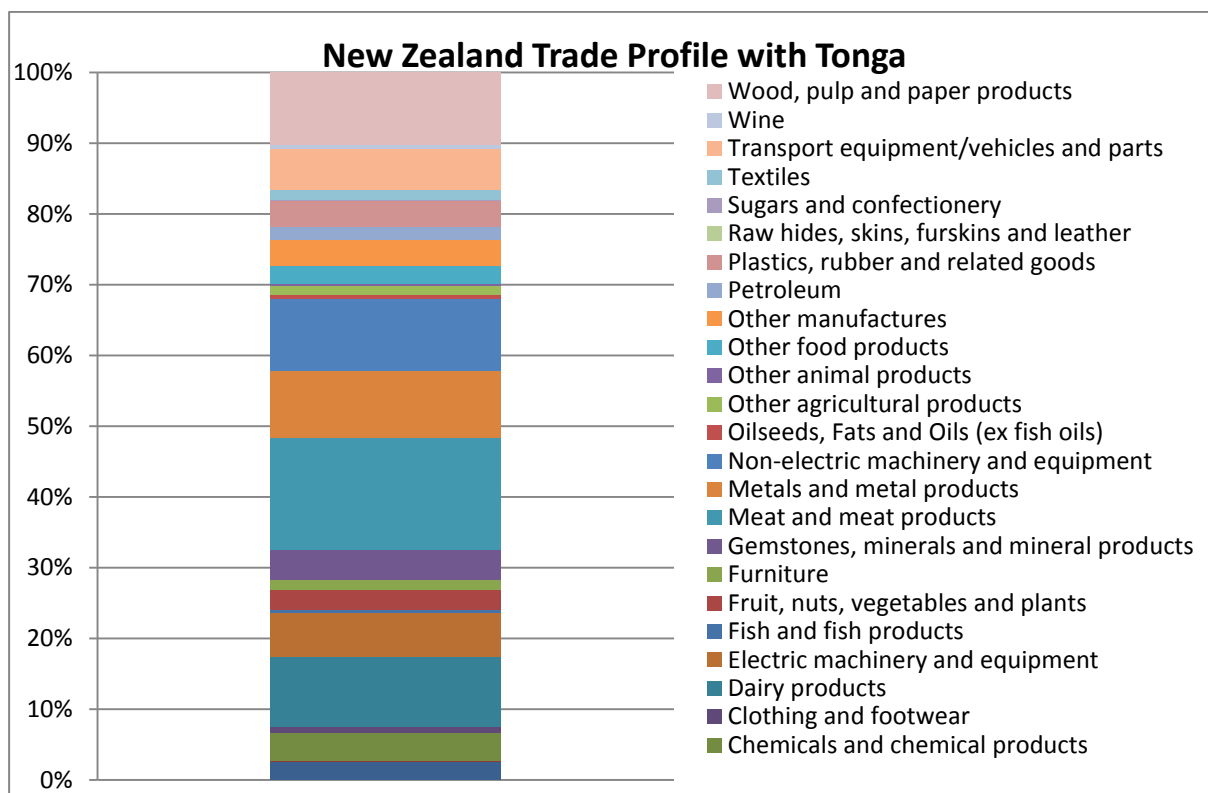


Elimination of tariffs for the majority of products will take place over the first 15 years following entry into force; this includes elimination of 5 percent tariffs on milk powder within 5 years, elimination of tariffs of 8 percent on cheese within 10 years. Tariffs of 8 to 20 percent on lamb, beef and some pork exports will be eliminated over periods from 10 to 25 years, applied rates on poultry will be bound in. While Samoa has retained current tariffs of 20 percent on a range of horticultural products elimination outcomes have been secured on 74 percent of New Zealand fruit nut and vegetable exports with elimination within 25 years on products including, carrots and turnips, leeks, kiwifruit, apples and avocados.

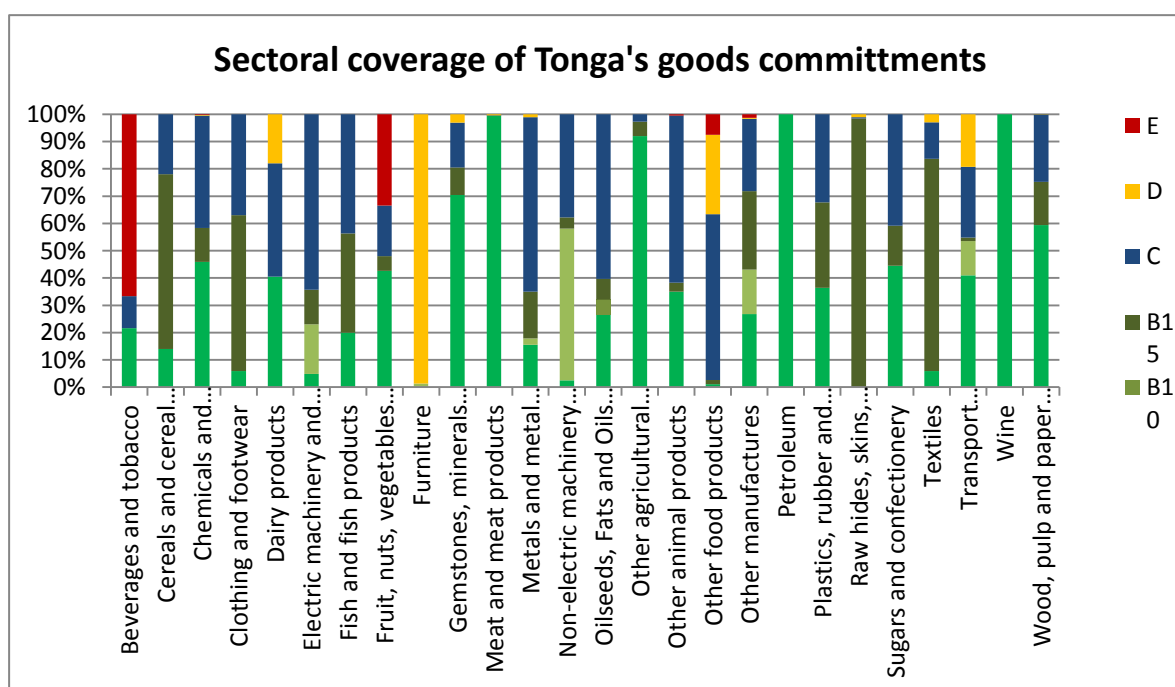
11 percent of New Zealand's exports will have their tariffs bound at current rates under PACER Plus including products such as ice-cream, a range of vegetables, some processed meat products, hens eggs, wine, beer and swine feed (a significant component of other agricultural products) while 3 percent of New Zealand's trade will be excluded from elimination or binding commitments including some meat products such as offal cuts of poultry and malt preparations for infant use.

Tonga

Tonga currently applies an average tariff of 7.1 percent on imports from New Zealand. Most products face a tariff of 3, 10 or 15 percent. New Zealand's primary exports to Tonga are meat and meat products (16 percent) wood, pulp and paper products (10 percent), dairy products (10 percent), non-electric machinery (10 percent) and metals and metal products (9 percent). Tonga will eliminate tariffs on 92 percent of exports to Tonga within 25 years of entry into force, a further 5 percent of New Zealand exports will have their duties bound at current rates, providing for commitments across a total of 97 percent of New Zealand's exports to Tonga.

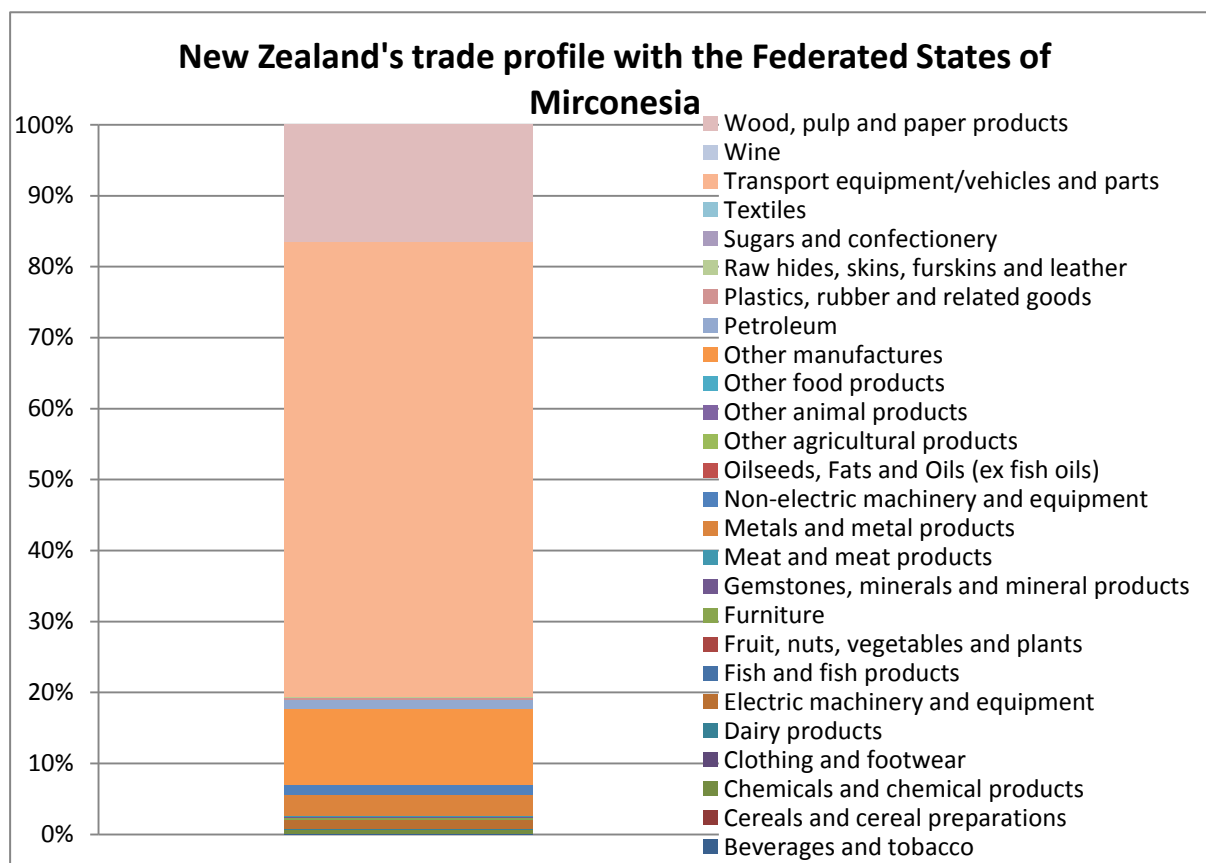


This includes elimination within 25 years of tariffs on just under 100 percent of New Zealand meat and wood exports, 99 percent of metal exports and 82 percent of New Zealand dairy exports. Tariffs on 5 percent of New Zealand's exports will be bound in at current rates including in relation to prepared sausages and ice-cream. A further 3 percent of New Zealand exports have been excluded from commitments including bird's eggs, potatoes onions, and beer.



The Federated States of Micronesia

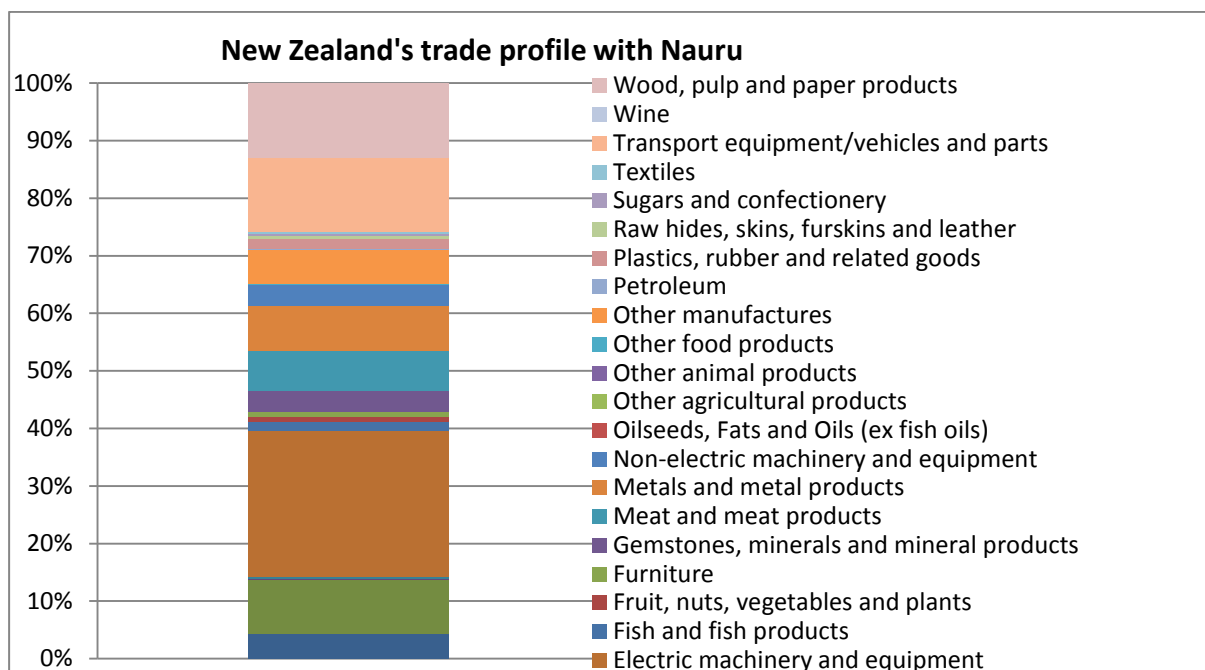
On average between 2013 and 2015 New Zealand exported 4.9 million to the Federated States of Micronesia per annum; over 98 percent of this trade attracts a tariff of 4 percent. New Zealand's most significant exports to the Federated States of Micronesia are transport equipment/ vehicles and parts, wood, pulp and paper products and other manufactures.



The Federated States of Micronesia will eliminate tariffs on 79 percent of New Zealand's exports within 20 years from entry into force of PACER Plus. A further 19 percent will be duty free at the end of 35 years, bringing total duty free access to 98 percent at the full implementation of the Agreement.

Nauru

On average between 2013 and 2015 New Zealand exported NZD\$1.3 million of goods to Nauru per annum, these exports face an average ad valorem tariff of 12 percent, making Nauru one of the more protected markets in the Pacific. New Zealand has a limited trade profile with Nauru. Notably we do not currently export wine, other agricultural or other animal products, oilseeds or fats, or cereals or cereal preparations to Nauru.

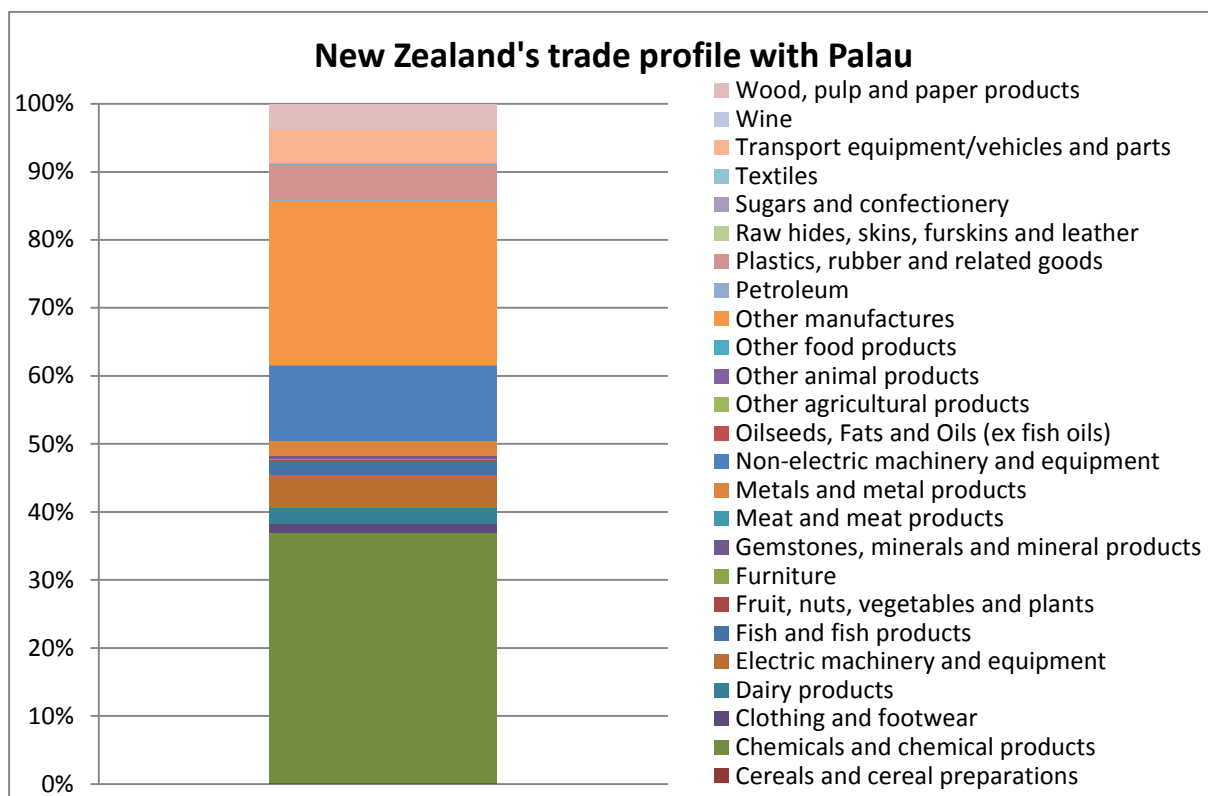


Under PACER Plus Nauru will commit to eliminate tariffs on 94 percent of New Zealand exports at the full implementation of the Agreement. This includes elimination of tariffs on 100 percent of New Zealand's wood, pulp and paper exports, 100 percent of New Zealand's fruit vegetable and nuts exports, 100 percent of metals and metal products, 91 percent of New Zealand's meat and meat products exports. Elimination outcomes will be gradual, outcomes for meat will take place in year 25 following entry into force of the Agreement. The fastest liberalisation outcomes pertain to products with a 10 percent tariff, such as a range of metal products, some fishery products, raw hides and skins. Tariffs will remain in place on a small range of traded products including ice-cream, beer, some vehicles and parts, some processed meat products such as sausages. Tariffs on a range of beef cuts will be bound in at current rates.

Palau

On average between 2013 and 2015 New Zealand exported NZD\$0.4 million per annum to Palau; trade almost exclusively enters duty free or under a 3 percent tariff. Trade is highly concentrated, our largest single export to Palau is Chemicals and chemical products (primarily medicaments) followed by other manufactures, (primarily electricity meters). All of these products are either duty free, or face tariffs of 3 percent which will be eliminated 15 years after entry into force of the Agreement.

