



Cabinet

Minute of Decision

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Additional Item: Regional Comprehensive Economic Partnership (RCEP): Approval of Final Outcome and Next Steps

Portfolio **Trade and Export Growth**

On 9 November 2020, Cabinet **noted** that the group of Ministers with power to act over the general election and government formation period made the following decisions in early November:

- 1 noted that negotiations towards a Regional Comprehensive Economic Partnership (the Agreement) were essentially concluded in November 2019 and fully concluded in 2020;
- 2 noted that India withdrew from the negotiations in November 2019 and that the Agreement will be signed by the other 15 parties;
- 3 noted that a fast-track accession process has been established for India, should it wish to re-join the Agreement in the future;
- 4 noted that the outcome of negotiations is within the mandate approved by Cabinet and protects the government's right to regulate for legitimate public policy purposes, including health (the Pharmac model is protected), investment in sensitive land and assets (Investor-State Dispute Settlement (ISDS) is excluded), and Māori policy (New Zealand's standard exception for the Treaty of Waitangi has been secured);
- 5 approved the text of the Agreement [Annex 2 of the Cabinet paper considered by the group of Ministers] subject to any minor or technical changes arising from the final legal verification process;
- 6 approved the National Interest Analysis [Annex 3 of the Cabinet paper considered by the group of Ministers], subject to any minor or technical changes required between now and public release;
- 7 authorised the Minister for Trade and Export Growth, in consultation with relevant Ministers, to approve any necessary minor or technical amendments to the Agreement or National Interest Analysis which do not materially alter their content;
- 8 authorised signature of the Agreement;
- 9 agreed that the text of the Agreement, along with the National Interest Analysis, the independent economic modelling, the Cabinet paper considered by the group of Ministers and the Cabinet minute be made public at the time of signature with redactions where necessary;

- 10 agreed that following signature, the text of the Agreement and the National Interest Analysis be presented to the House of Representatives for Parliamentary Treaty Examination, in accordance with Standing Orders 397-400;
- 11 noted that to implement the Agreement in domestic law, legislation amending the Tariff Act 1988 and the Customs and Excise Regulations 1996 as set out in paragraph 53 of the paper will be required;
- 12 authorised the Minister of Foreign Affairs to bring the Agreement into force by signing and submitting an instrument of ratification in accordance with Article 20.6 of the Agreement, following signature of the Agreement and completion of domestic implementing legislation.
- 13 agreed that all domestic legislative changes required to comply with the Agreement's obligations on entry into force be made by a Regional Comprehensive Economic Partnership (RCEP) Bill be included in the 2021 legislative programme as a Category 2 Bill;
- 14 invited the Minister for Trade and Export Growth to issue drafting instructions to the Parliamentary Counsel Office for the legislation required to implement the Agreement;
- 15 noted the Agreement requires at least three non-ASEAN signatories and six ASEAN signatories to complete their domestic procedures to ratify the Agreement before it enters into force;
- 16 noted that the earliest that the Agreement is expected to enter into force for New Zealand is 2022;
- 17 noted that Cabinet approval for New Zealand's contribution to the ongoing costs relating to the RCEP Secretariat following entry into force will be funded from departmental baselines in the first instance, and further funding will only be sought if it cannot be found in departmental baselines;
- 18 noted that other costs associated with New Zealand's participation in RCEP (including public engagement around RCEP's implementation and hosting RCEP Joint Committee meetings) will be met from within departmental baselines.

Michael Webster
Secretary of the Cabinet

Chair,
Cabinet Economic Development Committee

Regional Comprehensive Economic Partnership: Approval of Final Outcome and Next Steps

Proposal

1 The proposal is that Cabinet approve the outcome of the Regional Comprehensive Economic Partnership (RCEP) negotiations and authorise signature of RCEP. Approval is also sought to present the RCEP National Interest Analysis (NIA) along with the text of RCEP to the House of Representatives for parliamentary treaty examination, following signature.

Executive summary

2 Trade is a key driver of New Zealand's growth, competitiveness, employment and prosperity, as well as of wider foreign policy objectives. One in four jobs in New Zealand depend on access to export markets, and these jobs tend to be more productive and pay higher wages. The export sector will also be an enabler of New Zealand's wider economic recovery from the COVID-19 pandemic.

3 RCEP is a plurilateral free trade agreement (FTA) negotiated initially between the 10 members of ASEAN (Brunei-Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam) plus the six regional countries with which ASEAN has existing free trade agreements (Australia, China, India, Japan, South Korea, and New Zealand). Negotiations at the Ministerial level have been led by Hon Damien O'Connor. India withdrew from the negotiations in November 2019, and it is proposed that New Zealand sign RCEP alongside the fourteen other parties.

4 The outcomes from negotiations are all within the mandate provided by Cabinet. Other than minor amendments to the Tariff Act 1988 and Customs and Excise Regulations 1996, RCEP will not require changes to New Zealand law or regulations. RCEP will not impact the Government's right to regulate for legitimate public policy purposes, including health (the Pharmac model is protected), environment, public morals, security and taxation. Investor-State Dispute Settlement (ISDS) has been excluded.¹ New Zealand's standard exception for the Treaty of Waitangi has been secured. Explicit policy space for the creative arts has also been maintained, albeit through reservations in New Zealand's

¹ RCEP does provide for the parties to review the exclusion of ISDS within five years of entry into force, but any change requires consensus of all parties (i.e. New Zealand retains a veto).

services and investment schedules rather than a cross-cutting general exception (as was New Zealand's preference).

5 There are strong commercial and strategic reasons for New Zealand to be part of RCEP. The RCEP region is economically critical to New Zealand. The 15 signatories of RCEP account for 30% of the world's population, nearly a third of the world's GDP, and are the destination for 56 percent of New Zealand's total exports.