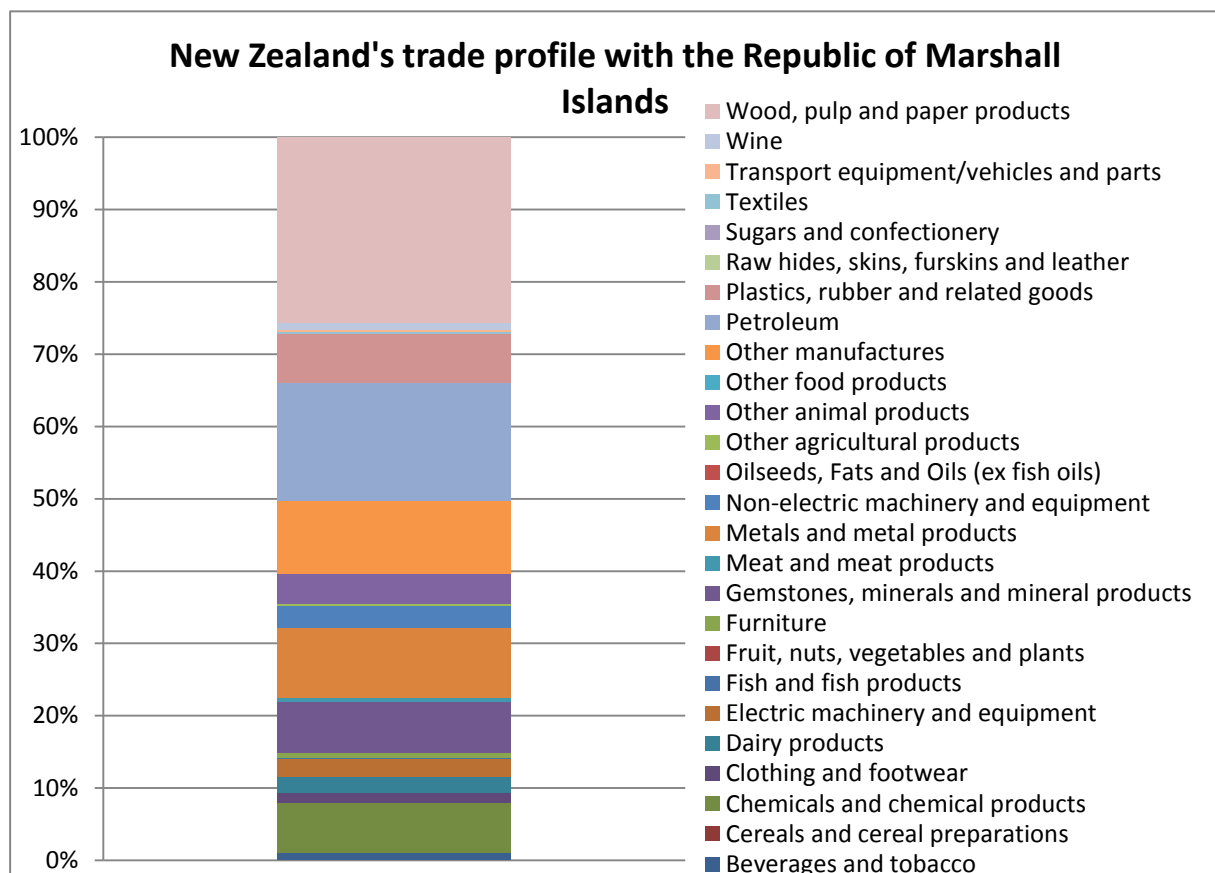
New Zealand's trade profile with Palau is included below. Notably New Zealand does not currently export cereals, oilseeds, fats and oils, other agricultural products or wine to Palau. Less than NZD\$1000 worth of meat, other animal products, fruit nuts and vegetables, raw hides, sugars, beverages and tobacco, other food products, petroleum or textiles is exported per annum.



Currently 42 percent of New Zealand's exports to Palau enter duty free. An additional 40 percent of New Zealand exports will be duty free within 15 years of entry into force of PACER Plus and a total of 98 percent of New Zealand exports will be duty free by full implementation of the Agreement.

Republic of the Marshall Islands

On average between 2013 and 2015 New Zealand exported NZD\$3.4 million to the Republic of the Marshall Islands per annum, the majority of trade is concentrated in a handful of products such as wood, pulp and paper products, petroleum, other manufactures. There is limited trade in, raw skins and hides, oilseeds, oils and fats and sugars and no trade in cereals. The majority of trade faces tariffs of 8 percent.



Under PACER Plus the Republic of the Marshall Islands will commit to eliminate duties on 84 percent of New Zealand exports. This includes providing duty free treatment for 98 percent of dairy exports within 15 years of entry into force, and eliminating duties on 99 percent of New Zealand's wood exports at the full implementation of PACER Plus. Exclusions remain on some products of traditional interest such as meat, fishery products, prefabricated buildings, and alcohol.

Least Developed Countries, which commence reductions dependent on graduation from Least Developed Country status

The below summary of market access outcomes is provided for the three least developed countries which will implement tariff reductions under PACER Plus commencing on the later of 10 years after entry into force or graduation from least developed country status. Given the unique vulnerabilities and challenges of these countries, there is no certainty about when a decision will be taken by the Committee for Development Policy²⁴ to graduate these countries. However a brief synopsis of the current decisions made by the committee with respect to these countries, and the earliest possible date for graduation on this basis²⁵ is provided below.

As a result of the 2015 triennial review, the Solomon Islands met the criteria for graduation from Least Developed Country status for the first time. Should the Solomon Islands meet the criteria for graduation during the 2018 triennial review then they may be recommended for graduation by the Committee. Graduation by the Solomon Islands could occur at the earliest in 2021, in which case reductions under their schedules of commitments would commence 10 years after entry into force of the Agreement.

The question of Tuvalu's graduation from LDC status was deferred by the Committee until the 2018 triennial review, due to the high vulnerability of Tuvalu, to allow the Council, *'to have an opportunity for further consideration of the particular challenges that Tuvalu faces.'* On this basis the earliest that Tuvalu could graduate from LDC status is 2021, in which case reductions under their schedules of commitments would commence 10 years after entry into force of the Agreement.

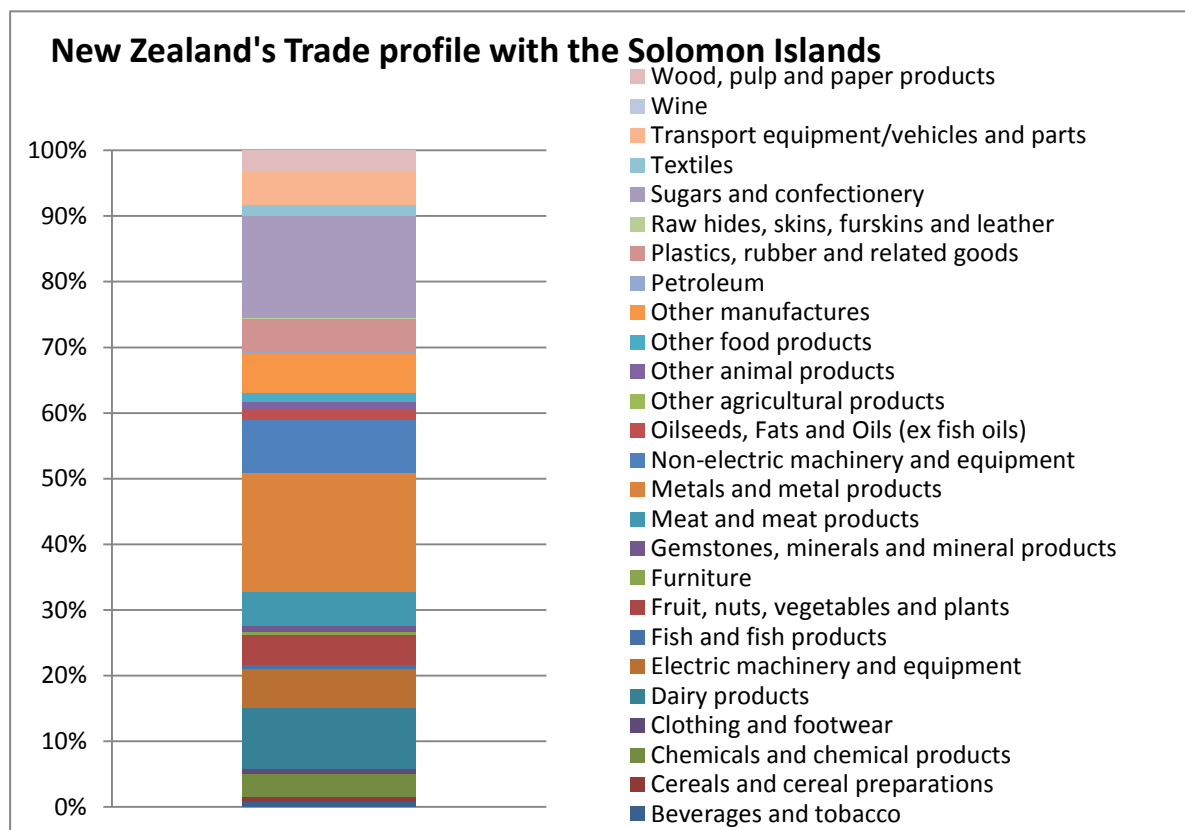
Vanuatu has been found eligible for graduation in 2006, 2009 and 2012 and was recommended for graduation in the 2012 triennial review. However the United Nations General-Assembly granted an additional preparatory period before the start of the three-year process for graduation. On the basis of this proposed timeline graduation by Vanuatu could occur at the earliest in 2018, in which case reductions under their schedules of commitments would commence 10 years after entry into force of the Agreement.

²⁴ Graduation is determined through triennial review by the Committee for Development Policy, a subsidiary body of the UN Economic and Social Council

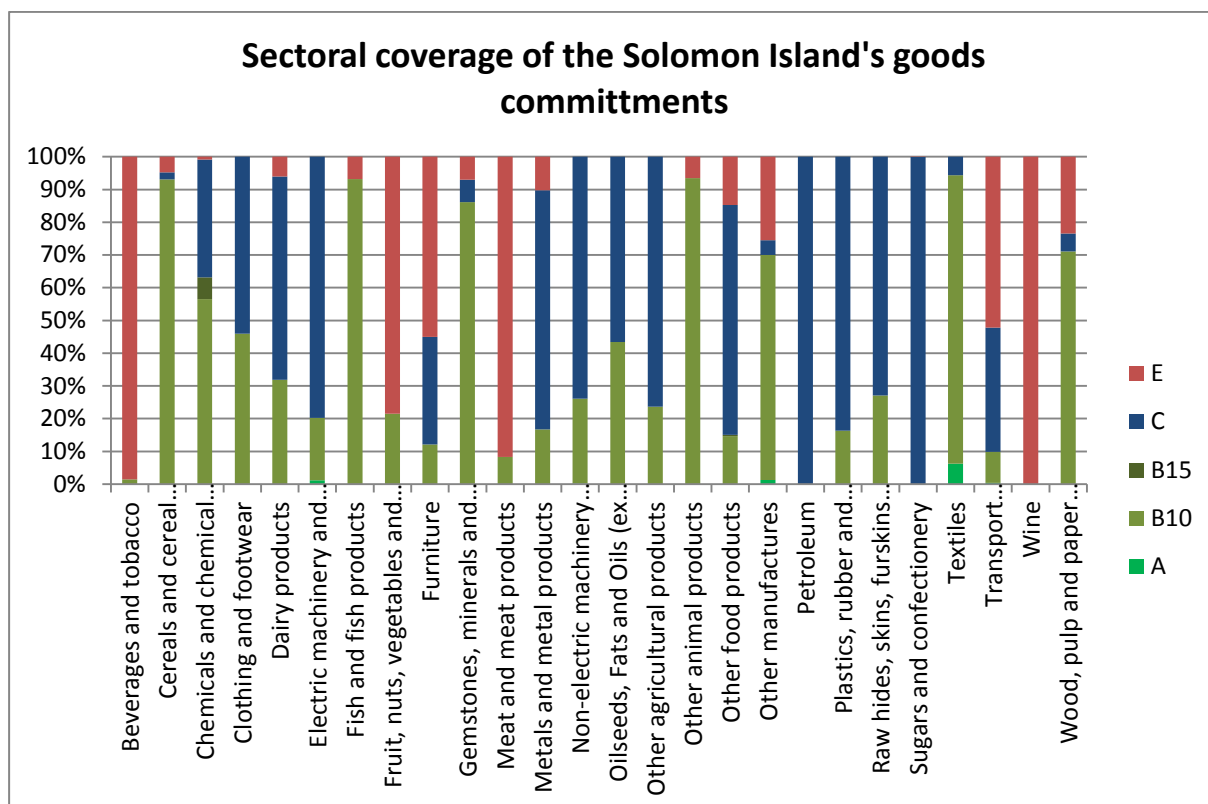
²⁵ <http://unohrlls.org/about-ldcs/criteria-for-ldcs/>

Solomon Islands

On average between 2013 and 2015 New Zealand exported NZD\$29 million to the Solomon Islands; these exports face an average applied tariff of 8.8 percent. Less than 1 percent of New Zealand exports are currently duty free, applied rates on the majority of trade are 5 or 10 percent, a small fraction of trade faces tariffs of up to 20 percent or specific duties such as those on fuel, alcohol and tobacco.

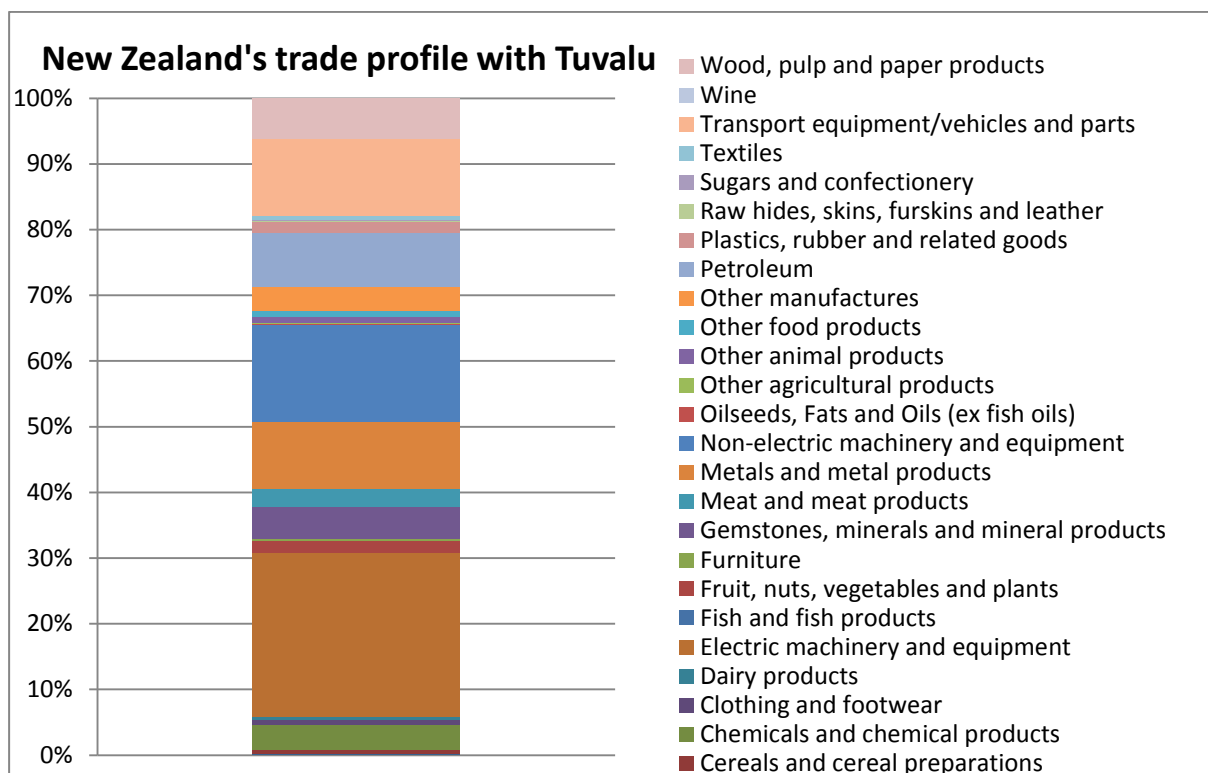


Under PACER the Solomon Islands will bind in currently applied rates for just under 83 percent of New Zealand exports. Subject to graduation from least developed country status; the Solomon Islands will eliminate these tariffs. This includes elimination of tariffs on 94 percent of dairy exports, 93 percent of fish exports, and 90 percent of metal and metal products exports. Tariffs will remain on a range of products including meat and meat products, fruit nuts and vegetables, wine beer.



Tuvalu

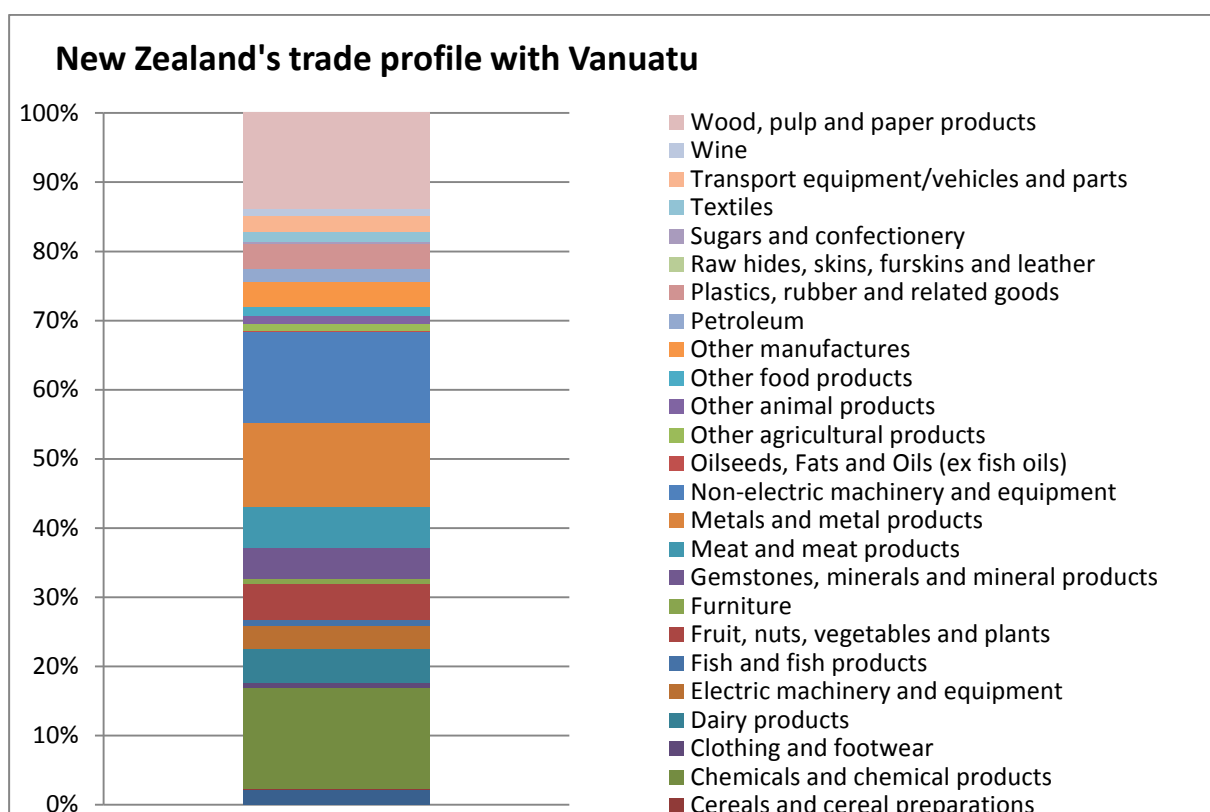
On average between 2013 and 2015 New Zealand exported just NZD\$4.7 million to Tuvalu per annum- an average tariff of 7.6 percent is applied on these exports. While 62 percent of New Zealand exports to Tuvalu are currently duty free, including key exports of coniferous wood and aluminium the remainder attract tariffs of between 7 and 33 percent with some specific tariff rates applied on vehicles. Under PACER Plus Tuvalu will bind in currently applied duties on 98 percent of New Zealand exports.