6 RCEP will provide commercial benefits to New Zealand goods exporters through enhanced trade facilitation measures and other provisions that respond to concerns raised by New Zealand businesses regarding non-tariff barriers impacting trade. New Zealand exporters currently grapple with a complex web of different rules when they trade in the RCEP region, having to navigate up to nine sets of rules stemming from existing FTAs.² RCEP will provide a single rulebook covering all 14 markets, which has the potential to significantly reduce complexity, and therefore compliance costs, for exporters. In addition to the consolidating impact of RCEP, the agreement improves on some of the existing rules to better address non-tariff barriers. For example, RCEP creates an expectation that customs authorities will release 'perishable goods', such as seafood, within six hours of arrival including (in exceptional circumstances) release of such goods outside normal business hours which should reduce spoilage and save exporters money.

7 Unlike most of New Zealand's previous FTAs, RCEP does not deliver significant 'new market access' for goods exports as a result of tariff cuts. This is because New Zealand has existing FTAs with all the RCEP signatories, which have already eliminated tariffs on most New Zealand exports. It was not possible (with a few exceptions outlined later in this paper) to improve on the tariff outcomes in these existing FTAs due to RCEP's modest level of ambition.³ The most significant opportunity to reduce tariff barriers for New Zealand exporters came from India's involvement in RCEP, because New Zealand does not have an existing FTA with India, which maintains very high tariff protection. This opportunity was frustrated by India's withdrawal from the negotiations, but (consistent with New Zealand's trade strategy) RCEP is an 'open plurilateral' agreement and parties have provided India (as an original negotiating party) with an expedited route to accession should it wish to re-join in the future.⁴

8 Beyond goods trade, New Zealand service providers and investors in the RCEP region will also benefit from rules in RCEP that represent advances over existing FTAs. For the first time, China and ASEAN countries that are not party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) will be making investment

² New Zealand – Australia Closer Economic Relations (CER), ASEAN – Australia – New Zealand FTA (AANZFTA), New Zealand – Malaysia Free Trade Agreement, New Zealand – Thailand Closer Economic Partnership, the Trans Pacific Strategic Economic Partnership (P4), New Zealand – Korea Free Trade Agreement, New Zealand – China Free Trade Agreement, New Zealand – Singapore Closer Economic Partnership, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

³ RCEP's modest level of ambition reflects the substantial differences in economic development within the region, for example with per capita GDP ranging from NZ\$93,000 in Singapore to less than NZ\$5,000 in Cambodia, Lao PDR, Myanmar, the Philippines and Vietnam.³ The RCEP outcomes reflect the sensitivities and complexity of dealing with diverse parties, both developed and developing.

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

⁴ The Treaty text stipulates that the 18 month 'stand-down' period between entry into force and accession of new parties will not apply to India.

market access commitments to New Zealand. In relation to services, RCEP will include commitments by a number of parties that go beyond their commitments to New Zealand in existing FTAs. These are meaningful outcomes, providing New Zealand service suppliers and investors with legal protections that guarantee market access and non-discriminatory treatment (unless subject to exceptions, they will be entitled to treatment equivalent to that given to local and foreign competitors). Improved commitments for services are also important for many New Zealand goods exporters as they look to undertake services and investment related activities to support their international business (such as establishing an in-market presence, forming commercial partnerships, providing after-sales service).

9 Independent economic modelling procured by the Ministry of Foreign Affairs and Trade (MFAT) demonstrates that the outcomes in RCEP, described above, have concrete economic benefit for New Zealand. The modelling predicts that RCEP, once fully implemented⁵, will increase New Zealand's real GDP by 0.4 percent (about NZ\$2.0 billion) relative to the baseline.⁶ Conversely, should RCEP proceed and New Zealand choose not to sign, the modelling predicts a *reduction* in New Zealand's GDP because New Zealand's place in regional supply chains would be eroded, exports from competitors would be favoured and comparably cheaper than New Zealand's, and investment would likely be diverted away from New Zealand to other RCEP countries. Given that RCEP is likely to go ahead with or without New Zealand, the *relative* economic benefit to New Zealand from signing RCEP will therefore likely *exceed* NZ\$2 billion.

10 The strategic benefits of RCEP to New Zealand are compelling. RCEP will be the largest FTA in the world and (alongside the CPTPP) the principal evolving instrument for economic integration in our region. The region is already the engine room of the world economy and is set to become even more important. Despite economic losses as a result of COVID-19, the RCEP region is anticipated to recover faster than most, with current growth estimates of 6.3 percent in 2021 (higher than the projected global economic growth of 5.8 percent)⁷. Economic modelling projects that RCEP (without India) will add \$186 billion to the world economy once fully implemented⁸, and will reorient trade and economic activity further toward East Asia. Accordingly, trade between RCEP economies is projected to increase by between \$428 billion and \$445 billion, while trade among economies outside RCEP is anticipated to fall by between \$39 billion to \$48 billion.⁹

11 As a party to RCEP, the New Zealand government will have a seat at the governance table of this globally significant regional economic integration project, and strengthen New Zealand's credibility and engagement in ASEAN-centred regional architecture. New

⁵ Over twenty years from entry into force.

⁶ Walmsley, T., Strutt, A. & Minor, P. Impact Econ study: *Impacts of a Regional Comprehensive Economic Partnership (RCEP) on New Zealand* October 2019 P. 16. The study was undertaken before RCEP's conclusion and before final outcomes were known. The model therefore considers a number of different outcome scenarios (representing different levels of ambition and with India in or out), with predictions on GDP impact ranging from 0.29%- 0.62%. The numbers used in this paper (0.39%) reflect the scenario closest to where RCEP ended up (modest ambition, India out).

⁷ http://apec.org/Press/News-Releases/2020/0420_PSU

⁸ Peterson Institute for International Economics, Working Paper 20-9: East Asia decouples from the United States: Trade War, COVID-19, and East Asia's New Trade Blocs: Petri and Plummer: June 2020

⁹ *Ibid*, p. 17

Zealand exporters will have the opportunity to embed themselves into regional value chains as they recalibrate following RCEP's entry into force.

12 Signature of RCEP also comes at a time of considerable international trade policy turbulence – tariff retaliation, the sharpest rise in protectionism since 1995, trade disputes among major economic powers and distortionary trade measures in response to the COVID-19 pandemic, all of which are stressing the international rules-based system in an unprecedented manner and reshaping global economic relationships. In addition to the direct impact of trade protectionism on New Zealand's economy, global trade policy uncertainty indirectly impacts on New Zealand firms' business investment and hiring decisions.¹⁰ The government's Trade Recovery Strategy [ERS-20-MIN-0004] seeks to mitigate this through the reinvigoration of international trade architecture. FTAs reduce uncertainty and improve economic resilience. RCEP, like other trade agreements, will create more security and certainty for New Zealand exporters and make the trading environment more predictable.¹¹ Signature of RCEP will progress the Trade Recovery Strategy.

13 The RCEP negotiations commenced six years before the launch of the Trade for All agenda and were substantially concluded just prior to the release of the Trade for All Advisory Board's report. Nevertheless, some Trade for All priorities are advanced by RCEP, such as a specific chapter on SMEs which aims to facilitate the engagement of small and medium enterprises in international trade. There are, however, some elements of Trade for All that are not reflected in RCEP, for example substantive provisions on environment, labour and gender which were opposed by most other RCEP parties. In mitigation, and as previously noted by Cabinet,¹² we already have a range of existing treaty-level outcomes on labour and environment with all RCEP parties except the three Least Developed Countries (LDCs – Cambodia, Laos PDR and Myanmar).

14 The Trade for All Advisory Board's report also included a number of process-related recommendations concerning evaluation, assessment, engagement and inclusion in trade negotiations. Some of these recommendations have been advanced by the RCEP implementation process, including a more robust assessment in the NIA of social, environmental and sustainability impacts¹³ and an independent analysis (to be publicly released alongside the NIA) of the economic impacts of RCEP on New Zealand. In addition, in the closing stages of the negotiations we have increased meaningful engagement with Māori through the newly-established Te Taumata.

15 The 15 RCEP parties aim to sign RCEP in the margins of the East Asia Summit in November 2020. As the Summit will be conducted virtually, officials have been discussing options for signature. New Zealand's preference is for the signing to occur through a virtual signing ceremony involving Trade Ministers from the 15 parties, with Leaders observing. If virtual signature is not possible for some parties s6(a), s9(2)(ba), the

¹⁰ Econet Report, *The Trade Policy Uncertainty Index*, July 2020 p.2

¹¹ *Ibid*, p. 3

¹² Cabinet mandate from 30 January 2018 [CAB-18-MIN-0013 and CBC-18-MIN-0014]

¹³ For example, the RCEP NIA contains a new section on the effects on women and describes the linkages between trade and productivity, sustainability and inclusiveness.

likely alternative option is for RCEP to be signed via physical circulation between the 15 parties.

16 In recommending that New Zealand sign RCEP, officials will continue to engage with the public and seek their views ahead of ratification of the agreement. This will include the release, at time of signature, of the RCEP NIA that explains in full the outcomes from the RCEP agreement and the implications for New Zealand. In accordance with our more recent practice and the Trade for All agenda, New Zealand's preference would be to publicly release the text of RCEP prior to signature. Within the RCEP negotiations, while we have been advocating strongly and consistently for the early release of the text, a number of parties would not consent to the release of the text until signature.

17 Therefore, I propose that this Cabinet paper, the associated Cabinet minute, the text of the RCEP agreement, and the NIA (together with the independent economic modelling) be publically released at the time of signature.

18 Following signature, the Government would need to pass legislation to implement RCEP before New Zealand can ratify it. Based on parliamentary timelines for treaty examination and implementing legislation, we would expect New Zealand would be in a position to ratify RCEP before the end of 2021. RCEP will enter into force 60 days after ratification by at least three non-ASEAN signatories and six ASEAN signatories, a threshold which is unlikely to be reached before the end of 2022.

Background

19 Trade is a key driver of New Zealand's growth, competitiveness, employment and prosperity, as well as of wider foreign policy objectives. One in four jobs in New Zealand depend on access to export markets, and these jobs tend to be more productive and pay higher wages.

20 Since 2012, New Zealand has been negotiating towards a Regional Comprehensive Economic Partnership (RCEP). This negotiation encompasses the 10 countries of the Association of South East Asian Nations (ASEAN), plus ASEAN's six FTA partners (China, Japan, South Korea, India, Australia and New Zealand).

21 RCEP Leaders met for the 3rd RCEP Summit on the 4th of November 2019. The Leaders' Statement noted that 15 parties had essentially concluded negotiations but acknowledged India had "significant outstanding issues", and agreed to "work together to resolve these outstanding issues in a mutually satisfactory way".

22 Over the course of 2020 it became clear India was not interested in signing RCEP this year. RCEP Ministers from the other 15 parties met virtually in June 2020 and agreed to proceed to signature of RCEP without India. In addition, Ministers noted that India was crucial to the RCEP regional integration project and it was important to maintain India's connection with RCEP post-signature. To this end, Ministers agreed a fast track accession process for India¹⁴, s6(a)

¹⁴ The Treaty text stipulates that the 18 month 'stand-down' period between entry into force and accession of new parties will not apply to India.

s6(a) RCEP parties are considering alternative options for providing a linkage with India. At a minimum this will include a paragraph in the Joint Leaders' Statement, and could also include something more substantial such as a separate stand-alone political statement.

23 Due to parties' COVID 19-related travel restrictions and quarantine requirements, physical signature of RCEP in November is not possible. Various options are being considered in lieu of a physical signing ceremony. It is likely, and our preference, that RCEP will be signed virtually by Ministers (and observed by Leaders) during the virtual 4th RCEP Summit on 15 November. An alternative option is for RCEP to be signed via physical circulation s6(a), s9(2)(ba) .