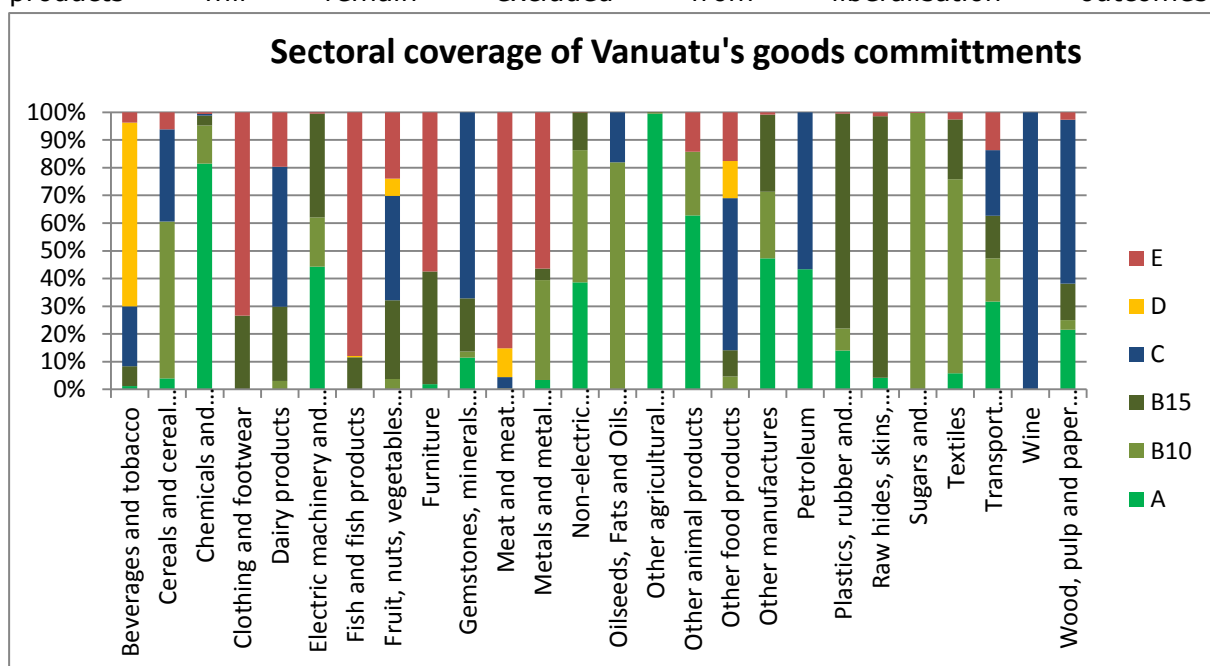
Subject to graduation from least developed country status, Tuvalu will eliminate tariffs on 37 percent of New Zealand exports; bring the total percentage of New Zealand exports entering Tuvalu duty free from 61 percent to 97 percent. This includes elimination of duties on 100 percent of wood, pulp and paper products exports, 100 percent of duties on electric machinery and equipment exports and 100 percent of duties on metal and metal products exports. While New Zealand does not currently export wine to Tuvalu, this will be duty free under the Agreement. Some products such as ice-cream, eggs, beer, pork and poultry will remain subject to duties at the full implementation of PACER Plus.

Vanuatu

On average between 2013 and 2015 New Zealand exported NZD\$42 million to Vanuatu per annum, these exports face an average applied tariff of 13.1 percent. Only 28 percent of New Zealand's exports currently enter duty free, the majority face tariffs of 5 to 15 percent while the remainder face tariffs of 20 to 75 percent and specific rates.



Under PACER Plus Vanuatu will bind in current applied tariffs on just under 83 percent of New Zealand's exports. Subject to graduation from Least developed country status Vanuatu will eliminate tariffs on 80 percent of New Zealand exports, including key products of interest such as coniferous wood, Portland cement, milk powder onions and potatoes, apples and sheep meat well as a range of products of key interest of such as iron, plastic, prefabricated buildings and steel. However beef and the majority of poultry products will remain excluded from liberalisation outcomes.



Disadvantages

Market Access – Exports

4.1.5 Key markets excluded from the initial signatories

The current PACER Plus grouping does not include the two largest markets for New Zealand exporters in the Pacific, Fiji and Papua New Guinea. This reflects the reality that at this point these countries are not yet ready to take on commitments under the Agreement and need more time to assess the benefits and consult domestically. These two Parties account for some NZD\$612 million worth of New Zealand goods exports. However, while these countries will not be amongst the original signatories of the Agreement, PACER Plus will provide an accession provision for these and other Forum Island Countries, such as new members New Caledonia and French Polynesia, to join when they are ready to do so. Concluding PACER Plus now, does not therefore undermine the future prospects of securing access in these markets, but does secure access for New Zealand exporters to the wider Pacific and lock in important most-favoured-nation obligations which will help ensure that New Zealand exporters to the PACER Plus Parties are not disadvantaged against significant competitors in the region in the future.

4.1.6 Some Products Remain Excluded at the Full Implementation of PACER Plus

As detailed above, tariffs will remain on items of export interest to New Zealand even at the full implementation of PACER Plus. Least Developed Country Parties will not make reductions until their date of graduation from Least Developed Country status.

4.1.7 Limitations on the scope of the most-favoured-nation-provision

The most-favoured-nation provision contains exemptions to facilitate “South South” trade between PACER Parties and small developing countries, which account for less than 1 percent of world merchandise exports.²⁶ Where PACER Plus Parties enter into Regional Trade Agreements exclusively with such countries (i.e. no participating country exceeds 1 percent of world merchandise exports or is developed) and the group together accounts for less than 4 percent of world merchandise exports, these preferences will not be passed onto New Zealand.

This means that it is possible that at some future point, the Pacific may provide more favourable tariff treatment to third Parties than provided to New Zealand and Australia. Likewise exemptions exist for preferential agreements between Pacific Island countries, in the case of Republic of the Marshall Islands, Palau, and the Federated States of

²⁶ In 2014 Qatar, Kuwait, Nigeria, South Africa, Iran, Iraq, Venezuela, Kazakhstan, Chile, Argentina, Algeria, Angola, Philippines, Columbia, Oman, Peru, Belarus, Bangladesh, Azerbaijan, Egypt, Ecuador, Pakistan, Morocco, and Libya were amongst the developing countries which account for less than 1 percent of world merchandise trade individually.

Micronesia future preferential arrangements within the framework of the Compact of Free Association with the United States of America will not be subject to most-favoured-nation obligations. Given the relative size of New Zealand, which itself accounts for only 0.28 percent of world merchandise exports, such "South South" preferences do represent a disadvantage to New Zealand, as compared with a provision with no such exemptions.

Furthermore any delay in entry into force of the Agreement by the Parties does present some small risk that New Zealand would be disadvantaged as compared to significant competitors in the region. This is because the most-favoured-nation provision applies from entry into force of PACER Plus. The obvious candidate for such a scenario is the European Union Economic Partnership Agreement negotiations with Pacific Island Countries, if these negotiations are successfully concluded and ratified before PACER Plus enters into force.

Notwithstanding these disadvantages the most-favoured-nation provision secured by New Zealand represents a substantial achievement and is the first such provision negotiated by New Zealand. There is no example of a goods most-favoured-nation provision in similar development free trade agreements that do not have thresholds on the application of most-favoured-nation, and all similar provisions contain a range of exemptions to facilitate "South South" trade. Arguably the PACER Plus provision is preferable to existing alternatives such as the goods most-favoured-nation provisions in the USA Compacts of Free Association which are not automatic in their application but require consultation between the Parties to take effect.

4.1.8 Industry Development

In recognition of the unique vulnerabilities of the small island developing Parties involved, including limited industry development opportunities, low populations, limited arable land and other natural resources, small isolated economies and high vulnerability to natural disasters, and taking into account the high incidence of persistent gaps between Forum Island Countries' respective levels of per capita gross national income and those of the world's developed countries and larger or more advanced developing countries, PACER Plus will be the only New Zealand Free Trade Agreement to include a provision on industry development.

The provision provides flexibility to Parties during the transition period for the elimination of tariffs to enable them to support the establishment or expansion of a new industry, or to support an industry destroyed or substantially damaged as a result of hostilities or natural disasters. With the approval of the PACER Plus Joint Committee, the requesting Party may delay scheduled tariff reductions, or increase the rate of duty to no more than the most-favoured-nation applied rate of duty (in the case of WTO members) or no more than the general non-preferential applied rate of customs duty (for non WTO members). Kiribati, in recognition of its comprehensive unilateral liberalisation, may raise the relevant tariff to a level agreed by the Joint Committee. Such a measure can be taken for an initial period of seven years, which may be extended by three years by the Joint Committee.

This flexibility comes at the cost of increased uncertainty for New Zealand businesses; however such uncertainty is balanced by limitations on use of the measure. The provision contains stronger limitations than those in similar provisions found under the European Union Interim Economic Partnership Agreement with Fiji and Papua New Guinea, as such a measure may:

- Only be taken with Joint Committee approval (as the committee operates by consensus and includes Australia and New Zealand a measure cannot be taken without Australian and New Zealand Agreement);
- Only be taken during the period of the requesting Party's scheduled reductions in the rate of Customs duty for the affected product; and
- Not, across all such measures taken by the requesting Party, account for more than eight percent of the total exports, and not more than three percent of tariff lines, of the affected Party to the requesting Party.

Compensation will be provided to New Zealand in the form of equivalent concessions, or, as otherwise agreed between the Parties, after the first three years of application of the measure.

The provision is unique to this Agreement, but broadly follows examples found in other development agreements in Africa and the Pacific. Its inclusion reflects the special relationship between New Zealand and the Pacific Island Countries and the unique context of this development agreement.

Transitional Safeguard

PACER Plus includes a "transitional safeguard measure" that would allow developing country Parties to remedy any serious injury experienced by their domestic sectors as a result of tariff liberalisation under the Agreement. If applied, such transitional safeguards can potentially temporarily undermine the agreed market access outcomes granted in the Agreement and cause uncertainty for businesses. The PACER Plus transitional safeguard measure mitigates this – and hence protects market access outcomes for New Zealand exporters – by establishing clear processes to discipline and limit the ability of Parties to take transitional safeguard actions. The transitional safeguard measure in PACER Plus is consistent with those of New Zealand's other Free Trade Agreements, except that it does not allow New Zealand (or Australia) as developed country Parties to utilise the transitional safeguard measure. This restriction was in recognition of the relative sizes of the economies of the developing country Parties when compared with Australia and New Zealand, as well as the overarching development objectives of PACER Plus.

Market Access - Imports

PACER Plus will have negligible tariff revenue implications for New Zealand given that duty free treatment is already provided to these Pacific Island Countries, under non-reciprocal agreements such as SPARTECA and the WTO Generalised System of

Preferences. All New Zealand imports from Pacific Island Countries are eligible for duty free treatment under SPARTECA if they qualify for preference under the relevant Rules of Origin. In practice this means that the overwhelming majority of exports from PACER Plus Parties enter New Zealand duty free. Of the NZD\$23 million dollars exported from these countries to New Zealand each year, less than NZD\$2 thousand per annum²⁷ is payable as duties.

Binding in current duty free access for PACER Plus Parties²⁸ under this Agreement commits New Zealand to PACER Plus as the basis of the regional framework for trade, and to asymmetrical commitments with respect to tariff liberalisation. Such commitments by Pacific Island Countries may be less ambitious than those which might be secured in the future, once the Pacific has more fully engaged in unilateral liberalisation and integration with the multilateral trading system. However such considerations are negated by the inclusion of a most-favoured-nation obligation for Trade in Goods which will secure improvements to tariff treatment, if Forum Island Country Parties negotiate preferential trade agreements with third party competitors. In this respect the earlier that PACER Plus enters into force the greater the likely benefits which will accrue due to third party preferences to New Zealand under the Agreement.

4.2 Rules of Origin and Origin Procedures

The rules of origin under a free trade agreement determine what products can benefit from the tariff preference of the Parties and ensure that such benefits are accorded only to the Parties.

The Rules of Origin Chapter (Chapter 3) establishes the rules for determining whether goods traded between PACER Plus Parties are considered to “originate” in the PACER Plus region and therefore qualify for relevant tariff preferences. All free trade agreements have such rules.

The PACER Plus Agreement provides three avenues through which goods can qualify for preferential tariff treatment (Chapter 3, Article 2). Goods will qualify as originating if:

- i. they are wholly obtained (e.g., fruits and vegetables grown in a Party and live animals born and raised in one or more Parties) or produced (e.g., goods obtained from live animals in a PACER Plus Party;
- ii. they are produced entirely in one or more of the Parties, by one or more producers, exclusively from originating materials; or

²⁷ Based on average import duties collected between 2013 and 2015

²⁸ The 2001 PACER Agreement between the Forum Islands Countries, Australia and New Zealand does not allow any backwards movement in market access commitments made so New Zealand is not able to withdraw existing preferential treatment from Forum Island Countries in the absence of new and improved commitments made by New Zealand to them.

- iii. the final substantive stage of production is carried out in a Party meeting the criteria specified in the product specific rules

In addition, they should also satisfy all other applicable requirements to meet and retain their originating status (e.g., (i) a consignment that left the exporting Party should not enter trade or commerce while passing through a non-Party and (ii) minimal operations such as facilitating shipment or transshipment, or affixing of labels are not considered origin conferring activities).

The key determinant for whether goods qualify under the third option above relates to a specified Change in Tariff Classification (CTC). Under the CTC approach, a good will qualify as originating if all non-originating materials (i.e., materials from non-PACER Plus region) used in its production have undergone a specified change of tariff classification. All products under the PACER Plus have an applicable CTC rule.

An alternative method based on the value added by producers within the PACER Plus region is also provided for some products (primarily industrial products (Chapter 3, Article 4)). For chemical and some other products there are also alternative process rules which confer origin.

The 'CTC', 'value added' and 'process' rules referred to above ensure that goods that are not wholly obtained or produced are substantially transformed in the PACER Plus region.

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

Advantages

Rules of origin, in themselves, do not confer an advantage or disadvantage to New Zealand. They are a recognised part of free trade agreements, to determine what products are eligible for the preferential tariffs agreed between Parties. Having said that, rules of origin can be a key determinant in how easily exporters are able to access the preferential market access in free trade agreements. In this regard:

- New Zealand exporters to the Pacific Region are not required to obtain independent certification that their goods are originating, thus reducing compliance costs;
- the product specific rules are now more closely aligned with New Zealand's other Free Trade Agreements, thereby reducing administrative costs for compliance and enforcement; and
- the rules are designed to allow significant flexibility in sourcing inputs from global supply chains.

Disadvantages

The more liberal rules of origin (compared with SPARTECA) will allow the Pacific Parties more freedom in sourcing their inputs from countries other than New Zealand or Australia. Companies supplying input materials for Pacific manufacture will need to remain competitive.

4.3 Sanitary and Phytosanitary (SPS) Measures

Chapter 5 sets in place mechanisms to facilitate trade in animals, plants and their products between the Parties, while protecting human, animal and plant life or health in the territory of each Party. The Chapter is based on the requirements and obligations of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) with the six Parties that are WTO Members⁶ affirming their rights and obligations under the SPS Agreement and with the eight non-WTO Members⁸ basing their SPS measures on the Agreement to the extent of their capacity.

Advantages to New Zealand

The Chapter places special emphasis on processes that enhance transparency, technical justification (for measures), consultation and harmonisation. It establishes a framework in which trade access issues can be addressed in a cooperative, objective and scientific manner. The Chapter also recognises equivalence and regionalisation (pest-, disease-free areas, or low prevalence). All of the above make for a more predictable trading environment. The import programmes of all Parties will be required to be based on science and be risk based, which will enable New Zealand exporters to understand exactly what the (justified) SPS requirements of the importing countries are (New Zealand already meets this requirement through its system of import health standards).

Disadvantages to New Zealand

The Chapter does not add any substantive obligations to those Parties already bound by the WTO SPS Agreement. However, the individual capacity of Parties to develop and maintain export markets for their produce varies immensely, with the smaller parties (e.g. Kiribati, Nauru, Niue, Tuvalu) being particularly affected. Expediting exports (imports into New Zealand) from such Parties will continue to pose a real challenge hence the importance of transparent, rules-based SPS Chapter that encourages dialogue and cooperation. Chapter 5, Article 12 (Technical Discussions) allows a mechanism whereby a Party may request technical discussions on any SPS measure affecting trade between it and another. Currently there is strong interest (concern) among Parties regarding New Zealand's Import Health Standard programme for imports of primary products and it could be possible that Parties may request discussions on this area under this Article. Responding to Pacific requests under such discussions (if they eventuate) could have an impact on the New Zealand Ministry for Primary Industries capacity and resources.

4.4 Technical Regulations, Standards, and Conformity Assessment

Chapter 6 (Technical Regulations, Standards, and Conformity Assessment Procedures) draws on Parties' existing rights and obligations under the WTO Agreement on Technical Barriers to Trade, with some differentiation for non-WTO members. The aim is to prevent technical regulations, standards and conformity assessment procedures operating as unnecessary barriers to trade between the Parties, while recognising the right of each Party to regulate for legitimate purposes (e.g. national security, the prevention of deceptive practices and the protection of human health or safety, animal or plant life or health, or the environment).

The Chapter has a focus on promoting cooperation and collaboration in order to facilitate trade between Parties, including increasing market access opportunities for developing country Parties (for example by enhancing transparency, promoting information exchanges, and establishing mechanisms for holding technical discussions). Through these mechanisms for cooperation and collaboration New Zealand can seek to resolve issues with standards, technical regulations and conformity assessment requirements that impede or add unnecessary cost to New Zealand exporters.

The Chapter also contains flexibilities for non-WTO members. For example, non-WTO members are only required to apply the obligations of the WTO TBT Agreement to the extent of their capacity. Further, Parties who are WTO Members have agreed to apply the provisions of Articles 1 through 10 of the WTO TBT Agreement with respect to non-WTO members to the extent such provisions are not covered elsewhere in the Chapter.

The Chapter does not add any substantive obligations to those Parties already bound by the WTO TBT Agreement.

4.5 Customs Procedures

Through the Chapter on Customs Procedures, PACER Plus Parties are committed to applying international standards and best practices. The Chapter encompasses provisions of:

- the World Customs Organisation's (WCO) Revised Kyoto Convention on simplification and harmonisation of customs procedures;
- the Harmonised Commodity Description and Coding System administered by the WCO;
- the World Trade Organisation's Customs Valuation Agreement; and
- the World Trade Organisation Agreement on Trade Facilitation.

These commitments are aimed at facilitating the flow of goods across borders, including through ensuring customs procedures and practices are transparent and consistent, and expediting certain forms of trade.

Advantages to New Zealand in entering the Agreement

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

Disadvantages to New Zealand in entering the Agreement

A number of the Forum Island Country Parties are not signatories to the conventions or agreements that promote international best practices. Hence, they lack the necessary skills and knowledge to implement the provisions embodied in those conventions. These countries may require technical assistance to implement the provisions of this Chapter. New Zealand is expected to assist Pacific customs administrations, subject to available resources and to the extent New Zealand domestic laws permit. So the speed at which New Zealand would benefit will depend in part on the speed with which capacity is built.

4.6 Investment

New Zealand's current volume of direct investment in PACER Plus Parties is negligible. However, this amount has fluctuated over time, potentially indicating shorter term investments associated with companies undertaking specific projects or contracts.

Advantages to New Zealand in entering the Agreement

PACER Plus establishes the first treaty-level framework for investment in the Pacific region, which establishes the safeguarding of the interests of New Zealand investors in non-services sectors and expands on that already afforded through the General Agreement on Trade in Services for services sectors. Chapter 9 establishes a credible legal framework with a set of rules based on international best practice, including customary international law, to facilitate investment flows (a key development objective for the Forum Island Countries), and provide for the protection of investments made by New Zealanders. The Chapter facilitates the creation of a stable and predictable environment for foreign investment, taking account national policy objectives and the right of each Party to regulate for public policy purposes.

New Zealand investors will benefit from:

- provisions that enable the free transfer of all payments relating to an investment, including capital necessary for establishing the investment, and the returns generated from that investment, between Forum Island Countries and New Zealand (Chapter 9, Article 14). These are a significant addition to the current protections available to New Zealand investors;

- commitments to provide protection from arbitrary expropriation (Chapter 9, Article 13). Neither Party may expropriate or nationalise the investment of investors of the other Party, unless such an action is done for a public purpose; in a non-discriminatory manner; or with payment of compensation; and in accordance with due process of law. The provisions ensure that any compensation paid must be equivalent to the fair market value of an expropriated investment, paid without delay, and rendered in an effectively realisable and freely transferable currency, with appropriate interests. Such expropriation provisions constitute a key protection for New Zealand investors. They minimise the risk of arbitrary government action to expropriate established investments, and ensure that any expropriation actions are appropriately compensated should they occur;
- provisions to enhance the transparency of Parties' investment regimes, including by requiring the publication of domestic investment measures (Chapter 9, Article 15). Access to information about Parties' investment frameworks, and communications between the Parties on any matter covered by the Investment Chapter, is facilitated by a provision that requires each Party to designate specific contact points [Chapter 9, Article 21]. This will be a useful mechanism for keeping New Zealand investors abreast of future developments in the Parties' foreign investment frameworks, particularly those countries where gaining information on policy setting has – in the past – been difficult.

In addition to this framework of rules, PACER Plus Parties make individual commitments to afford national treatment to investors of other Parties. These commitments typically comprise general provisions regarding the treatment of foreign investment (for example detailing investment screening regimes), and a list of specific sectoral commitments to afford national treatment.

Samoa, Tonga and Vanuatu have committed not to impose a general investment screening regime.

The Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of Marshall Islands, the Solomon Islands, Tuvalu maintain the right to screen all foreign investment

Sector specific national treatment commitments undertaken by all Forum Island Countries (subject to some limitations or exceptions in individual instances) comprise:

- agriculture, hunting and forestry;
- aquaculture; and
- manufacturing.

In addition, the following Forum Island Countries have undertaken a commitment for mining and quarrying: the Cook Islands, the Federated States of Micronesia, Kiribati, Niue, Republic of Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu, Vanuatu.

The most-favoured-nation obligation means that, except where Parties inscribe specific exceptions, they must afford New Zealand investors treatment no less favourable than that afforded to investors from other countries. This means that, even where no national treatment commitment is made (for example where an investment screening regime is maintained), New Zealand investors will benefit from any liberalisation of regimes undertaken as part of a future free trade agreement negotiation. This commitment is subject to the following exceptions taken by all Forum Island Countries:

- any free trade agreement signed prior to PACER Plus;
- existing or future agreements relating to aviation, fisheries, and maritime;
- measures involved in devolving services provided in the exercise of governmental authority;
- measures related to core government functions;
- bilateral or regional agreements with other Pacific island countries and territories or least-developed countries;
- measures relating to the creative arts, cultural heritage and other cultural industries (including audio visual and broadcasting services, entertainment services and libraries, archives, museums and other cultural services).

In addition, many Forum Island Countries also include more specific exceptions particular to them.

Other significant rules against discrimination include prohibitions on nationality requirements imposed on senior management and boards of directors of foreign companies, subject to specified exceptions found in Annex 9-B (Chapter 9, Article 10), and trade distortive performance requirements, subject to specific exceptions for non-WTO Forum Island Countries to be found in Annex 9-C (Chapter 9, Article 11). These rules are designed to allow the investors of the PACER Plus Parties (including New Zealand) to enter another Party's market and compete on a level playing field with domestic investors and other international competitors.

Disadvantages to New Zealand in entering the Agreement

New Zealand's investment commitments under PACER Plus are wholly consistent with current regulation and commitments made in previous free trade agreements.

While these investments are the first made in the region, in reality they are of limited substantive effect. In practical terms, the investment screening regimes maintained by most Forum Island Countries (except Samoa, Tonga and Vanuatu) provide very little certainty for New Zealand investors in relation to access to the Forum Island Countries' markets. These Forum Island Countries effectively maintain full discretion to refuse any foreign investment. This reflects the current state of investment environment in these Parties, and all have undertaken to consider further reform. Should they afford better treatment to investors of another country (for example through a future free trade

agreement) the most-favoured-nation provision in PACER Plus (discussed above) would ensure that this treatment is also afforded to New Zealand investors (subject to limited exceptions).

Unlike New Zealand's usual approach to investment market access, PACER Plus adopts a positive list approach to the scheduling of specific national treatment commitments for non-services sectors. Under a positive list approach, the Parties list all those sectors where commitments are made. This approach was adopted based on the capacity and developing status of the Forum Island Countries.

In respect of senior management and board of directors commitments (which prohibit certain nationality requirements) Parties were able to agree a "negative list" approach. However, this has been effectively nullified by a horizontal reservation made by all Forum Island Countries for sectors where positive commitments are not taken in their services and investment schedules. In many cases this also seriously limits the overall scope of commitment against this obligation.

Contrary to the approach taken by all other Parties (including New Zealand), Australia has exempted its investment screening regime in its entirety from the most-favoured-nation obligation. This will have no direct impact on New Zealand, given the preferential access we enjoy on a bilateral basis. However, it will mean that the Forum Island Countries will not enjoy the benefits of increased screening thresholds Australia might negotiate in subsequent free trade agreements. New Zealand has not made a similar carve-out meaning its investment regime is subject to the most-favoured-nation commitment and improved market access commitments offered to other Parties in future free trade agreements will be extended to the Forum Island Countries.

There is also a most-favoured-nation exemption included by all Forum Island Countries for "regional integration" which is, in New Zealand's view, too broad. In addition to covering other Pacific countries, it includes all Least Developed Countries. This goes well beyond its stated intention of providing for opportunities for the Pacific region to further integrate. However, the limited commercial significance of Least Developed Countries means the impact of this exemption on New Zealand's trade interests is likely to be small.

4.7 Trade in Services

In the year to December 2016 New Zealand exported NZD\$278 million of services to PACER Plus Parties, excluding Australia. This represents 1.3 percent of total services exports. The majority of this figure is made up of personal travel-related services likely associated with tourism and Forum Island Country residents visiting family and friends living in New Zealand. Business travel and transport services make up smaller portions of the services export profile.

Advantages to New Zealand in entering the Agreement

PACER Plus seeks to facilitate trade in services between New Zealand and Forum Island Countries by building on current commitments under the General Agreement on Trade in Services (GATS), and the Pacific Island Countries Trade Agreement (PICTA) Trade in Services Protocol. It covers all services sectors and modes of supply, with exceptions which preserve services supplied in the exercise of government authority, government procurement, subsidies and air transport services. Parties have committed to obligations which will enhance transparency and create an enabling environment for New Zealand service providers to operate across Pacific borders.

Parties make commitments to afford market access (Chapter 7, Article 5) and national treatment (Chapter 7, Article 6) in their individual schedules under Annex 7-A. These schedules are structured on a “positive list” basis with all sectors where commitments have been made specifically listed in the schedules.

Through PACER Plus, New Zealand service suppliers will, for the first time, benefit from all the specific commitments made by the non-WTO Member Forum Island Countries across many key services sectors. These countries are: the Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Niue, Palau, Republic of Marshal Islands, and Tuvalu. New Zealand service suppliers will be on a level playing field with competitors from Australia, and be entitled to more favourable treatment in comparison to third party competitors without a free trade agreement with the Forum Island Countries.

New Zealand service suppliers will benefit from improved market access commitments over and above the existing WTO commitments made by Samoa, the Solomon Islands, Tonga, and Vanuatu across a wide range of services sectors.²⁹ These include the following sectors:

- taxation services (Tonga);
- veterinary services (Samoa);
- services provided by midwives, nurses, physiotherapists and para-medical personnel (Tonga, Vanuatu);
- computer and related services (the Solomon Islands);
- research and development services (Tonga);

²⁹ All schedules for Trade in Services follow the format of the WTO’s Services Sectoral Classification List (MTN.GNS/W/120), and corresponding definitions from the Provisional Central Product Classification List (CPC). The “universe” of services is divided into 11 major categories of Services: (1) Business, (2) Communications, (3) Construction and Related Engineering, (4) Distribution, (5) Educational, (6) Environmental, (7) Financial, (8) Health and Social, (9) Tourism and Travel, (10) Recreational, cultural & sporting; and (11) Transport.

- real estate services (Tonga);
- rental/leasing services without operators (Samoa, Tonga);
- advertising services (Samoa);
- market research and public opinion polling services (Samoa, Tonga);
- technical testing and analysis service (Vanuatu);
- services incidental to fishing (Tonga);
- services incidental to mining (Tonga);
- services incidental to manufacturing (Tonga);
- services incidental to energy distribution (Tonga);
- placement and supply services of personnel (Samoa, Tonga);
- related scientific and technical consulting services (Tonga);
- maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (Tonga);
- building-cleaning services (Samoa, Tonga);
- photographic services (Tonga);
- packaging services (Tonga);
- convention services (Tonga);
- courier services (the Solomon Islands);
- telecommunication services (the Solomon Islands);
- wholesale trade services (Samoa);
- other human health services (Tonga);
- social services (Tonga);
- travel agencies and tour operators services (the Solomon Islands);
- tourist guides services (Tonga);
- entertainment services (Vanuatu);
- news agency services (Samoa, Vanuatu);
- libraries, archives, museums and other cultural services (Samoa, Tonga);
- sporting and other recreational services (Samoa, Tonga, Vanuatu);
- maritime passenger transportation services (the Solomon Islands);
- maritime freight transportation services (the Solomon Islands);
- maintenance and repair of maritime vessel services (the Solomon Islands);
- maritime auxiliary services (the Solomon Islands);
- maintenance and repair of aircraft services (the Solomon Islands);
- supporting services for air transport (the Solomon Islands);
- computer reservation system services (the Solomon Islands);
- selling and marketing of air transport services (the Solomon Islands);
- specialty air services (the Solomon Islands, Tonga, Vanuatu);

- services auxiliary to all modes of transport (the Solomon Islands).

PACER Plus applies the protections for investment agreed under the Investment Chapter and discussed under section 4.7 above to Mode 3 (establishing a commercial presence to supply a business) (Chapter 9, Article 4).

The Agreement contains a strong most-favoured-nation obligation (Chapter 7, Article 3). This obligation ensures that, where restrictions on services trade remain, if the Forum Island Countries liberalise their services markets for any future free trade agreement partner, or unilaterally afford more favourable treatment to any other country, New Zealand will automatically receive that improved treatment. PACER Plus Parties provide most-favoured-nation commitments across virtually all service sectors, except for limited exemptions as set out in each Parties' schedule to Annex 7-A (discussed above in section 4.7).

New Zealand service suppliers will benefit from greater certainty and transparency doing business in Forum Island Countries, with domestic regulation rules that are consistent with WTO standards for sectors where specific commitments have been made (Chapter 7, Article 10). This will ensure that relevant domestic measures affecting trade in services are administered in a reasonable, objective and impartial manner and that measures relating to qualification requirements and procedures, technical standards, and licensing requirements and procedures do not become unnecessary barriers to trade in services. These provisions are consistent with New Zealand's existing regulatory settings and practices and with the approach we pursue in WTO and other free trade agreement negotiations.

New Zealand retains the right to regulate and introduce new regulations for the purpose of domestic public policy setting, provided such regulations are not inconsistent with the obligations of this Chapter.

Disadvantages to New Zealand in entering the Agreement

New Zealand's services commitments under PACER Plus are wholly consistent with current regulation and commitments made in previous free trade agreements.

As for investment (discussed above in section 4.7), services commitments in the Agreement are undertaken on a "positive list" basis, in contrast to New Zealand's preferred "negative list" approach as applied in other recent Agreements. This approach was adopted based on the capacity and developing status of the Forum Island Countries.

The overall standard of services commitments made by the Forum Island Countries is less than that New Zealand would typically expect in other free trade agreement negotiations. However, the new commitments made are nonetheless commercially significantly. Importantly, respectable most-favoured-nation coverage will mean that

where improved treatment is afforded to other countries, New Zealand services exporters will realise the benefits of this.

Notably, however, the “cultural industries” most-favoured-nation exception adopted by all Forum Island Countries is, in New Zealand’s view, unduly broad. It seriously undermines the possibility for improved future commitments for a sector that is a significant export interest for New Zealand. The limited concern around the breadth of the Forum Island Countries’ “regional integration” most-favoured-nation exception discussed in section 4.7 above also applies to services.

4.8 Temporary Movement of Natural Persons Chapter (and Labour Mobility Arrangement)

Movement of natural persons

The commitments established under the Chapter 8 (Movement of Natural Persons) ensures access for New Zealand business visitors, intra-corporate transferees, contractual service suppliers, installers or servicers and (in some instances) management trainees on professional development, to enter and temporarily stay in the Forum Island Countries; and facilitates New Zealand businesses taking up commercial opportunities under the Agreement in the Pacific region. The contractual service supplier commitments may be subject to labour market testing. An unusual feature is that the Forum Island Countries have scheduled commitments to facilitate the temporary entry of skilled or semi-skilled workers from each other’s countries. These are commitments set out in country schedules – not in the chapter itself. New Zealand (and Australia) has not scheduled equivalent commitments as this would be inconsistent with our normal mandate approach to such chapters in free trade negotiations.

This Chapter commits the PACER Plus Parties to provide streamlined and transparent procedures for immigration-related applications. New Zealand business persons applying to enter into a Forum Island Country will benefit from the commitments to publish all relevant information regarding immigration requirements. New Zealand business persons will also benefit from commitments to process applications for temporary entry without undue delay, and to keep any fees imposed at a reasonable, cost-based level (Chapter 8, Article 2). PACER Plus also obliges Parties to promptly publish any changes to these regulations.

The availability of clear and up-to-date information about the requirements and conditions for temporary entry for business visitors, combined with reasonably expeditious processing of immigration documents and applications, will facilitate the movement of business people, investors and traders around the region. It will also ensure that business people are able to make the most of trade and investment commitments contained in PACER Plus.

New Zealand has made temporary entry commitments across a number of categories including business visitors, intra-corporate transferees, independent service suppliers,

and installers/servicers. The commitments made under this chapter are all within New Zealand's existing immigration policy framework, and similar to the treatment offered in the ASEAN-Australia-New Zealand Free Trade Agreement.

Labour Mobility Arrangement

A non-legally binding Labour Mobility Arrangement has been negotiated alongside PACER Plus. This Arrangement establishes an annual labour mobility meeting, to enhance cooperation in labour mobility. The annual meeting is intended to address, in particular, key elements of cooperation set out in the Arrangement:

- enhancement of existing labour mobility schemes and facilitation of other forms of temporary labour mobility
- support for institutions;
- facilitation of circulation;
- TVET and other tertiary education; and
- facilitation of recognition of qualifications and registration of occupations.

Advantages

The Recognised Seasonal Employer Scheme (RSE) has proven the mutual benefits from labour mobility.³⁰ In particular, a significantly higher proportion of RSE employers have been able to increase their production compared to other horticulture and viticulture growers (85 percent of RSE employers compared to 48 percent of other growers). In 89 percent of cases, participation in the RSE scheme was regarded as a contributing factor in this expansion. A high proportion (82 percent) considers that participation in the scheme has enabled them to employ more New Zealand workers.³¹ The Labour Mobility Arrangement provides an opportunity to develop similar initiatives to address labour demand in other sectors.

For example, New Zealand is piloting a new initiative to employ 24 Pacific carpenters in the Canterbury Reconstruction Programme. Based on employment projections produced by the Ministry of Business, Innovation and Employment, commercial construction activity is projected to operate at elevated levels in Christchurch till 2018. At the peak, it

³⁰ The RSE scheme allows the horticulture and viticulture industries to recruit overseas workers - mostly from the Pacific Islands - for seasonal work. Under the scheme employers can bring in a total of up to 10,500 workers a year, provided there are no New Zealanders available to do the work

³¹ RSE Monitoring Survey 2015 – link available at https://www.immigration.govt.nz/documents/statistics/rse-monitoring-survey-2015_final_10-11-15.docx

RSE Monitoring Survey 2016 – link available at https://www.immigration.govt.nz/documents/statistics/rse-monitoring-survey-2016_report.pdf

is estimated that 8000 additional workers will be needed. The Canterbury labour market is described by officials as already lacking suitable or trainable New Zealanders. The pilot scheme uses existing visa policies but, with New Zealand Aid Programme funding, facilitates new recruitment pathways for New Zealand employers to source semi-skilled labour from the Pacific. New Zealand government support has included assistance identifying suitable labour supply in the Pacific, skills testing and recruitment, pre-departure training, pastoral care and worker assessments against the New Zealand Qualifications Framework.

On completion of the pilot in October 2017, an evaluation will inform whether the pilot is expanded into a new scheme. Across New Zealand demand for construction employees is projected to increase on average by 10 percent between 2015 and 2021. The overall increase in construction employment is approximately 49,000 by 2021. The National Construction Pipeline Report (Oct 2014) cover 5 years till December 2019 estimated the value of building and construction nationally would rise from 27 billion in 2014 to 35 billion by March 2017.

The Arrangement provides a platform for improving circular mobility amongst Forum Island Countries to meet their labour shortages. The tourism industry is where there are the most pressing shortages. In the longer term, the Arrangement provides a platform for the enhancement of qualifications and familiarity with other labour markets that could improve the prospects of citizens from climate change affected countries seeking for permanent migration pathways.

Disadvantages

New Zealand, together with Australia, have agreed to jointly fund an annual regional labour mobility meeting as part of our commitment to funding the implementation of PACER Plus. The financial implications are minimal and can be met from within existing Official Development Assistance (ODA) programmes.

There are no commitments to provide access to New Zealand's labour market under the Labour Mobility Arrangement, and any new schemes will continue to be based on the Government's 'New Zealanders first' principle, be employer-driven and within existing policy settings. Therefore the Labour Mobility Arrangement will not have a negative impact on immigration or unemployment in New Zealand.

4.9 Development and Economic Cooperation Chapter and Implementing Arrangement

Chapter 10 (Development and Economic Cooperation) sets the objectives and framework to operationalise PACER Plus and for the additional support Australia and New Zealand will provide to Pacific Island Countries to increase their capacity to trade. The Chapter stipulates that the developed country Parties will provide financial resources for a Work Programme and confers authority to the PACER Plus Joint Committee to approve, review, modify and terminate the Work Programme.

The Chapter is supplemented by an Implementing Arrangement that has less-than-treaty status. The Implementing Arrangement specifies the funding commitments to be provided by Australia and New Zealand and details the operational aspects of the Work Programme to support the implementation of PACER Plus.

New Zealand's funding commitments are specified in two parts:

- i) NZD\$7 million to fund the management and delivery of the Development and Economic Cooperation Work Programme; and
- ii) An Aid for Trade funding target of 20 percent of total ODA for the Pacific. This funding will be delivered through New Zealand's existing bilateral and regional programmes in the Pacific.