Comment

24 Since the essential conclusion of negotiations in November 2019, the COVID-19 pandemic has significantly altered the international economic and trade landscape including between RCEP parties. The global economic slow-down may delay some of the immediate economic benefits for New Zealand that would have been expected from implementation of RCEP. However, the disruption and uncertainty to the world economy caused by COVID-19 makes the case for international trade rules even stronger. The export sector will be a key enabler of New Zealand's wider economic recovery.

25 Signature and entry into force of RCEP will form an important component of New Zealand's COVID-19 trade recovery strategy, by contributing to the revitalisation of the regional architecture of trade agreements, which gives us valuable market access security. Our trade networks provide predictable rules and other mechanisms to facilitate New Zealand's imports and exports of goods and services. In that regard, RCEP will help to support New Zealand businesses through the recovery phase, particularly as the Asia-Pacific is anticipated to recover more quickly from the pandemic relative to other regions. The outcomes achieved will facilitate the participation by New Zealand traders in supply chains in the RCEP region.

26 The Government's right to regulate for legitimate public policy purposes will be preserved, including through New Zealand's standard Treaty of Waitangi exception and the exclusion of Investor-State Dispute Settlement (ISDS). There will be only minor changes needed to New Zealand's regulatory settings as a result of RCEP.

Key outcomes

27 The final outcomes from the negotiations are all within the Cabinet mandate.¹⁵ The following are some of the highlights (with full details in Annex 1):

- New market access for New Zealand **goods** exporters to Indonesia, through tariff elimination on a number of products including sheepmeat, beef, fish and fish products, liquid milk, grated or powdered cheese, honey, avocados, tomatoes and persimmons. These outcomes improve on the ASEAN-Australia-New Zealand free trade agreement

¹⁵ CBC-18-MIN-0014 (26 January 2018), DEV-18-MIN-0176 (September 2018) and Submission to the Minister for Trade and Export Growth (October 2019).

(AANZFTA) s9(2)(j)

- Enhanced **trade facilitation** measures and other provisions that respond to concerns raised by New Zealand goods exporters regarding non-tariff barriers impacting trade. Many of these outcomes improve the status quo under existing FTAs such as AANZFTA, and extend some of the high standards contained in CPTPP to a broader set of New Zealand's trading partners. These outcomes will thus lower compliance costs, reduce the time exporters spend waiting for goods to clear customs, and enhance transparency and predictability for businesses operating in the RCEP region. These trade facilitative rules will have meaningful commercial impacts for New Zealand, as summarised in the economic impact section below.
- New **services** commitments by some RCEP parties that go beyond existing FTAs. For example, New Zealand has gained commitments beyond AANZFTA in key sub-sectors including professional services, computer related services, education services, environmental services, air transportation services, research and development services, and distribution services. In addition, many of these enhanced commitments relate to the 'cross-border mode' of services supply. In the COVID-19 environment, the ability of New Zealand service providers to deliver their services cross-border - with the provider based in New Zealand and the customer based in their home country - will be increasingly important. The recent Trade Recovery Cabinet Paper [ERS-20-MIN-0004] agreed that New Zealand should prioritise cross-border trade in professional and commercial services, and the RCEP services outcome delivers on that mandate. At the same time, we have been careful to ensure that, while RCEP will facilitate the movement of business people around the region, the rules do not apply to measures affecting access to the employment market of New Zealand, or any measures regarding nationality, citizenship, residence, or employment on a permanent basis.
- New **investment** commitments by some RCEP parties that go beyond existing FTAs. In particular, China and ASEAN countries that are not party to CPTPP have made investment market access commitments for the first time to New Zealand. This will provide New Zealand investors in the RCEP region with protection from discrimination (compared to domestic or other foreign investors) and will enhance their ability to retain control of their investments. At the same time, New Zealand was successful in excluding Investor-State Dispute Settlement (**ISDS**) from RCEP, and New Zealand's schedule of commitments contains a number of exceptions which reserve policy space including for our investment screening regime under the Overseas Investment Act¹⁷.
- In the **Intellectual Property** (IP) Chapter, the outcomes on **geographical indications**¹⁸ (GIs) extend advantages previously secured in CPTPP to a wider group of trading partners. In particular, RCEP requires Parties to adopt or maintain due

s9(2)(j)

¹⁷ Which ensures, for example, that we can continue to introduce changes such as the temporary notification regime in response to the economic impact of Covid-19.

¹⁸ A geographical indication is a sign or name used to identify a good as originating in a territory, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin - for example 'champagne'.

process and transparency obligations in respect of any regime they provide for the protection of GIs. This is important for a number of New Zealand producers who export products with names claimed as GIs by the European Union but considered generic in many other markets (for example the cheeses 'feta' and 'parmesan'). In addition, the RCEP IP Chapter goes further than any of New Zealand's other FTAs in recognising **genetic resources and traditional knowledge and folklore** (GRTKF).

- RCEP's **Electronic Commerce** Chapter will introduce specific rules on e-commerce for the first time between New Zealand and South Korea, and expand existing rules in AANZFTA and the New Zealand-China FTA. The inclusion of these e-commerce obligations will modernise the trading relationship with our RCEP partners, particularly those not party to CPTPP. At a time of increasing reliance on e-commerce to mitigate Covid-19 constraints, the rules will allow businesses and consumers to transact online with confidence, and protect the privacy and rights of consumers.

Treaty of Waitangi and other general exceptions

28 We have secured the Treaty of Waitangi exception in RCEP, consistent with all New Zealand's FTAs since 2001. The Treaty of Waitangi exception ensures that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi. It is designed to work alongside other provisions to provide successive governments with flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities. This exception applies in respect of matters covered by the entire RCEP agreement.

29 The RCEP agreement expressly recognises the right of Parties to regulate for legitimate public welfare objectives. The General Provisions and Exceptions Chapter sets out exceptions to ensure that RCEP does not impair a government's ability to make and implement legitimate policy in a range of critical areas including health, conservation of exhaustible natural resources, public morals, security, and taxation.