These financial commitments will be met from within existing Vote ODA allocations.

The Implementing Arrangement will commence when PACER Plus enters into force, for a duration of five years. An option to renew the Implementing Arrangement for a further five years has also been accepted. The Parties will have the option to review progress and renegotiate the terms of the Implementing Arrangement, including any further funding contributions, on conclusion of the first five year period.

The Development and Economic Cooperation Work Programme will commence once PACER Plus enters into force. A new Implementing Unit will be established under the ambit of the Pacific Island Forum Secretariat to manage the delivery of the Work Programme, and will collaborate with regional partners to deliver technical assistance. Some technical assistance and capacity building may also be delivered by New Zealand government agencies, such as New Zealand Customs Service and the Ministry for Primary Industries. Officials will seek to manage the resource implications within current allocations including through ODA-funded state sector activities in the Pacific.

The Agreement represents a unique opportunity to develop and track measures that go beyond the traditional focus in free trade agreements on increases in two way trade. The Work Programme will require a results framework to track the application of funds in support of agreed activities and priorities. The granularity of the five year Work Programme represents a useful tool to inform the development of high level indicators to measure PACER Plus's impact. The complexity of the existing regional architecture across a range of sectors and thematic areas makes the attribution of impacts to PACER Plus challenging but measuring the trade and development impacts of the ongoing commitment to a 20 percent regional "aid for trade" target will assist in this regard. This is also offers an opportunity to build in periodic evaluations to mitigate and check for the social and environmental impacts that governments and non-state actors identified as potentially arising from trade agreements in the Pacific.

Advantages

The trade-related assistance jointly funded by Australia and New Zealand will support Forum Island Countries to implement the provisions of PACER Plus and build their capacity to trade and attract investment, thereby enabling them to take full advantage of the opportunities PACER Plus provides.

The Development and Economic Cooperation Work Programme will deliver targeted assistance over a 5-year period focused on the provisions of PACER Plus, including:

- Rules of Origin: assistance to ensure Pacific exporters take full advantage of concessions under PACER Plus
- Customs: assistance to improve Forum Island Countries' customs administrations and the management of goods across borders
- Biosecurity: support for sanitary and phytosanitary measures to increase agriculture exports
- Standards and conformance: assistance to ensure Pacific businesses understand and can comply with quality standards for imports and exports
- Services: assistance to help Forum Island Countries remove barriers to trade in services and stimulate growth in services sectors to address domestic demand and promote services exports
- Investment: support to improve Forum Island Countries' investment environments and help attract new investment.

In addition, New Zealand's 'Aid for Trade' funding target will ensure 20 percent of ODA is invested across the Pacific in trade-related sectors such as renewable energy, ICT, agriculture, fisheries, tourism, economic governance, trade facilitation and labour mobility. The target represents about NZD\$340m over the current funding triennium (2015/16 - 2017/18).

New Zealand's (and Australia's) support is critical for delivering successful implementation of PACER Plus and thereby progressing regional economic integration. The objectives of PACER Plus and the New Zealand Aid Programme are mutually reinforcing. The New Zealand Aid Programme supports sustainable economic development in the Pacific through investments in economic infrastructure, key export sectors, private sector development, trade facilitation and through increasing opportunities for regional labour mobility. PACER Plus will leverage New Zealand's ODA investments to increase regional trade, investment and labour flows that will, in turn, build Pacific Island countries' private sectors, create jobs and raise standards of living.

Disadvantages

The commitment to an 'Aid for Trade' funding target will be for a period of five years, commencing from entry into force of PACER Plus. While the target is consistent with the New Zealand Aid Programme's Strategic Plan and Investment Priorities for 2015-2019, the commitment will extend beyond the current three-year funding period (2015-2018).

4.10 Legal and Institutional Provisions

Free trade agreements include legal and institutional provisions that cover such things as how and when the Agreement will enter into force, how Parties should resolve issues in the case of a dispute, and what exceptions are allowed. In PACER plus, these are covered by the Initial Provisions and General Definitions, Institutional, Consultations and Dispute Settlement, Transparency, General Provisions and Exceptions, and Final Provisions Chapters.

Advantages

The General Provisions and Exceptions Chapter (Chapter 11) sets out a number of exceptions which provide a backstop to ensure that PACER Plus does not impair New Zealand's ability to make policy and undertake measures to further that policy. These exceptions should be seen in addition to the specific flexibilities negotiated in different areas of the agreement. The obligations in PACER Plus have been drafted so as not to impair the ability of countries to regulate and take other measures in the public interest, but should there be a situation where such government action (or inaction) would breach an obligation, then the General Provisions and Exceptions Chapter provides a safety net. The exceptions cover a wide variety of policy areas that are critical for New Zealand to preserve regulatory freedom - including health, environment, security, taxation, and the Treaty of Waitangi. The Treaty of Waitangi exception provides additional clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi.

Chapter 12 (Institutional Provisions) establishes a Joint Committee to review the operation of PACER Plus and Associated Development and Economic work Programme. This Joint Committee will create a forum for the Parties to meet to discuss the implementation and operation of the Agreement, and to undertake a general review of the Agreement to ensure it remains current and fit for purpose.

Chapter 14 (Consultations and Dispute Settlement) includes party-to-party dispute settlement mechanisms that are simple, effective, and broadly in line with the principles of the WTO Dispute Settlement Understanding and the dispute settlement provisions of New Zealand's other trade agreements. There is no Investor-State dispute settlement mechanism in PACER Plus; negotiating countries did not consider it appropriate in the context of small island developing countries. The *New Zealand-Australia Side Letter: Application of PACER Plus between Australia and New Zealand* provides that PACER Plus's dispute settlement provisions do not apply between Australia and New Zealand. This ensures that our existing and future mechanisms for governing trade-related disputes will continue to be dealt with in ways that we agree bilaterally.

Disadvantages

The legal and institutional provisions do not present any disadvantages to New Zealand.

4.11 Labour and environment

There are no specific chapters on labour and environment however the agreement includes aspirational and non-binding provisions which are well within New Zealand's existing policy and regulatory settings. All signatories continue to be bound by their international obligations in these areas, including in relation to the International Labour Organisation Conventions as well as multilateral trade and environmental agreements. New Zealand will continue to apply its domestic labour laws and standards to any labour mobility initiatives that may be implemented under the Labour Mobility Arrangement.

4.12 Side Letter on the application of PACER Plus between Australia and New Zealand

New Zealand also agreed with Australia the *New Zealand-Australia Side Letter: Application of PACER Plus between Australia and New Zealand* (Side Letter) as we did for the Trans-Pacific Partnership Agreement (TPP) and the ASEAN Australia New Zealand Free Trade agreement (AANZFTA). The Side Letter provides the obligations in PACER plus will only apply to a limited extent between the two countries because it is considered that under the New Zealand Australia Closer Economic Relations Trade Agreement (ANZCERTA) umbrella of instruments New Zealand and Australia already have, or are working on, a broad and robust range of commitments aimed towards furthering the Single Economic Market.

Advantages

This treaty-level Side Letter is needed to clarify the rights and obligations that apply as between New Zealand and Australia under PACER Plus. The Side Letter provides that only the goods commitments, Rules of Origin obligations, general exceptions (including the Treaty of Waitangi exception) provisions, and certain operational provisions will apply between Australia and New Zealand. This is because the Trade in Goods chapter of PACER Plus creates a new obligation which forbids a Party from applying a customs duty to a good that re-enters its territory after repair and alteration, but does allow a Party to charge a duty on the cost of repair or alteration. Some of the Rules of Origin obligations under PACER Plus are more liberal than those under ANZCERTA. While some obligations are also more restrictive, this would not negatively impact on New Zealand exporters as they would rely on ANZCERTA to export the affected goods.

The Side Letter clearly states that the Development and Economic Cooperation and Consultations and Dispute Settlement chapters will not apply as between Australia and New Zealand. The Side Letter is silent on the remaining chapters, and leaves open the possibility of New Zealand and Australia considering the merits of applying these other Chapters in the future. Pending any agreement on their application, the remaining chapters do not create any rights and obligations between New Zealand and Australia.

Disadvantages

There are no disadvantages for New Zealand created by this Side Letter.

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

This section sets out the legal obligations that would be imposed on New Zealand under PACER Plus. It also outlines the dispute resolution mechanism in the section on the Consultations and Dispute Settlement chapter.

5.1 Trade in Goods

Under Chapter 2 and Annex 2-A of the Agreement, New Zealand shall eliminate ordinary customs duties on originating goods from the date of entry into force of the Agreement. New Zealand is therefore required to bind in current duty free access for the goods of Parties on entry into force of PACER Plus.

With limited specified exceptions, Parties must provide any more favourable treatment given to the goods of developed countries, or to the goods of significant developing countries³², after the entry into force of PACER Plus to the PACER Plus Parties (Chapter 2, Article 3.2). As New Zealand already provides duty free treatment to all Parties, this represents an obligation to New Zealand by the other Parties

Any preferences granted outside of a Regional Trade Agreement or inconsistent with Decision 36 of Annex F of the WTO Hong Kong Ministerial Declaration of 2005 on Measures in Favour of Least-Developed Countries and related WTO Decisions on duty-free and quota-free access for products originating in Least-Developed Countries to the Hong Kong Ministerial Decision must also be granted to New Zealand (Chapter 2 Article 3.2). This means that non WTO member Parties are subject to the same most-favoured-nation treatment obligations with respect to the Parties as WTO member Parties.

The Agreement requires that each Party ensure that no duty is charged on a good which enters its territory for repair or alteration, or a good which re-enters a Party's territory after it has been temporarily exported to the territory of another Party for repair or alteration. Although a Party may, in accordance with its legislation, apply a duty on the cost of repair or alteration of the good which shall not exceed the duty which would have been imposed if the good were imported for the first time (Chapter 2, Article 4).

Parties must also grant duty free entry of commercial samples of negligible value and printed advertising materials (Chapter 2, Article 5).

The National Treatment and most-favoured-nation obligations in Chapter 2, Article 6 require each Party to accord national treatment and most-favoured-nation treatment to

³² Which individually account for 1 percent of world merchandise exports, or in the case of a group, where the individual threshold is not breached, account for more than 4 percent of world merchandise exports.

the goods of other Parties in respect of internal taxation and regulation in accordance with Articles I and III, including the Interpretative Notes to Article III, of GATT 1994.

Under Chapter 2, Article 10, Parties must ensure that all fees and charges in relation to importation and exportation are limited to the approximate cost of the services provided, do not represent an indirect protection to domestic products or a taxation on imports for fiscal purposes and are otherwise in conformity with the WTO Agreement.

Under Chapter 2, Article 12, Parties shall not adopt or maintain any quantitative restrictions or non-tariff measures, except in the circumstances specified.

Parties shall ensure that information on the current non-preferential and preferential applied rates of customs duties it maintains; existing fees and charges it imposes on or in connection with importation or exportation; and new or modified import licensing procedures is made available to the other Parties through the Contact Points upon the entry into force of PACER Plus (Chapter 2, Article 14), except for measures covered by the SPS Agreement or the TBT Agreement or import licensing regimes governing the administration of tariff rate quotas with respect to such quotas established in the WTO schedules of WTO Members. A WTO Member shall be deemed to be in conformity with this obligation upon fulfilment of its obligations under paragraphs 5.1 to 5.3 of the Agreement on Import Licensing Procedures and upon transmitting to the other Parties through Contact Points the relevant notifications made to the WTO.

Parties shall provide each Party with a Contact Point to facilitate the distribution of requests and notifications made under Chapter 2 (Chapter 2, Article 15).

Under Chapter 2, Article 16, Parties agree to consult regularly to consider the implementation of their commitments under Chapter 2, either through the Joint Committee or a relevant subsidiary body. The Joint Committee shall support the implementation of goods chapter, including in respect of the administration of Modification or Withdrawal of Concessions (Chapter 2, Article 3.8) and industry development (Chapter 2, Article 9) provisions. The Parties shall ensure that the Joint Committee or a relevant subsidiary body shall commence a review of the operation of the goods chapter within three years of entry into force of PACER Plus, and submit a final report to the joint committee within four years of entry into force (Chapter 2, Article 16.2). In addition, the Joint Committee, or a relevant subsidiary body, shall review the operation of the most-favoured-nation provision (Chapter 2, Articles 3.2(c) and 3.3, and Annex 2-B) two years from the date of initial application of Annex 2-B and thereafter at ten year intervals (Chapter 2, Article 16.3).

5.2 Rules of Origin and Verification Procedures³³

Chapter 3 sets out rules for determining whether goods traded between the Parties qualify as originating goods and therefore qualify for preferential tariff treatment.

Chapter 3, Article 2 provides three avenues through which goods can qualify for preferential tariff treatment:

- the goods are wholly obtained or produced in New Zealand or in another PACER Plus Party;
- the goods are produced entirely in New Zealand or in one or more of the other PACER Plus Parties exclusively from originating materials of the Parties; or
- if non-party inputs are used to produce the goods, they are produced in New Zealand or other PACER Plus Parties meeting the criteria specified in the product specific rules.

This Chapter uses a change of tariff classification (CTC) as the key approach to determine origin. Under the CTC approach, a good will qualify for preferential tariff treatment if all third party inputs used in its production have undergone a specified change of tariff classification. Annex 3-B details the precise form of CTC that will apply to a particular good.

For some products there are also optional regional value content (RVC) or process rules. Under the RVC approach, a good will qualify for preferential tariff treatment provided the value of originating inputs is equal or greater than the specified RVC threshold for that good. Chapter 3, Article 4 sets out the method for calculating the RVC. For chemical and some other products there are also alternative process rules which confer origin. These rules are optional and allow the producer or exporter to choose which rule best suits their particular business model.

Chapter 3, Article 5 requires each Party to provide for full cumulation between the PACER Plus Parties. This means that all materials produced by a PACER Plus Party or any processing undertaken in a PACER Plus Party can count towards achieving the rule established for that product.

Chapter 3, Article 12 requires that an importer claiming preferential tariff treatment, and an exporter, producer or an authorised representative of the producer or exporter, retain the relevant records for five years from the date of exportation or importation as the case may be. The records to be maintained pursuant to this Article include electronic records.

For any good to retain its originating status and qualify for PACER Plus tariff preferences, it must be consigned directly between the two Parties. If transported through a third

³³ Excludes measures covered by the SPS Agreement or the TBT Agreement or import licensing regimes governing the administration of tariff rate quotas with respect to such quotas established in WTO schedules of WTO members.

party, the good must not enter into the trade or commerce there or undergo any operation there other than unloading and reloading, repacking, or any operation required to preserve them in good condition or to transport them to the importing Party (Chapter 3, Article 13).

Importers wanting to make a claim for preferential tariff treatment under the Agreement may do so based on a declaration of origin completed by the exporter or producer or an authorised representative of the exporter or producer. The Declaration of Origin may be made on the invoice for the goods or on a separate document, including on a company's letterhead (Chapter 3, Article 15).

When there is a reasonable doubt as to the origin of a good, Chapter 3, Article 19 outlines the procedures for customs administration of an importing Party to verify the eligibility of a good for preferential tariff treatment. This Article also requires that subject to the availability of resources and to the extent allowed by its laws, regulations and policies, the exporting Party shall whenever possible cooperate in any action to verify eligibility and require that producers and exporters cooperate in any action to verify eligibility.

Chapter 3, Article 21 provides the basis for a verification visit to an exporting Party by the importing Party's customs administration. That is, if all verification actions under Chapter 3, Article 19 have been exhausted and have failed to resolve the concerns of the customs administration of the importing Party, a verification visit may be conducted.

Chapter 3, Article 22 permits an importing Party to deny a claim for preferential tariff treatment for a good if:

- the good does not meet the requirements of the Chapter;
- the importer, exporter or producer fails to comply with any of the relevant requirements of this Chapter; or
- a verification conducted in accordance with this Chapter has failed to determine that the good is originating.

It also requires that in the event that preferential tariff treatment is denied, the Customs Administration of the importing Party shall provide full reasons for that decision in writing to the importer, on request.

An importing Party is required under Chapter 3, Article 23 to grant the right of appeal in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, in accordance with its domestic laws, regulations and administrative practices. If no right of appeal exists in a Party in matters relating to the eligibility for preferential tariff treatment to producers, exporters or importers of goods traded or to be traded between the Parties, those Parties will, subject to the availability of resources, endeavour to establish such rights of appeal.

Chapter 3, Article 26 requires Parties to consult regularly, through the Committee on Trade in Goods, Rules of Origin and Customs, to ensure that this Chapter is administered in a manner consistent with the objectives and other provisions of this Chapter. The government authorities of the Parties with a direct interest in any issues that arise concerning origin determination, classification of products, or other matters related to this Chapter shall consult with a view to resolving such issues and, where relevant, inform the importer of the outcome. The Joint Committee shall be notified of any significant outcomes from such consultations.

Chapter 3, Article 27 provides for a review of the Chapter, through the Committee on Trade in Goods, Rules of Origin and Customs, to commence within three years of entry into force of PACER Plus and submit a final report to the Joint Committee, including any recommendations, within four years of the date of entry into force. This Article also allows the Committee on Trade in Goods, Rules of Origin and Customs to review the implementation of the Declaration of Origin provisions within four years of the date of entry into force and make appropriate recommendations to the Joint Committee.

Chapter 3, Article 28 enables the Parties to consult and review the Product Specific Rules (PSRs) specified in Article 2(c) of this Chapter to ensure that the PSRs are applied in an effective and uniform manner.

Chapter 3, Article 29 requires Parties to prepare technical revisions to the PSRs when a periodic amendment to the Harmonised System is published. The Parties are required to ensure that such technical revisions are carried out on a neutral basis and market access conditions are not impaired by the process or the outcomes of technical revisions.

5.3 Customs Procedures

Chapter 4 involves a range of commitments on trade facilitation and customs co-operation. These commitments fall within current policy settings and include:

- ensuring customs procedures and practices are predictable, consistent, and transparent (e.g. providing customs valuations, using internationally accepted tariff classifications, and providing advanced rulings) to ensure efficient administration and the expeditious clearance of goods (Chapter 4, Article 4);
- encouraging the use of international best practice on customs (Chapter 4, Articles 5, 9, 10 and 11), facilitating the use of automated systems (Chapter 4, Article 6), and expedited shipments (Chapter 4, Article 7). In the normal course of events, customs administrations of the Parties are required to release originating goods within 48 hours of arrival (Chapter 4, Article 8);
- provisions for treating confidential information furnished (Chapter 4, Article 12);
- encouraging customs co-operation (Chapter 4, Article 5) and providing for contact points (Chapter 4, Article 13) and consultations to discuss any issues which might arise (Chapter 4, Article 15);

- publishing customs laws and administrative procedures (Chapter 4, Article 13); and
- provisions for administrative and judicial reviews (Chapter 4, Article 14).

5.4 Sanitary and Phytosanitary (SPS) Measures

Under Chapter 5, Parties that are WTO Members affirm their rights and obligations with respect to each other under the Sanitary and Phytosanitary (SPS) Agreement. While reserving their rights under the SPS Agreement, Parties that are WTO Members shall also apply the provisions of Articles 1-8 of the SPS Agreement with respect to Parties that are not WTO Members (Chapter 5, Article 4).

Nothing in the Chapter creates substantive obligations for New Zealand or requires New Zealand to change our approach to protecting human health, maintaining food safety and protecting New Zealand's animal and plant health status from introduced pests and diseases.