30 New Zealand also sought to include in RCEP a general exception relating to the creative arts, similar to that contained in all of our FTAs apart from CPTPP. We pursued the creative arts exception tenaciously until the final Ministerial meeting before the RCEP Leaders' Summit in 2019 which announced conclusion of the text. However, in the face of consistent strong opposition from all other parties, we agreed to drop our proposal for a general creative arts exception

s9(2)(j), Note: As an alternative, New Zealand has reserved its policy space in its services and investment schedules. While it is preferable to have the exception reflected in the FTA text rather than schedules, it does not impact the policy space available in practice.

Economic Impact of RCEP

31 An independent economic study has been commissioned by MFAT to quantify the impact on the New Zealand economy of entering into the RCEP agreement (Annex 3). This independent analysis will be released publicly alongside the NIA. Sharing the economic modelling with the public aligns with the recommendations of the Trade for All Advisory Board's report.

32 In this study, ImpactEcon considered the impact of RCEP on trade in goods, services and investment. The study estimated how New Zealand's economy would evolve under RCEP compared to how it would grow in a world without RCEP (the "baseline"). The "baseline" was carefully estimated to account for commitments in existing trade agreements, particularly CPTPP, to avoid double counting economic impacts.

33 However, the modelling was completed prior to the emergence of COVID-19 and the significant economic shock that has resulted from the virus and measures to contain it, both in New Zealand and abroad. The economic recession now under way will likely result in smaller economies than were estimated in the "baseline". Future trend growth rates may also be lower following the shock, depending on the lasting impacts on productivity from factors such as the effect of long term unemployment on skills (called "hysteresis" in economic theory).

34 MFAT's assessment is that if RCEP countries are impacted economically in roughly the same magnitude, then the modelling results will remain broadly correct. If the economic impacts of COVID-19 vary significantly across the different RCEP countries then the modelling results will become less accurate as the relativity between countries shifts. It is too early to tell at this stage if this is the case. What this points to is, unsurprisingly, greater-than-normal uncertainty around the modelling results.

35 RCEP is projected to add \$186 billion to the world economy.²⁰ For New Zealand, modelling anticipates that RCEP, once fully implemented,²¹ will increase real GDP by \$1.5 – 3.2 billion (0.3% to 0.6% of GDP). Should India remain outside of RCEP then the gain to New Zealand would be towards the lower end of the range – officials' best estimate is \$2.0 billion (0.4%) of GDP relative to the baseline.²² This is mostly due to the trade facilitative aspect created by RCEP, which is likely to have a significant influence on the form and function of value chains across the RCEP region in the coming years. As a party to RCEP, New Zealand exporters will have the opportunity to embed themselves into regional value chains as they recalibrate on RCEP's entry into force.

36 If RCEP goes ahead without New Zealand, the modelling estimates a decline in our GDP as New Zealand's place in regional supply chains would be eroded, exports from competitors would be favoured and comparably cheaper than New Zealand's, and investment would likely be diverted away from New Zealand to other RCEP countries. Trade

²⁰ Petri and Plummer, p. 10

²¹ Over twenty years from entry into force.

²² The ImpactEcon modelling work was undertaken before RCEP's conclusion and before final outcomes were known. The model therefore considers a number of different outcome scenarios (representing different levels of ambition and with India in or out). The numbers assumed in this paper (\$2 billion of 0.4% of GDP) reflect the scenario closest to where RCEP ended up (modest ambition, India out).

among RCEP economies is projected to increase by between \$428 billion and \$445 billion while interactions among economies outside RCEP are anticipated to fall by between \$39 billion to \$48 billion.²³

Trade for All

37 The RCEP negotiations commenced six years before the launch of the Trade for All agenda and were substantially concluded just prior to the release of the Trade for All Advisory Board's report. Nevertheless, some Trade for All priorities are advanced by RCEP, such as a specific chapter on SMEs which aims to facilitate the engagement of small and medium enterprises in international trade.

38 There are, however, some elements of Trade for All that are not reflected in RCEP, for example substantive provisions on environment, labour and gender. While New Zealand prioritised the inclusion of many of these elements from the beginning of negotiations in 2012, in the end it was not possible to achieve consensus in the context of strong opposition from many RCEP parties. Mitigating this disappointing outcome is the fact that New Zealand already has treaty-level outcomes on trade and environment and trade and labour with all other RCEP parties except the Least-Developed Countries (LDCs - Cambodia, Laos PDR and Myanmar). Consistent with the government's response to the Trade for All Advisory Board's report, we will continue to seek outcomes in these areas in our ongoing trade policy work with the RCEP region, including through reviews of RCEP, accession negotiations with new parties and (with ASEAN) the AANZFTA upgrade.

39 The Trade for All Advisory Board's report also included a number of process-related recommendations concerning evaluation, assessment, engagement and inclusion in trade negotiations. Again, the timetable of RCEP's negotiation and conclusion means that not all of these recommendations will be reflected in the domestic implementation process. For example, some of the recommendations relating to the parliamentary treaty examination process (including preparation of a National Interest Analysis) would require changes to Parliament's Standing Orders. Nevertheless, improvements have been made to the content of this NIA to ensure better alignment with the Board's recommendations, while still within the Standing Order requirements. For example, the NIA includes a more robust assessment of social, environmental and sustainability impacts,²⁴ and an independent analysis (to be publicly released alongside the NIA) of the economic impacts of RCEP on New Zealand. Other changes resulting from the Board's recommendations can be made now and are reflected in the RCEP implementation process. For example, in the closing stages of the negotiations we have increased meaningful engagement with Māori through the newly-established Te Taumata. This was reflected in positive media releases by Te Taumata.

²³ Petri and Plummer, p. 17

²⁴ For example, the RCEP NIA contains a new section on the effects on women and describes the linkages between trade and productivity, sustainability and inclusiveness.