The SPS Chapter provides a framework for enhanced dialogue and co-operation on the Parties' application of SPS measures (Chapter 5, Article 11). The objective is to facilitate trade in goods affected by SPS measures, and to provide a means to improve transparency, communication and consultation on SPS issues.

The Chapter contains an article on Technical Discussions (Chapter 5, Article 12) but states that discussions held under the Article do not constitute formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

5.5 Technical Regulations, Standards and Conformity Assessment Procedures

Chapter 6 on Technical Regulations, Standards, and Conformity Assessment Procedures preserves New Zealand's existing rights and obligations under the WTO Agreement on Technical Barriers to Trade (Chapter 6, Article 4.1).

Parties that are World Trade Organisation Members shall apply the provisions of Articles 1 through 10 of the Agreement on Technical Barriers to Trade with respect to Parties that are not World Trade Organisation Members, to the extent that such provisions are not already covered in this Chapter (Chapter 6, Article 4.2). The Chapter also includes provisions on Special and Differential Treatment for developing country Parties (Chapter 6, Article 13). These provisions are in accordance with New Zealand's existing obligations under the WTO Agreement on Technical Barriers to Trade.

The Chapter enhances the implementation of the Agreement on Technical Barriers to Trade by Parties that are WTO Members; promotes the observance of the requirements of the Agreement on Technical Barriers to Trade by Parties that are not WTO Members; promotes trade facilitation by ensuring that technical regulations, standards, and

conformity assessment procedures do not create unnecessary barriers to trade; ensures transparency and promote understanding of each Party's technical regulations, standards and conformity assessment procedures; strengthens information exchange and cooperation; promotes good regulatory practice; and provides a framework of supporting mechanisms to realise these objectives (Chapter 6, Article 2.1)

The Chapter creates a framework for dialogue and cooperation on technical regulations, standards and conformity assessment procedures with a view to facilitating trade, including increasing market access opportunities for developing country Parties. Parties are obliged to respond within 90 days (or as otherwise mutually agreed) to reasonable written requests for information on their technical regulations, standards and conformity assessment procedures (Chapter 6, Article 6).

Further, Parties are obliged, upon request, to explain their reasons for: not accepting a technical regulation of another Party as equivalent; not accepting the results of a conformity assessment procedure conducted in another Party; refusing to recognise a conformity assessment body in another Party; for applying a technical regulation or conformity assessment procedure that is more strict or more strictly applied than necessary; or for applying a technical regulation or conformity assessment procedure that violates the national treatment principle (Chapter 6, Article 6.2).

Parties must also give positive consideration to proposals for cooperation on matters within the scope of the Chapter, including sector-specific proposals, on mutually agreed terms and conditions (Chapter 6, Article 10).

The Chapter contains an article on Technical Discussions (Chapter 6, Article 11) but states that discussions held under the Article do not constitute formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to a Party's rights and obligations under that Chapter, the WTO Agreement, or any other agreement to which both Parties are party.

A Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade shall be established to consult as required on the implementation of this Chapter (Chapter 6, Article 12).

5.6 Trade in Services

The Trade in Services Chapter (Chapter 7) seeks to facilitate the expansion of trade in services, improve the efficiency and transparency of the Parties' service sectors and work towards progressive liberalisation. The Chapter also recognises each Party's right to regulate and introduce new regulations affecting the supply of services within their territory in order to meet national policy objectives, provided that such regulation is not inconsistent with the Chapter. The Chapter excludes services supplied in the exercise of government authority, government procurement, subsidies or grants provided by a Party, or measures affecting traffic rights. Further, the Chapter does not apply to measures

affecting natural persons seeking access to the employment market of another Party, or measures regarding citizenship, residence or employment on a permanent basis.

Subject to reservations or exceptions in the services schedule, PACER Plus establishes the following general obligations:

- **National treatment:** in the sectors specified in New Zealand's schedule of commitments (Annex 7-A), and subject to any particular conditions and qualifications, services and service suppliers of PACER Plus Parties operating in New Zealand are entitled to non-discriminatory treatment compared to domestic services and service suppliers (Chapter 7, Article 6);
- **Most-favoured-nation treatment:** where applicable, services and service suppliers of a PACER Plus Party operating in New Zealand are entitled to non-discriminatory treatment compared with "like" services and service suppliers of a non-party. This means that PACER Plus Party service suppliers receive the benefits of any better treatment which New Zealand provides to service suppliers of other countries, subject to certain reservations and exceptions (for example, better treatment of service suppliers under an existing trade agreement would not have to be extended to service suppliers of PACER Plus Parties) (Chapter 7, Article 3);
- **Market access:** where applicable, service suppliers of a PACER Plus Party wishing to operate in New Zealand are entitled to access the market without limitation on the number of service suppliers, value of the service transaction, number of service operators, total quantity of service output, total number of persons employed in a service sector or that a service supplier may employ, the type of legal entity or joint venture which a service supplier may provide a service, or the participation of foreign capital (Chapter 7, Article 5); and
- **Movement of capital:** if New Zealand undertakes a Mode 1 (cross-border supply) market access commitment (the supply of a service from the territory of one Party into the territory of another), and if the cross-border movement of capital is an essential part of the service itself, it shall allow such movement of capital. The same applies to transfers of capital for the purposes of services supplied through Mode 3 (the supply of a service through commercial presence) (Chapter 7, Article 5). Further, except for certain circumstances set out in Chapter 11 (General Provisions and Exceptions), New Zealand shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments (Chapter 7, Article 12).

New Zealand's market access, national treatment and most-favoured-nation commitments for services go beyond those afforded under the General Agreement on Trade in Services (GATS) to Samoa, the Solomon Islands, Tonga, and Vanuatu. They also represent new commitments in relation to the Forum Island Countries that are not WTO members.

New Zealand's services sectoral commitments go beyond those of GATS. Commitments that go beyond those in New Zealand's GATS schedule are for:

- Private "other" education services (language training provided in specialist language institutions and tuition in subjects taught at the primary and secondary levels in specialist institutions operating outside the New Zealand compulsory school system);
- Environmental services (the provision of consultancy services across the full range of environmentally related services, and the delivery of services in waste and waste water management);
- Legal services (extension of existing commitment to cover the provision of foreign law services);
- Taxation services (extension of existing commitment to cover tax planning and consulting services);
- Engineering services (removal of restriction relating to registration);
- Integrated engineering services;
- Veterinary services (extension of existing commitment to cover Mode 1);
- Computer services (extension of existing commitments to cover maintenance and repair of office machinery and equipment, including computers; and other computer services);
- Market research and opinion polling services;
- Management consulting services and services related to management consulting;
- Placement and supply services of Personnel;
- Photographic services;
- Convention services;
- Credit reporting services;
- Collection agency services;
- Interior design services;
- Telephone answering services;
- Duplicating services;
- Other business services;
- Construction services (extension of existing commitment to cover consultancy related to construction services and renting of construction equipment);
- Cargo and baggage handling services in relation to air transport; and
- Washing, cleaning and dyeing services.

These commitments do not go beyond those afforded in New Zealand's other recent free trade agreements, and are fully consistent with the current regulatory environment and policy settings.

In addition to the market access and national treatment commitments contained in Annex 7-A, New Zealand will commit most-favoured-nation treatment to PACER Plus

Parties. This means that any better treatment afforded to service suppliers of a third country (for example due to obligations under a subsequent free trade agreement) must be extended to service suppliers from PACER Plus Parties. This obligation is subject to a defined set of exceptions set out in New Zealand's schedule to Annex I. These exceptions cover:

- any free trade agreement signed prior to PACER Plus;
- existing or future agreements relating to aviation, fisheries, and maritime;
- measures involved in devolving services provided in the exercise of governmental authority;
- measures related to core government functions;
- measures relating to enterprises owned or controlled by the New Zealand government;
- measures relating to research and development services carried out by state-funded entities;
- measures relating to research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical and other natural sciences;
- various scientific testing, inspection and surveying services;
- foreign fishing, consistent with the UN Convention on the Law of the Sea;
- services incidental to mining;
- nuclear energy;
- immigration advice services;
- interpretation services;
- postal services;
- co-production agreements;
- adoption services;
- private hospital and maternity services;
- pharmaceutical services;
- measures with respect to cultural heritage of national value; and
- maritime cabotage, port services, New Zealand-flagged vessels, entry of ships' crews and services by ships' officers.

The market access commitments are supplemented by provisions to:

- encourage recognition of professional qualifications and registration;
- ensure that domestic regulation is administered in a reasonable, objective and impartial manner; and
- ensure that that unanticipated licensing and qualification requirements and technical standards applied by a Party do not nullify or impair specific commitments made (Chapter 7, Article 10).

These additional elements are fully consistent with the current regulatory environment and policy settings and accord with New Zealand's approach in other recent free trade agreements. They are discussed in section 4.8 above.

5.7 Movement of Natural Persons Chapter (and Labour Mobility Arrangement)

The Movement of Natural Persons Chapter (Chapter 8) provides for rights and obligations in relation to the temporary entry of natural persons. New Zealand has made specific commitments for particular categories of natural persons, and is required to grant temporary entry to those persons provided that they follow the prescribed application procedures for the immigration formalities sought, and meet all relevant eligibility requirements for entry into New Zealand.

Each Party under the Agreement makes specific commitments relating to the movement of business persons. New Zealand's schedule in Annex 8-A is consistent with current New Zealand policy settings and the approach taken in other free trade agreements. It contains the following commitments on the temporary entry and duration of stay for particular categories of business persons on the following basis:

- **Business Visitors** – for negotiating or concluding the sale of goods or services, or for establishing, expanding, monitoring or disposing of an investment. Entry is for an aggregate period of three months in any calendar year.
- **Intra-corporate transferees** – executives, managers or specialists involved in the operation of a business with a commercial presence in New Zealand. Entry is for an initial stay of up to three years.
- **Installers/servicers** – for the installation or servicing of machinery/equipment, where the installation or servicing is a condition of the purchase of the machinery/equipment. Entry is for an aggregate period of three months in any 12 month period.
- **Independent professionals** – individuals with advanced technical skills and suitable qualifications/experience, working under a valid contract in New Zealand in one of the services sectors New Zealand has committed, and subject to an economic needs test. Entry is for a period of stay up to 12 months.

Under Chapter 8, Article 7, each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of that contact point to the other Parties.

The Consultations and Dispute Settlement Chapter does not apply to a refusal to grant temporary entry under this chapter, unless the matter involves either a pattern of practice, or the persons involved have exhausted all available domestic remedies (Chapter 8, Article 8).

Labour Mobility Arrangement

In addition to the movement of natural persons commitments, which are common in trade agreements, PACER Plus also encompasses a broader Labour Mobility Arrangement. This Arrangement holds less-than-treaty status and is therefore not legally binding. The Arrangement does, however represent an important political commitment to the Forum Island Country Parties who place a high priority on the potential benefits of labour mobility. New Zealand agencies have been very clear that any initiatives under the Arrangement would be developed and carried out in a manner consistent with existing or future New Zealand policy and regulatory settings.

The non-legally binding status is important to New Zealand in the context of its current and future free trade agreement negotiations in order to underline that the Arrangement:

- does not represent a precedent for other free trade agreement negotiations; and
- does not trigger most-favoured-nation obligations in any of our existing trade agreements.

5.8 Investment

The investment rules in PACER Plus are designed to encourage a stable and predictable environment to attract and promote the flow of investment between the Parties, and protect investments, while respecting the right of each Party to regulate. Subject to the extent of commitments and any exceptions in the services and investment schedules of PACER Plus, the following rules that will facilitate investment flows have been included in the Investment Chapter (Chapter 9):

- **National treatment:** As set out in its schedule of commitments, investors and investments are entitled to non-discriminatory treatment compared to domestic investors and investments in a Party “in like circumstances” (Chapter 9, Article 6.1);
- **Most-favoured nation treatment:** Investors and investments are entitled to non-discriminatory treatment compared to investors from third countries “in like circumstances”. This means for instance that New Zealand investors receive the benefits of any better treatment which a PACER Plus Party might in future provide to other foreign investors (for example under a future free trade agreement), subject to certain reservations and exceptions (Chapter 9, Article 7.1);
- **Performance requirements:** New Zealand (along with all Parties that are WTO Members) must ensure that measures taken in relation to investment are consistent with the *Agreement on Trade-Related Investment Measures*. For example, investors and investments may not be subject to a range of trade and investment distorting performance requirements, such as requirements to purchase goods produced in a Party or to tie domestic sales to export earnings (Chapter 9, Article 11); and

- **Senior management and boards of directors:** Requirements may not be imposed on investors to appoint persons of a particular nationality to senior management positions, or stipulate that a majority of a board be of a particular nationality or resident in a particular Party (Chapter 9, Article 10).

These are supplemented by rules designed to protect investors and investments from harmful conduct to which investors in foreign countries can be exposed:

- **Transfers:** Limitations on the circumstances in which restrictions can be imposed on the transfer of capital (Chapter 9, Article 14);
- **Expropriation and compensation:** A Party can only expropriate or nationalise an investor's property for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process (Chapter 9, Article 13). Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, do not constitute indirect expropriation (Annex 9-C). Restitution or compensation is also to be provided by a Party to an investor if it suffers a loss owing to armed conflict, civil strife or state of emergency resulting from the requisitioning of or destruction of a covered investment by the Party's authorities (Chapter 9, Article 12); and
- **Minimum standard of treatment:** Investments must be treated in accordance with the customary international law minimum standard of treatment which requires fair and equitable treatment and the provision of full protection and security (Chapter 9, Article 9.1).

The Chapter recognises that it is inappropriate to encourage investment by investors of another Party and of non-Parties by not enforcing their own environmental, health, labour, safety or other regulatory standards (Chapter 9, Article 19).

PACER Plus does not contain an investor-state dispute settlement mechanism.

New Zealand's commitments on investment are set out in Annex 9-A. Annex 9-A contains a list of investments into New Zealand by an "overseas person" that require approval by the Overseas Investment Office. It also lists overseas non-issuer companies that are required to file audited financial statements with the Registrar of Companies.

The categories of investment into New Zealand that require approval are:

- acquisition or control of 25 percent or more of any class of shares or voting power in a New Zealand entity where either the consideration of transfer or the value of the assets exceeds NZD\$10 million;
- commencement of business operations or acquisition of an existing business, including business assets, in New Zealand, where the total expenditure to be

incurred in setting up or acquiring that business or those assets exceed NZD\$10 million;

- acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation; and
- acquisition, regardless of the dollar value, of 25 percent or more of any class of shares or voting power in a New Zealand entity that owns commercial fishing quota or annual catch entitlement, or the acquisition of commercial fishing quota or annual catch entitlement.

In Annex 9-A, New Zealand reserves the right to accord different treatment to investments by an overseas person formed in accordance with the laws and regulations in relation to:

- the control, management or use of protected areas, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation and scenery preservation;
- the control, management or use of species owned under enactments by the Crown or that are protected by or under an enactment;
- animal welfare;
- the preservation of plant, animal and human life and health, including in particular food safety of domestic and exported foods; animal feeds; food standards; biosecurity; and certification of the plant or animal health status of goods;
- in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone, and the continental shelf, including for the issuance of maritime concessions in the continental shelf;
- water, including the allocation, collection, treatment and distribution of drinking water;
- the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals, where the New Zealand Government wholly owns or has effective control over an enterprise;
- New Zealand nationals and permanent residents in the form of incentives or other programmes to help develop local entrepreneurs and assist local companies to expand and upgrade their operations;
- any order to prohibit, regulate, manage or control the production, use, distribution or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so;
- investments by an overseas person in relation to the holding of shares in co-operative dairy company arising from the amalgamation authorised by section 7(1)(a) of the Dairy Industry Restructuring Act 2001 (or any successor body); and the disposition of assets of that dairy company or its successor bodies;
- giving effect to the establishment or the implementation of mandatory marketing plans (also referred to as "export marketing strategies") for the export marketing of products derived from agriculture; beekeeping; horticulture; arboriculture; arable farming; and the farming of animals, where there is support within the

relevant industry that a mandatory collective marketing plan should be adopted or activated;

- fishing by foreign vessels and allocation of fishing quotas; and
- research and development services carried out by State funded tertiary institutions or by research organisations that are part of the New Zealand State sector when such research is conducted for a public purpose; and research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical and other natural sciences.

Subject to these general limitations, New Zealand makes national treatment commitments for investment in agriculture, hunting and forestry, fisheries and aquaculture, mining and quarrying and manufacturing.

Annex 9-B specifies a list of New Zealand's exemptions from specific commitments concerning the make up of the senior management and boards of directors of companies. It contains a list of investment activities that still require prior approval from the New Zealand Government, consistent with New Zealand's overseas investment regime. These exemptions are the same as those described above in relation to Annex 9-A.

In Annex 9-B, New Zealand reserves the right to adopt or maintain any measure in relation to:

- protected areas, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation and scenery preservation;
- species owned under enactments by the Crown or that are protected by or under an enactment;
- animal welfare;
- the preservation of plant, animal and human life and health, including in particular food safety of domestic and exported foods; animal feeds; food standards; biosecurity; and certification of the plant or animal health status of goods;
- water, including the allocation, collection, treatment and distribution of drinking water.
- measures in respect of the foreshore and seabed, internal waters as defined in international law (including the beds, subsoil and margins of such internal waters), territorial sea, the Exclusive Economic Zone and the continental shelf, including for the issuance of maritime concessions in the continental shelf;
- the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals;
- measures requiring that a majority of the board of directors, or any committee thereof of an enterprise that is a covered investment, be of a particular nationality or resident in New Zealand provided that the requirement does not materially impair the ability of the investor to exercise control over its investment;
- the holding of shares in co-operative dairy company arising from the amalgamation authorised by section 7(1)(a) of the Dairy Industry Restructuring

Act 2001 (or any successor body); and the disposition of assets of that company or its successor bodies;

- export marketing of fresh kiwifruit to all markets other than Australia;
- measures necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as "export marketing strategies") for the export marketing of products derived from agriculture; beekeeping; horticulture; arboriculture; arable farming; and the farming of animals, where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated;
- measures in relation to the control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges) consistent with the provisions of the United Nations Convention on the Law of the Sea; and
- measures necessary in order to prohibit, regulate, manage or control the production, use, distribution, or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so.

Furthermore, no one foreign national may hold more than 10 percent of shares which confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder. In addition at least three members of the Board of Directors must be ordinarily resident in New Zealand; more than half of the Board of Directors must be New Zealand citizens; and the Chairperson of the Board of Directors must be a New Zealand citizen.

New Zealand's commitments under the investment chapter are, as is the case for services, subject to a most-favoured-nation obligation. This obligation is subject to the same exceptions as those for services (e.g. commitments under existing past free trade agreements, services exercised by the government and certain sensitive sectors); contained in Annex I and discussed in detail under part 5.6 above (see p.69).

Notably, the most-favoured-nation obligation means that any more favourable treatment in relation to investment screening afforded to other countries in the future, such as a higher screening threshold for significant business assets, would also in effect be available to PACER Plus Parties.

5.9 Development and Economic Cooperation

Chapter 10 requires Parties to contribute appropriately to the implementation of the Work Programme by taking into account:

- the different levels of development and capacities of the Parties;
- in-kind contributions that Parties are able to make to Work Programme components;
- contributions that non-Parties are able to make to Work Programme components, directly or indirectly; and
- that the appropriate level of contribution enhances the relevance and sustainability of cooperation, strengthens partnerships between Parties and builds Parties' shared commitment to the effective implementation and oversight of Work Programme components (Chapter 10, Article 3).