Next Steps

Signature

40 Viet Nam, as ASEAN Chair, will likely invite Leaders and Trade Ministers to a virtual signing ceremony for the RCEP agreement on 15 November 2020. This event will be held on the margins of the annual East Asia Summit, during the 4th RCEP Summit.

Ratification

41 Signature of RCEP would signal New Zealand's intention to ratify the RCEP agreement. Following signature of RCEP, the RCEP agreement text, together with the NIA, must be presented to the House of Representatives for parliamentary treaty examination. During the parliamentary treaty examination process, the Foreign Affairs, Defence and Trade Committee (FADTC) may choose to allow for public hearings and submissions. This process will allow for further engagement with stakeholders. Following consideration FADTC will produce a report, which may be as required under the Standing Orders, RCEP will also be debated in the House.

42 Officials intend to release the NIA at the time of signature. The NIA is drafted primarily for Parliament and standard practice is to submit the NIA to Parliament before or at the same time as it is made publically available. As the House may not be sitting at time of signature this may not be possible in this instance. However I am of the view that in the interest of public transparency, release on signature should go ahead.

43 Parliament will be given a further opportunity to consider the domestic implementation of RCEP when a Bill is submitted to give effect to RCEP obligations in domestic law. All changes to legislation required to comply with RCEP obligations (as described in paragraph 53) will be made through a single Bill.

Entry into force

44 RCEP will enter into force 60 days after the date on which at least three non-ASEAN signatories and six ASEAN signatories have completed their necessary domestic procedures and notified the Depositary (the Secretary-General of ASEAN) of this. RCEP is unlikely to enter into force until 2022 at the earliest.

45 RCEP has the ability to expand the grouping over time. It is likely that the membership of RCEP will grow. Regionally, RCEP is an important part of the emerging economic architecture and, having now been concluded, presents a significant opportunity to shape economic integration in the Asia-Pacific.

Consultation and Caretaker Convention

46 The following departments and agencies have been consulted: the Ministry of Business, Innovation and Employment, Ministry of Culture and Heritage, New Zealand Customs Service, Ministry for Women, Ministry of Education, Ministry of Health, Ministry for Primary Industries, The Treasury, Te Puni Kōkiri, Reserve Bank of New Zealand, New Zealand Qualifications Authority. The Department of Prime Minister and Cabinet has been informed.

47 The NIA outlines the wider consultation and engagement with Māori and civil society during the negotiating process.

48 Given the timing of RCEP's signature, it is necessary to progress this proposal during the post-election period. Should the decision need to be made before a new administration is appointed, Cabinet has authorised a group of Ministers to have Power to Act to take urgent decisions during the caretaker period, on the advice of the incoming government in accordance with the caretaker convention (Cabinet Manual, paragraphs 6.29-6.30). In that case, this Cabinet paper will need to be approved by the Prime Minister, the Deputy Prime Minister, Hon Kelvin Davis and Hon Grant Robertson, and relevant portfolio Ministers (the Minister of Foreign Affairs, the Minister for Trade and Export Growth, the Minister of State for Trade and Export Growth and the Associate Minister for Trade and Export Growth).

Financial implications

49 The implementation of RCEP will have some fiscal implications that are expected to mostly be met from within departmental baselines. Any promotion and outreach activities to explain the key outcomes of the RCEP agreement are expected to be undertaken as part of the MFAT's wider trade policy outreach activities, which includes both consultations and engagement (for both on-going and completed negotiations) as well as promotional activities.

50 The Institutional Provisions Chapter in RCEP foresee five established committees (a RCEP Joint Committee and four subject-specific committees) meeting annually, unless agreed otherwise. Committees are able to meet via video- or tele-conferencing – which will keep costs to a minimum. It is expected that more meetings will take place virtually in the years to come, even as travel restrictions ease after COVID-19. The RCEP agreement also establishes a RCEP Secretariat which will be funded equally by the RCEP countries. The total cost of funding the RCEP Secretariat will be approximately US\$3 million per year, or US\$200,000 (NZ\$310,000) per RCEP Party per year. Cabinet approval for New Zealand's contribution to funding the RCEP Secretariat will be sought following RCEP's entry into force.

51 New Zealand will, on occasion, need to host RCEP Joint Committee meetings following RCEP's entry into force. According to the RCEP agreement, RCEP Joint Committee will convene alternately, and on a rotational basis, in an ASEAN Party and a non-ASEAN Party, unless the Parties agree otherwise. This means New Zealand will be required to host approximately every ten years. The cost of hosting the RCEP Joint Committee or related committees is estimated to be NZ\$500,000 (based on the assumption that New Zealand would host all subsidiary committees as well as the Joint Committee that year). Funding for such hosting would be sought on a cases-by-case basis and likely from departmental baselines.

Human rights

52 There are no inconsistencies with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990.

Legislative implications

53 Most of the obligations in RCEP will be met by New Zealand's existing domestic legal and policy regime. However, a small number of regulatory amendments will be required to align New Zealand's domestic legal regime with certain obligations under RCEP, and thereby enable New Zealand to ratify the RCEP agreement. These are as follows:

- An amendment to the Tariff Act 1988 to enable Orders in Council to be made to: identify RCEP countries for the purposes of the Tariff Act; and amend the 'Tariff' (as defined in that Act) to enable the application of the preferential tariff rates agreed in RCEP.
- An amendment to the Customs and Excise Regulations 1996, to implement the agreed rules of origin and product specific rules for goods imported from RCEP countries.

Regulatory impact analysis

54 The Regulatory Quality Team at the Treasury has determined that a separate Regulatory Impact Assessment is not required for the regularly proposals in this paper because it would substantively duplicate the NIA.

Publicity

55 An announcement on the signature of RCEP is due to take place in the margins of the East Asia Summit in November 2020. As the East Asia Summit will take place virtually, a Joint Leaders' Statement will be released online. Traditionally, New Zealand's preference is to publicly release the text of FTAs before they are signed, and this is what we have been advocating for within RCEP. A number of parties would not consent to the release of the text prior to signature. Therefore, I propose to release this Cabinet paper, the associated Cabinet minute along with the text of the RCEP agreement and the NIA following the public announcement of RCEP's signature.