The Agreement notes that the financial commitments of the developed country Parties are set out in the *Implementing Arrangement for Development and Economic Cooperation under Pacific Agreement on Closer Economic Relations Plus*. This Arrangement has less-than-treaty status and is therefore not legally binding.

The Chapter requires Parties to designate a focal point to be responsible for overseeing and reporting on the implementation of the Work Programme, and ensuring it is coordinated with the relevant development assistance coordination agency of that Party (Chapter 10, Article 5).

The consultation and dispute settlement provisions of PACER Plus do not apply to any matter arising under the Development and Economic Cooperation Chapter (Chapter 10, Article 8).

5.10 General Provisions and Exceptions

The General Provisions and Exceptions Chapter (Chapter 11) applies the General Exceptions that are found in Article XX of the General Agreement on Tariffs and Trade and Article XIV of the General Agreement on Trade in Services to those chapters in the Agreement for which these exceptions are relevant. The effect of this incorporation is that provided that such measures are not used for disguised trade protectionist purposes or applied in an arbitrary or unjustifiably discriminatory manner, the Agreement will not prevent New Zealand from taking measures (including environmental measures) necessary to protect human, animal or plant life or health or public morals (Chapter 11, Article 1). This also applies to measures relating to the conservation of living and non-living exhaustible natural resources, and to measures necessary to protect that Party's works or specific sites of historical or archaeological value, or to support creative arts of national value to that Party. The Agreement will also not prevent a Party from taking any actions necessary to protect its essential security interests (Chapter 11, Article 2), or to respond to a serious balance of payments and external financial difficulties (Chapter 11, Article 3).

The Agreement will not prevent New Zealand 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 (Article 4).

The Agreement will have limited application with respect to taxation measures. In general, PACER Plus only grants rights or imposes obligations with respect to taxation measures where corresponding rights and obligations are granted or imposed under the WTO Agreements, or if they are granted or imposed under Chapter 9, Article 11. Expropriation obligations in Chapter 9, Article 13 will apply to taxation measures (Chapter 11, Article 5.4). However, nothing in the Agreement will affect the rights and obligations of the Parties under any tax convention such as a double taxation agreement in force between the Parties (Chapter 11, Article 5.5).

The effect of the Treaty of Waitangi exception is that, provided measures are not used for trade protectionist purposes, PACER Plus will not prevent New Zealand from taking measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by PACER Plus, including in fulfilment of its obligations under the Treaty of Waitangi. The text also specifies that interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of the Agreement (Chapter 11, Article 6).

5.11 Institutional Provisions

The Institutional Provisions Chapter establishes a Joint Commission comprising of representatives of the Parties (Chapter 12, Article 1.1).

The functions of the Joint Commission are to review the implementation and operation of PACER Plus and the associated Development and Economic Work Programme; supervise the work of all subsidiary bodies; consider any other matters in relation to the operation of PACER Plus or any other functions as the Parties may agree. The Joint Commission may also consider or recommend to the Parties any proposal to amend or modify the Free Trade agreement, adopt procedures for the transposition of the tariff schedules and technical revisions to product specific rules, adopt recommendations on modifications of rules of origin, and explore ways to enhance further trade and investment between the Parties (Chapter 12, Article 1.2).

The subsidiary bodies established under this Chapter comprise:

- Customs Procedures, Rules of Origin and Trade in Goods Committee;
- Sanitary and Phytosanitary Measures and Technical Barriers to Trade Committee; and
- Services, Movement of Natural Persons and Investment Committee (Chapter 12, Article 2.1).

Unless agreed otherwise by the Parties, the Joint Commission shall meet within a year of entry into force of the Agreement and thereafter as mutually agreed by the Parties (Chapter 12, Article 1.4). Each subsidiary body shall also meet within one year of the date of entry into force of the Agreement or the establishment of that body, and thereafter, as and when required (Chapter 12, Article 2.3).

Each Party shall designate a Contact Point or Points to facilitate communications between the Parties on any matter covered by PACER Plus (Chapter 12, Article 5.1).

5.12 Transparency

The Transparency Chapter contains obligations that ensure that each Party publishes or makes available its laws, regulations, procedures and administrative rulings of general application (in electronic form, or online, to the extent possible) (Chapter 13, Article 2).

To the extent possible, each Party shall notify the other Parties of any proposed or actual measure that the Party considers might materially affect the operation of PACER Plus or otherwise substantially affect another Party's interests. Further, on request of another Party, a Party shall provide information and respond to questions pertaining to measures which might affect another Party's interests or the operation of PACER Plus (Chapter 13, Article 3).

5.13 Consultations and Dispute Settlement

The Dispute Settlement Chapter (Chapter 13) provides a mechanism for the resolution of disputes between the Parties arising under PACER Plus. The dispute settlement mechanism provides an effective, efficient and transparent process to settle any dispute arising under PACER Plus. This ensures that New Zealand is able to pursue a matter to arbitration should it consider that another Party has not acted in accordance with obligations under the Agreement. Conversely, New Zealand may also be held to account if another Party considers that New Zealand has not fulfilled its obligations.

Each Party must enter into consultations in good faith, upon request and within specified timeframes to resolve any disputes (Chapter 14, Article 5) and may agree to alternative dispute resolution through good offices, conciliation or mediation (Chapter 14, Article.6). Third Parties may join the consultations (Chapter 14, Article 5.8) and consultations are confidential (Chapter 14, Article 5.9).

The Chapter allows for the complaining Party to select the forum for dispute settlement where a dispute arises under PACER Plus and under another international agreement to which Parties to the dispute are party (Chapter 14, Article 7). If the PACER Plus forum is chosen, the Chapter sets out a process for the establishment of a panel, Third Parties' rights, the Panel's functions, proceedings, termination of proceedings and reports (Chapter 14, Articles 8–14*bis*). Model rules of procedure are provided in Annex 14-A. Parties must comply with the findings of the panel (Chapter 14, Article 15.1) and in cases of non-compliance the complaining Party will be able to suspend the benefits of the Agreement after following the procedures set out in Chapter 14, Article 17.

The Chapter provides for recourse to the original panel, unless the original panellists are unavailable, under certain circumstances (Chapter 14, Article 17.9).

5.14 Final Provisions

The Final Provisions Chapter sets out the procedures for entry into force of the Agreement, as well as providing for amendments and the relationship between PACER plus and other international agreements.

PACER Plus shall enter into force 60 days after the date on which no fewer than eight negotiating Parties have notified the depositary in writing of the completion of their internal requirements (domestic legal procedures). Following this date, PACER Plus shall

enter into force for any other signatory 60 days after the date on which such signatory has notified the depositary in writing of the completion of its internal requirements (Chapter 15, Article 8).

The Parties may agree, in writing, to amend PACER Plus (Chapter 15, Article 7), and it is open to accession or association, by any State, separate customs territory or self-governing entity as the Parties may agree (Chapter 15, Article 9.1). Forum Island Countries which participated in the PACER Plus negotiations but were unable to sign by the time it entered into force, may accede to it on an expedited basis following agreement with the Parties on its schedules of commitments on tariffs, trade in services, movement of natural persons and investment (Chapter 15, Article 9.5).

PACER Plus records the Parties' affirmation of their rights and obligations to each other under existing international agreements to which more than one of them are Party. In situations where a provision of PACER Plus is inconsistent with a provision of another agreement to which at least two PACER Plus Parties are Party, then the Parties in question are required to consult with a view to finding a mutually satisfactory solution, taking into account applicable principles of international law (Chapter 15, Article 3).

5.15 Application of PACER Plus between New Zealand and Australia

The treaty level associated *New Zealand-Australia Side Letter: Application of PACER Plus between Australia and New Zealand* (Side Letter) provides that only the goods commitments, Rules of Origin obligations, general exceptions provisions, and certain operational provisions will apply between New Zealand and Australia (Chapters 1, 2 (including Annex 2-A and 2-C, but excluding Article 4.2), 3 (including Annex 3-A and 3-B), and Chapter 11). The Side Letter specifically states that Chapters 10 (Development and Economic Cooperation) and 14 (Consultations and Dispute Settlement) shall not create any rights or obligations between New Zealand and Australia. The Side Letter is silent on the remaining chapters, but states that New Zealand and Australia further agree to consider the merits of applying provisions of the PACER Plus not mentioned, at a date and time not specified.

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

A very small number of legislative and regulatory amendments are required to align New Zealand's domestic legal regime with the rights and obligations created under PACER Plus and thereby prepare New Zealand for entry into force of the Agreement.

The following changes have been identified as being required:

- an amendment to the Tariff Act 1988 to provide for the transitional safeguard mechanism under the Trade in Goods Chapter;

- an amendment to the Tariff Act 1988 and an Order in Council to enable the application of preferential tariff rates to imported goods of PACER Plus Parties (Parties currently receive duty free treatment under SPARTECA, however a separate legal instrument is required to implement duty free preferences under this Agreement) and to recognise the 12 Forum Island Countries as 'preferential countries' under PACER Plus; and
- an amendment to the Customs and Excise Act 1996 and regulations under the Customs and Excise Act 1996 will be required to implement the agreed rules of origin and new rules on 'goods returned after repair or alteration'.

These changes will be enacted through the Pacific Agreement on Closer Economic Relations (PACER) Plus Bill (the Bill).

The Bill was given a priority 3 ranking (to be passed in 2017 if possible) on the 2017 legislative programme.

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

7.1 Economic effects

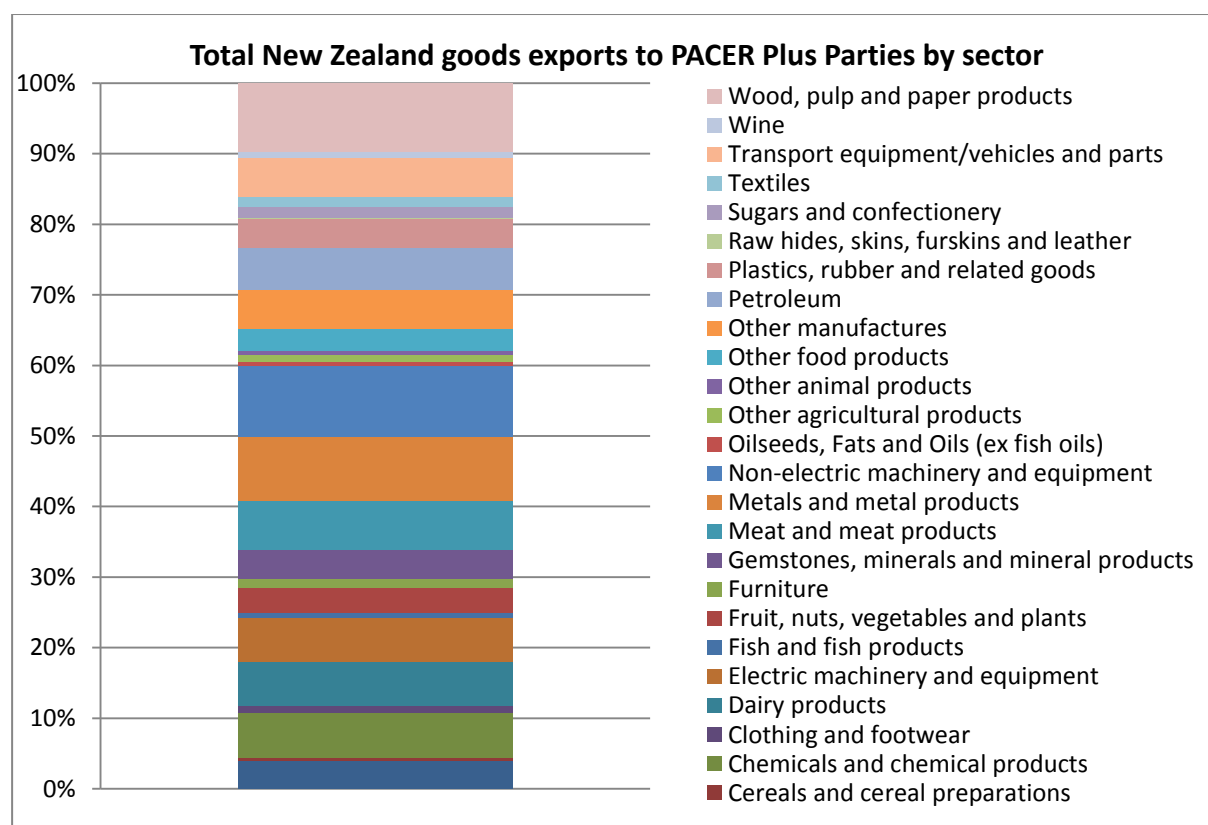
In the year to December 2016 New Zealand exported \$278 million of services to PACER Plus Parties, excluding Australia. This represents 1.3 percent of total services exports. The majority of this figure is made up of personal travel-related services likely associated with tourism and Forum Island Countries' residents visiting family and friends living in New Zealand. Business travel and transport services make up smaller portions of the services export profile. Services make up over 60 percent of Forum Island Country exports and offer greater potential for growth than Trade in Goods, especially in relation to tourism. We can expect two way trade in services to increase.

New Zealand companies currently export NZD\$376 million of goods to PACER Plus Parties, excluding Australia. Only NZD\$23 million of goods is imported by New Zealand from the PACER Plus Parties.

Trade	New Zealand exports NZD\$	New Zealand imports NZD\$	Total two way trade NZD\$
Cook Islands	99 million	357 thousand	99.4 million
FSM	4.9 million	116 thousand	5 million
Kiribati	10.4 million	66 thousand	10.4 million
Nauru	1.3 million	8.5 million	9.8 million
Niue	15.1 million	250 thousand	15.4 million
Palau	367 thousand	0.338 thousand	367 thousand
RMI	3.5 million	627 thousand	4 million

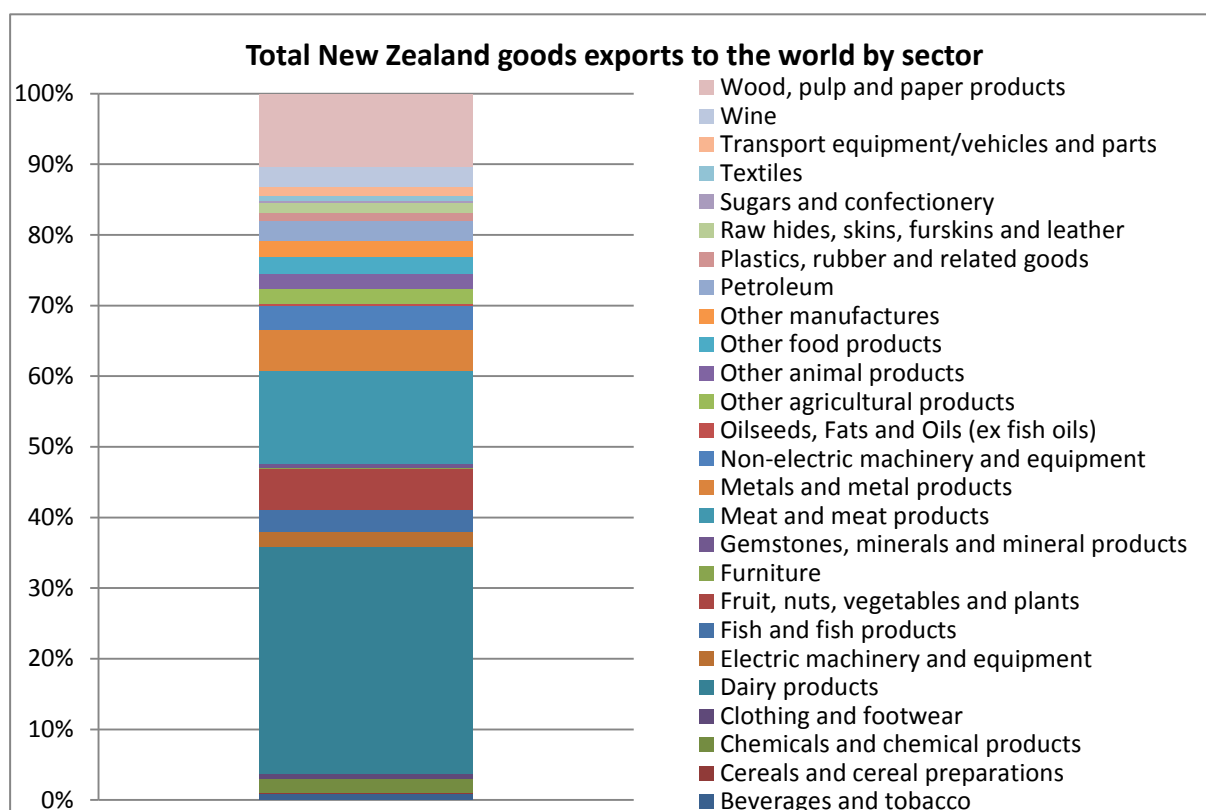
Samoa	108.6 million	3.3 million	111.9 million
Solomon Islands	28.6 million	6 million	34.6 million
Tonga	57.1 million	2.6 million	59.8 million
Tuvalu	4.7 million	15 thousand	4.8 million
Vanuatu	41.5 million	1.4 million	42.8 million
Grand Total	376 million	23 million	399 million

New Zealand exports a different mix of goods to the Pacific than it does to the world as a whole, reflecting proximity and opportunities in markets that prove more difficult for competitors. As example of this difference, dairy and meat, which collectively account for more than 45 percent of New Zealand's exports to the world, account for only 13 percent of New Zealand exports to PACER Plus Parties. Trade to the Pacific is more diversified with greater exports of processed and manufactured products. Chemicals and chemical products, machinery and equipment, furniture, minerals and mineral products, plastics, petroleum, confectionary and textiles are all more significant exports in this market than our global export markets.



New Zealand's position in these markets is not currently protected by a Free Trade Agreement. In respect of the 8 non-WTO member countries which are Parties to PACER Plus this means that there are no limitations or obligations currently in force with respect to the level of tariffs which may be charged on New Zealand exports. Furthermore

current negotiations underway between PACER Plus Parties and the European Union do present the potential for New Zealand companies to be left at a disadvantage in terms of the tariffs charged in these markets, if these negotiations are successfully concluded and ratified.



PACER Plus will protect our competitive position in terms of exports to Forum Island Countries through a most-favoured-nation obligation, and provide reduced tariffs, over extensive time horizons which will improve the competitive position of New Zealand businesses, as compared to Parties outside of the region. This may lead over the long term to a small increase in the volume of exports from New Zealand to Pacific Island Countries as New Zealand exports displace third Party exports in the region and as reduced tariffs bring the cost of products down to a level which is more accessible to consumers in the Pacific Islands. Imports from the Pacific Island Countries may also increase gradually overtime, from their low base, as aid for trade and related assistance provided under the Agreement supports product diversification and the export capacity of Pacific Island Countries.

7.2 Social effects

PACER Plus is expected to have an overall net-benefit to New Zealand socially due to:

- the anticipated net economic benefits of PACER Plus to New Zealand;
- enhanced people to people relationships; and

- indirect benefit from a more prosperous Pacific as this could reduce somewhat the growth in potential demand for New Zealand social services from nearby Pacific countries.

PACER Plus is not expected to have any discernible negative social effects in New Zealand. One area that merits attention when developing new labour mobility initiatives under the Labour Mobility Arrangement is the potential social, including cultural, impact of increased labour mobility in provincial New Zealand. Impacts evidenced from the Recognised Seasonal Employer scheme are instructive such as the tradition of village and filial support in the islands manifesting as in New Zealand as social pressure on small Pasifika communities in rural areas to help new workers settle in.

7.3 Employment

The reduction in tariffs under free trade agreements may lead to a loss in employment in sectors that had been protected by tariffs. This is not expected to be the case with PACER Plus, as New Zealand already offers Pacific Countries duty free access under the SPARTECA. There is, however, expected to be an increase in exports from the Pacific over time due to the more flexible rules of origin, as well as the economic cooperation focused on better positioning Pacific countries to export. Nevertheless, given imports from the Pacific only account for NZD\$23 million per annum,³⁴ or 0.05 percent of total New Zealand imports from the world, the impact of any increase in imports is likely to be negligible.

There are no commitments to provide Pacific countries with access to the New Zealand labour market. While the Labour Mobility Arrangement establishes a framework for cooperation, experience with the pilot initiative (Canterbury Reconstruction) shows that this objective can be managed through supporting Pacific workers to obtain a higher share of the temporary work visas issued by New Zealand each year. All of New Zealand's labour mobility initiatives adhere to the Ministry of Social Development's "New Zealanders first" principle, are within existing visa settings including labour market testing requirements, and are targeted in sectors that face a persistent skills shortage that cannot be met by New Zealanders.

7.4 Social regulation

New Zealand's social regulation frameworks will not be affected by PACER Plus. In the area of services, PACER Plus follows the structure of General Agreement on Trade in Services and therefore excludes services supplied in the exercise of government authority. Moreover New Zealand has not made any commitments in respect of publicly provided services, such as public health, public education, social housing and social welfare.

³⁴ Based on average imports between 2013 and 2015.

7.5 Immigration

Outside the specific commitments entered into in respect of short-term entry, the Agreement will not require any changes in New Zealand's immigration policy settings. The Labour Mobility Arrangement, may, however, lead to Pacific Island workers taking a larger share of New Zealand's temporary work visas. Many of these roles may be circular migration with workers returning regularly to their home countries and then returning to contribute their skills to the New Zealand labour market, and send remittances home. (As with other Trade agreements, PACER Plus makes no commitments relating to permanent migration.) In the longer term, it is anticipated that the increased social/labour familiarity and the harmonisation of qualifications that will flow from the Labour Mobility Arrangement may make it easier for New Zealand to consider how to respond to any potential need for more permanent migration pathways for Forum Island countries affected by climate change. In the short to medium term, remittances and skills may both be employed in Pacific nations to increase resilience and mitigate climate change-related impacts.

7.6 Cultural Effects

PACER Plus is not expected to have any negative cultural effects. PACER Plus includes safeguards to ensure that New Zealand preserves the ability to pursue certain cultural policy objectives, such as supporting the creative arts. PACER Plus is expected to enhance the existing fabric of relationships that New Zealand has with Forum Island Countries and with Pasifika communities in New Zealand.

Questions around access to, ownership over and control of elements of intangible cultural heritage are under ongoing consideration throughout the Pacific region.³⁵ Accordingly, it was agreed that PACER Plus should not include a chapter on intellectual property, seek to expand on existing international obligations with respect to traditional knowledge; and that measures relating to the creative arts, cultural heritage and other cultural industries would be exempted from the Most-favoured-nation obligation for investment.

However Parties did record their intent to act consistently with "applicable international agreements on intellectual property rights binding on the Party". This includes: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Paris, Berne and Rome conventions. Consequently PACER Plus does not impact on existing relevant policy settings or legislation in New Zealand. Nor would PACER Plus limit any domestic changes that might be made in the future, including in relation to the protection of indigenous flora and fauna or treaty settlements.

³⁵ See for example:

http://www.wipo.int/export/sites/www/tk/en/resources/pdf/talakai_report.pdf

7.7 Treaty of Waitangi obligations and Māori interests

The following were assessed³⁶ to be the main areas of Māori interest in PACER Plus:

- Safeguarding the ability of the Crown to honour its obligations to Māori, including under the Treaty of Waitangi
- Māori export interests
- Seasonal Pacific Island labour (stemming from the existing Recognised Seasonal Employer scheme)
- Labour mobility
- Future development partnerships; and
- Areas already known to be of interest to Māori in the context of international trade.³⁷

As the founding document of New Zealand, the Treaty of Waitangi is fundamental to the on-going relationship between the Government and Māori. Determining the Crown's obligations to Māori, including under the Treaty of Waitangi, is a very important and ongoing question that is quite properly a function of New Zealand's domestic legal, constitutional and political system. The function of free trade agreements like PACER Plus is to avoid impinging on these important domestic processes.

PACER Plus contains the same protections for the Treaty of Waitangi as all recent New Zealand Free Trade Agreements. The Treaty of Waitangi exception, along with other provisions in the Agreement, combine to protect the capacity of the Crown to implement domestic policies that fulfil its obligations to Māori, including under the Treaty of Waitangi, without being obliged to offer equivalent treatment to our PACER Plus partners. New Zealand's approach of including the Treaty of Waitangi exception in its free trade agreements is unique, and reflects the constitutional significance of the Treaty of Waitangi to New Zealand.

³⁶ In August 2016, based on feedback up to that point and the findings in the WAI 2522 report of the Waitangi Tribunal, an assessment of "[Māori interests in PACER Plus](#)" was published on the Ministry of Foreign Affairs and Trade website. The proposed approach to these interests in PACER Plus was foreshadowed in that document for comment and consideration in subsequent outreach.

³⁷ The areas are broadly similar to the areas identified by the Waitangi Tribunal:
"It will be clear from this and earlier chapters that Māori interests in trade and economic development, natural resources, the protection and transmission of Māori culture and traditional knowledge, indigenous rights, and environmental protection, are all profoundly affected by international instruments. In the current globalised commercial (and to some extent political) world, some effects on these interests will occur not because of Crown action but because of Crown obligation." (See WAI 262, page 680.)

PACER Plus will not impede New Zealand's current or future ability to meet its obligations to Māori, including under the Treaty of Waitangi.

PACER Plus is, in part, about maintaining New Zealand's Pacific connections, and Māori are intrinsically connected to the wider Pasifika communities. Given the significant asset base that Māori have in the primary sector, PACER Plus represents an opportunity to develop those connections in an authentic and genuine way.

7.8 Environmental Effects

One of the aims of New Zealand's trade agreements is to ensure that the outcomes contribute to sustainable development and environmental objectives. However, New Zealand also recognises that the degree to which policy and regulatory settings are still being developed in Forum Island Country parties and the priority that they attach to preserving the flexibility to set legislative and regulatory priorities.

PACER Plus will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided that they are applied to meet a legitimate objective and are not implemented in a discriminatory fashion. New Zealand has a suite of relevant existing legislation that is designed to address any potential adverse environmental outcomes of economic activity.³⁸

7.9 Regulatory Effects

PACER Plus, as with New Zealand's other recent trade agreements, does not limit the New Zealand Government's ability to regulate for environmental protection. Its general exceptions are consistent with those provided for in international [legislation] (the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS)). These exceptions apply across all areas of the Agreement, and allow all Governments to introduce measures necessary to protect human, animal or plant life or health, and to conserve exhaustible natural resources, provided these measures are not applied in a manner that constitute an arbitrary or unjustifiable discrimination on trade or investment. The provisions on cooperation provide an avenue for enhanced dialogue and engagement on environmental matter.

7.10 Product Effects

Generally, trade liberalisation results in a more efficient use of resources, which may alter the mix of products imported and exported from New Zealand. Product effects may

³⁸ Including the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Ozone Layer Protection Act 1996, the Soil Conservation and Rivers Control Act 1941, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1996, the Forests Act 1949 (amended 1993), and the Wildlife Act 1953.

arise under PACER Plus from the more efficient use of resources, and the additional income that is generated by trade liberalisation in the Forum Island Countries. This alongside investment in the trade capacity of Forum Island Countries pursuant to the Implementing Arrangement may lead to changes in the composition of New Zealand imports and exports over time.

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

Any product effects under this Agreement are likely to be small and occur over long time horizons. This is due to the size of the countries involved (which account for 0.5 percent of New Zealand goods imports and 0.7 percent of New Zealand goods exports to the world) the pre-existing preferential access provided by SPARTECA for Forum Island Country exports to Australia and New Zealand, and the extended phase outs for tariff elimination by Forum Island Countries under the Agreement.

7.11 Structural Effects

Structural effects relate to the ways in which trade liberalisation can affect the production processes of goods and services that have environmental effects. PACER Plus is unlikely to result in structural effects of sufficient magnitude to create any significant new negative environmental effects. This reflects the reality that future demand for New Zealand goods and services will continue to be a relatively small proportion on New Zealand's exports. PACER Plus is unlikely to have any discernible negative structural effects, given the degree of structural reform that New Zealand has experienced over the past four decades, natural resource and capacity constraints, the open nature of the New Zealand economy, and the environmental management legislation and management systems already in place.

7.12 Scale Effects

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

In the case of PACER Plus, the size of the Forum Island economies involved means that no negative effects are expected on the environment in New Zealand and any possible effects could be managed satisfactorily using existing policy frameworks. To the degree that New Zealand companies undertake joint ventures or increase exports to Forum Island Country Parties, officials anticipate that New Zealand's regulatory standards, technological potential and production practices may encourage improved productivity and sustainability in the use of natural resources in those countries.

8 The costs to New Zealand of compliance with the treaty

8.1 Summary of Costs

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

Area	Annual Cost	Description
Foregone tariff revenue	\$2000	
PACER Plus institutional arrangements	NZD\$11 million over 7 years	From within Vote ODA allocations.
Outreach activities	Approx.: \$46500	Includes: the production of appropriate publications explaining the key outcomes of the Free Trade agreement, and a series of promotional "roadshows" in New Zealand prior to entry into force to outline the content of PACER Plus to New Zealand businesses and wider stakeholder community (in particular Māori and Pacific business and community stakeholders). Also includes other engagement in centres with Māori as Treaty partner, Māori and Pacific business and community interests and the wider private sector.
Implementing and Administrative costs	Approx \$81,000	Costs in relation to signing event in Tonga on 14 June including legal costs of treaty preparation and support to Government of Tonga as depository of agreement.
TOTAL	\$129,500 & NZD\$11 million over 7 years	

8.2 Tariff revenue

PACER Plus will have a negligible impact on New Zealand tariff revenue. Approximately NZD\$2 thousand is collected on imports from PACER Parties each year on products which either fail to claim preference, or do not qualify for preference under the rules of origin of SPARTECA or the Generalised System of Preferences.

8.3 Promotion and Outreach Costs

One-off costs associated with implementing PACER Plus incurred in the 2016/2017 Financial Year totalled NZD\$129,500. Domestic outreach costs in 2017/2018 Financial year are estimated to be NZD\$46,500. Key activities over this period include residual costs associated with legal support to the Government of Tonga in its role as depository for the Agreement, the production of appropriate publications explaining the key outcomes of the Agreement, and a series of promotional “roadshows” in New Zealand prior to entry into force to outline the content of PACER Plus to New Zealand businesses and wider stakeholder community (in particular Māori and Pacific business and community stakeholders).

Government agencies will also be working with the private sector and others to implement strategies to best leverage the opportunities arising from PACER Plus. Such activities are considered, however, to represent an investment in PACER Plus and the Pacific region rather than a compliance cost.

Any ongoing promotional and outreach costs would be minor and would be dealt with from, primarily, MFAT’s normal departmental budget.

8.4 PACER Plus Implementation Costs

PACER Plus establishes an Implementing Unit to consider the implementation of the Agreement. The implementing unit will also play a role in supporting Forum Island Countries in their own domestic implementation.

8.5 Costs to government agencies of implementing and complying with the Agreement

Under the Development and Economic Cooperation Chapter (Chapter 10) and associated Implementing Arrangement, New Zealand will undertake two funding commitments. The first is to jointly fund with Australia a work programme to provide trade-related assistance to Forum Island Countries to implement and take advantage of the benefits of PACER Plus. The Minister of Foreign Affairs has approved a New Zealand funding contribution of NZD\$11 million over 7 years, from within Vote ODA allocations.

The second commitment is to spend at least 20 percent of ODA on ‘aid-for-trade’ investments in the Pacific. This commitment would bind New Zealand to a floor allocation

from Vote ODA towards activities that support trade in the Pacific. Based on current Vote ODA estimates, this represents about NZD\$340 million over the current triennium (2015/16 - 2017/18). This commitment is consistent with the government's intentions as outlined in the New Zealand Government International Development Policy Statement. Further, the Ministry of Foreign Affairs and Trade forecasts that this funding target will be exceeded for the current funding triennium. However the commitment to a funding target will exceed the current funding period (five years from Entry into Force).

Some technical assistance and capacity building may also be delivered by New Zealand government agencies, such as New Zealand Customs Service and the Ministry for Primary Industries. Officials will seek to manage the resource implications within current allocations including through ODA-funded state sector activities in the Pacific.

The implementation of PACER Plus will have fiscal implications. Activities undertaken by government departments in support of this Agreement are either expected to be funded within existing departmental baselines or, in cases where this is not possible, Cabinet approval for additional funding may be sought by the relevant department. The inter-agency Trade Negotiations Fund has a funding pool available to provide departments with funding for "bedding-in" activities associated with the Agreement, for a period of 18 months from the date of entry into force of the Agreement.

8.6 Costs to businesses of complying with the Agreement

The expected effect of PACER Plus would be to reduce compliance and at the border costs for New Zealand businesses through trade facilitating outcomes which aim to prevent standards, technical regulations, conformity assessment procedures operating as unnecessary barriers to trade. These outcomes will help reduce transaction costs from the outset of the Agreement. Other outcomes are expected to develop and increase over time from the platform the Agreement provides in areas such as standards, technical regulations, conformity assessment procedures for enhanced regulatory co-operation to facilitate trade. The benefits may be lessened with regards to non-WTO members who are Parties to PACER Plus, as they are granted additional flexibility in applying the obligations of the Chapter on Technical Regulations, Standards, and Conformity Assessment.

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

9.1 Inter-departmental consultation process

The negotiation of PACER Plus (and associated Arrangements and Side Letter) was conducted by an inter-agency team led by the Ministry of Foreign Affairs and Trade. The inter-agency team comprised officials from the Ministry of Business, Innovation and Employment and the New Zealand Customs Service.

Other relevant departments and agencies were also regularly consulted during the negotiations in the preparation of New Zealand's position, notably the Ministry of Primary Industries and the Inland Revenue Department.

The Department of the Prime Minister and Cabinet and the Treasury were also regularly consulted on the process.

9.2 Public consultation process

Public outreach and consultation has taken place throughout the negotiation of the PACER Plus, including with key stakeholders on negotiating objectives.

In undertaking consultations for PACER Plus, the Government drew on an existing foundation of information from engagement with stakeholders over the course of previous free trade agreement negotiations.

When negotiations first commenced in 2009, thirteen public submissions was received from a variety of organisations and individuals from involved in education, business, development, trade union, social services and a church based organisation. Over the years, interest has not been wide spread but it has been steady.

In 2016 and 2017, as part of MFAT's communications programme, outreach to Māori as a treaty partner and to key stakeholders included:

- A meeting with the Federation of Māori Authorities Board and a presentation to their Annual National Conference in 2016;
- Pacific Economic Development Ambassador Matua Shane Jones hosted a Pasifika Futures Seminar and stakeholder event in Christchurch;
- Meetings and email correspondence with the Council of International Development to support wider engagement and outreach to New Zealand non-governmental organisations (NGOs);
- A presentation to MFAT's informal "Core Group" of agriculture sector trade stakeholders, Pacific Exporters Network and Pasifika Business Network in Wellington;
- A keynote address promoting the benefits of PACER Plus to the Pacific-New Zealand Fisheries Forum;
- A Ministerial keynote address to the Horticulture New Zealand's Annual Recognised Seasonal Employers Conference in July 2017; and
- Work in collaboration with Trade Agenda 2030 public outreach engagements.

Negotiating countries, including New Zealand, made use of centralised outreach to canvas issues and discuss the concerns of Non-State Actors from the region. Between 2010 and 2016, six "Non-State Actor Dialogues" were held in conjunction with PACER Plus negotiating rounds. Representatives from regional peak body NGOs, national NGOs and private sector bodies from around the region, including from New Zealand, were invited. The briefings (as well as material on the website of the Office of the Chief Trade Adviser to the Forum Island Countries) provided extensive information on each chapter

of the draft Agreement. At the time of writing, the 7th Non-State Actor Dialogue was scheduled for 31 May 2017.

9.2.1 Planned consultation

Negotiating countries agreed that subject to domestic approvals, the text of the Agreement (and the related Arrangements) should be released prior to signature on 14 June.

A communications plan is in place to respond to ongoing interest in PACER Plus by the business community, other stakeholders and media. An awareness campaign targeting Pasifika communities will be deployed through television, radio and social media. A series of Business Roadshows will also be delivered in, at least, Auckland, Wellington and Christchurch following the signing of the agreement. A range of material will be released to coincide with the release of the text and signature including: an overview and factsheets on key issues in PACER Plus, publication of the text, publication of information on the benefits and costs of PACER Plus, and a legal summary of the Agreement.

It is proposed that the NIA be made publicly available on the Ministry of Foreign Affairs and Trade's website following its tabling in Parliament.

During Parliamentary treaty examination of the text of PACER Plus and the NIA, it is likely that the relevant select committee will call for public submissions. This process will allow for further engagement with stakeholders.

9.3 Issues covered in the consultation process

Information was offered on all the subject matter that is at the core of the fifteen chapters of the Agreement, and on labour mobility and development cooperation. Stakeholders have been consulted on the phase-out of tariffs, rules of origin, services and investment commitments (including the shape of potential outcomes on movement of natural persons). Māori interests formed part of the consultation process (see section 7.7). The potential social and environmental impacts were discussed but stakeholders were primarily interested on the potential impacts on Forum Island Countries.

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

PACER Plus provides that it may be amended by agreement in writing by the Parties and that any amendments would come into force on the date agreed among the Parties (Chapter 15, Article 7).

New Zealand would consider proposed amendments to PACER Plus on a case-by-case basis. Any decision to accept an amendment would be subject to the normal domestic approvals and procedures.

New Zealand is encouraging other Pacific Island Forum members to join PACER Plus; specifically Fiji and Papua New Guinea who have been part of these negotiations and new members, French Polynesia and New Caledonia. These four countries comprise New Zealand's four largest trading partners in the region so would have a demonstrably positive effect on the potential trade benefits of PACER Plus for New Zealand exporters. Their accessions would require Cabinet approval as the Parties are required to agree their schedules and would therefore result in a specific and detailed analysis of the impact of their membership of PACER Plus.

11 Withdrawal or denunciation provision in the treaty

Any Party may withdraw from PACER Plus by giving six months advance notice in writing to the other Parties (Chapter 15, Article 11.1). If more than half of the Parties have notified their withdrawal from PACER Plus pursuant to Chapter 15, Article 11.1, the Agreement shall terminate (Chapter 15, Article 11.2).

12 Agency Disclosure Statement

This extended National Interest Analysis (NIA) has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. The extended NIA identifies all the substantive legal obligations in the *Pacific Agreement on Closer Economic Relations* (PACER Plus), few of which will require legislative implementation (for example, amendments to regulations under the Customs and Excise Act 1996 and the Tariff Act 1988 will be required to reflect 'rules of origin' and 'goods returned after repair or alteration' negotiated under PACER Plus). The NIA analyses the advantages and disadvantages to New Zealand in becoming a Party to the Agreement and concludes that it would not have any detrimental policy or regulatory effects that represent a disincentive to signing the Agreement. It canvases New Zealand's broader foreign policy and development objectives in the Pacific region and the unique nature of the PACER Plus agreement given its dual trade and development focus.