56 Further information about RCEP will be added to the MFAT website during this process.

Recommendations

57 The Minister for Trade and Export Growth recommends that Cabinet:

1. **Note** that negotiations towards a Regional Comprehensive Economic Partnership (the **Agreement**) were essentially concluded in November 2019 and fully concluded in 2020;
2. **Note** that India withdrew from the negotiations in November 2019 and the Agreement will be signed by the other 15 parties;
3. **Note** a fast-track accession process has been established for India, should it wish to re-join the Agreement in the future;
4. **Note** the outcome of negotiations is within the mandate approved by Cabinet and protects the Government's right to regulate for legitimate public policy purposes, including health (the Pharmac model is protected), investment in sensitive land and assets (Investor-State Dispute Settlement (ISDS) is

excluded), and Māori policy (New Zealand's standard exception for the Treaty of Waitangi has been secured);

5. **Approve** the text of the Agreement (Annex 2 of this Paper) subject to any minor or technical changes arising from the final legal verification process;
6. **Approve** the National Interest Analysis (Annex 3 of this Paper), subject to any minor or technical changes required between now and public release;
7. **Authorise** the Minister for Trade and Export Growth, in consultation with relevant Ministers, to approve any necessary minor or technical amendments to the Agreement or National Interest Analysis which do not materially alter their content;
8. **Authorise** signature of the Agreement;
9. **Agree** that the text of the Agreement, along with the National Interest Analysis, the independent economic modelling, this Cabinet paper and the Cabinet minute be made public at the time of signature with redactions where necessary;
10. **Agree** that following signature, the text of the Agreement and the National Interest Analysis be presented to the House of Representatives for Parliamentary Treaty Examination, in accordance with Standing Orders 397-400;
11. **Note** that to implement the Agreement in domestic law, legislation amending the Tariff Act 1988 and the Customs and Excise Regulations 1996 as set out in para 53 will be required;
12. **Authorise** the Minister of Foreign Affairs to bring the Agreement into force by signing and submitting an instrument of ratification in accordance with Article 20.6 of the Agreement, following signature of the Agreement and completion of domestic implementing legislation.
13. **Agree** that all domestic legislative changes required to comply with the Agreement's obligations on entry into force be made by a Regional Comprehensive Economic Partnership (RCEP) Bill be included in the 2021 legislative programme as a Category 2 Bill;
14. **Invite** the Minister for Trade and Export Growth to issue drafting instructions to the Parliamentary Counsel Office for the legislation required to implement the Agreement;
15. **Note** the Agreement requires at least three non-ASEAN signatories and six ASEAN signatories to complete their domestic procedures to ratify the Agreement before it enters into force;
16. **Note** the earliest that the Agreement is expected to enter into force for New Zealand is 2022;

17. **Note** that Cabinet approval for New Zealand's contribution to the ongoing costs relating to the RCEP Secretariat following entry into force will be funded from departmental baselines in the first instance, and further funding will only be sought if it cannot be found in departmental baselines;
18. **Note** that other costs associated with New Zealand's participation in RCEP (including public engagement around RCEP's implementation and hosting RCEP Joint Committee meetings) will be met from within departmental baselines.

Hon David Parker
Minister for Trade and Export
Growth

Hon Damien O'Connor
Minister of State for Trade and
Export Growth

Annex 1 – Summary of Outcomes

The following are the key outcomes for New Zealand in RCEP's various chapters and annexes.

Trade in Goods

For the reasons described in paragraph 7 of this Cabinet Paper, RCEP does not deliver significant 'new market access' for goods exports as a result of tariff cuts. RCEP does, however, reduce tariff barriers for New Zealand exporters into Indonesia for the following products:

- Elimination of the 5% unbound tariff on beef exports (other cuts with bone in), and all sheepmeat exports.
- Elimination of the 5% applied MFN²⁵ tariff and 2.5% reduced AANZFTA tariff on preserved and prepared meat exports.
- Elimination of the 10% applied MFN tariff and 5% reduced AANZFTA tariff on table salt exports.
- Elimination of the 15% applied MFN tariff and 7.5% reduced AANZFTA tariff on fish and fish product exports.
- Elimination of the 5% applied MFN tariff and 4% reduced AANZFTA tariff on liquid milk, grated or powdered cheese, honey, avocados, tomatoes, persimmons, and many manufactured goods (including ships' or boats' propellers and blades, pumps, motors and electrical circuit boards).

s9(2)(j)

Notwithstanding its modest tariff outcomes, RCEP contains enhanced trade facilitation measures and other provisions that respond to concerns raised by New Zealand goods exporters regarding non-tariff barriers impacting trade. Many of these outcomes improve the status quo under existing FTAs such as AANZFTA, and extend some of the high standards contained in CPTPP to a broader set of New Zealand's trading partners. These outcomes will thus lower compliance costs, reduce the time exporters spend waiting for

²⁵ Most Favoured Nation (MFN) tariff rate, the 'standard' tariff rate applied on an import from a country with most favoured nation status as a member of the World Trade Organisation.

s9(2)(j)

goods to clear customs, and enhance transparency and predictability for businesses operating in the RCEP region. Some examples include:

- **Trade in Goods** Chapter, which provides enhanced transparency on import licensing procedures, commitments to facilitate future tariff transpositions,²⁷ and a forum for cooperation on good regulatory practice in relation to measures affecting trade in goods. The Goods Chapter also provides an avenue for New Zealand to address non-tariff barriers maintained by an RCEP country by providing for a consultation mechanism with clear and predictable processes and timeframes. There is also provision for a future work programme on sectoral initiatives, which provides an opportunity to seek further sector-specific obligations aimed at reducing unnecessary barriers to trade in sectors of interest to New Zealand, such as wine and cosmetics. RCEP Parties have also reaffirmed their commitment to the elimination of agricultural export subsidies, and to work together to prevent their reintroduction in any form (reinforcing New Zealand's long-standing aim to eliminate agricultural export subsidies globally).
- **Rules of Origin and Operational Procedures** Chapter, which will reduce compliance costs as traders will have a number of options on the type of proof of origin documentation they can use. Third party issued certificates of origin, self-declaration by approved exporters and self-declaration by exporters and producers (subject to an implementation period) will all be available. Overall, the Schedule of Product Specific Rules will provide traders with co-equal value add or change in tariff classification rules. This reflects New Zealand's preferred approach.
- **Customs Procedures and Cooperation** Chapter, which draws on important trade facilitation principles from the WTO Trade Facilitation Agreement and is designed to facilitate trade through the simplification and streamlining of customs and border procedures. The Chapter will provide predictability and transparency of importing and exporting processes. These benefits are particularly significant for economies such as New Zealand, with a large proportion of Small and Medium Businesses (SMEs) – given that higher trade administration and transaction costs are a bigger challenge for SMEs than for larger enterprises.
- **A Standards, Technical Regulations, and Conformity Assessment Procedures** Chapter which includes provisions to enhance transparency in the development of technical barriers to trade (TBT) measures in the RCEP region and promote greater regulatory cooperation and good regulatory practice. In the longer-term, this is expected to lead to regulatory frameworks in RCEP markets that would make it easier for New Zealand exporters to determine the requirements for exporting. The Chapter also has provisions to minimise the adverse effects regulations can have on trade by

²⁷ Tariff commitments are based on an international system of goods classification called the Harmonised Commodity Description and Coding System (HS). The World Customs Organisation is responsible for the HS and revises the system at regular intervals (roughly every five years) to ensure that it reflects changes in technology and patterns of international trade. Each time the HS is revised, the tariff commitments in FTAs need to be 'transposed' into the new revised nomenclature. New Zealand has had past experiences where this transposition process has been used to undermine tariff commitments. RCEP contains robust rules to ensure future transpositions are carefully managed and verified.

reducing transaction costs for businesses, and to provide mechanisms for Parties to address specific trade issues with the aim of reducing or eliminating unnecessary TBTs.

- **A Sanitary and Phytosanitary (SPS)** Chapter which upholds the WTO SPS Agreement and facilitates trade while also preserving New Zealand's existing biosecurity and food safety regimes. The substantive provisions are at least equivalent to AANZFTA and are in many respects similar to those in the CPTPP, which build on the WTO Agreement on the Application of Sanitary and Phytosanitary Measures) and provide a solid framework for RCEP Parties to practically implement their WTO-related SPS commitments (in relation to both new and existing SPS measures). The RCEP SPS Chapter provides better outcomes than AANZFTA in a number of trade-facilitating ways including in relation to: equivalence (encouraging importing parties to accept that New Zealand goods meet their SPS requirements if New Zealand demonstrates that its SPS measures achieve the same level of protection – i.e. 'equivalent', without having to be 'identical'); regionalization (promoting acceptance of regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence); and emergency measures (if a Party adopts an emergency SPS measure that impacts New Zealand's trade, it is required to hold discussions on request and take due account of information provided). In relation to transparency, the SPS Chapter contains several provisions which require Parties to provide documents in English, a better outcome than both CPTPP and AANZFTA.
- **A Trade Remedies** Chapter which preserves New Zealand's rights and obligations under the relevant WTO agreements (the Agreement on Anti-Dumping, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards). It confirms that WTO rules will apply to the application of global safeguards and to the administration of anti-dumping and countervailing duties on trade between RCEP Parties. The Chapter also sets out non-binding guidance on best practices to enhance transparency and due process in anti-dumping and countervailing duty proceedings, which will be beneficial to New Zealand exporters wishing to access trade remedy proceedings in RCEP countries. This includes guidance for providing opportunities to remedy or explain deficiencies in requests for information, procedures for offering and concluding undertakings, and providing public notices and explanations for determinations.

Trade in Services

New Zealand already benefits from services commitments by other RCEP parties through existing FTAs, such as AANZFTA, CPTPP as well as our bilateral FTAs with South Korea and China. However, RCEP represents a meaningful step forward because:

- New Zealand will benefit from new commitments by some RCEP parties that go beyond existing FTAs. For example, the Philippines has agreed new commitments in professional services,²⁸ computer and related services, education services,²⁹

²⁸ Including bookkeeping, integrated engineering, veterinary medicine, environmental planning, architecture, interior design, forestry, customs broker, optometry, and respiratory therapy.

²⁹ Adult education services, including for cross-border delivery.

environmental services³⁰ and air transport services³¹. Thailand has agreed new commitments in professional services,³² computer related services,³³ research and development services, distribution services, education services³⁴ and air transport services. Indonesia has agreed to new commitments in education services³⁵, engineering services³⁶, and computer related services³⁷.

- New Zealand exporters currently grapple with a complex web of different rules when they trade in the RCEP region, having to navigate up to nine sets of rules stemming from existing FTAs. RCEP will establish a consistent framework and a single set of services rules for the entire RCEP region. This will improve regulatory certainty and transparency for New Zealand service suppliers across the RCEP region as a whole, and give them greater confidence to enter these markets.

In the COVID-19 environment, the ability of New Zealand service providers to deliver their services cross-border - with the provider based in New Zealand and the customer based in their home country - will be increasingly important. This has been a consistent negotiating priority for New Zealand and the commitments in this area exceed what was achieved with ASEAN markets during the AANZFTA process. It is also consistent with the direction agreed in the recent Trade Recovery Cabinet Paper [ERS-20-MIN-0004] that New Zealand should prioritise cross-border trade in professional and commercial services. The need for providers to be able to deliver cross-border is particularly important in the education sector and we have made gains in this area - for example new market access commitments for cross-border trade in education services with the Philippines, Thailand and Laos PDR.

Sitting under the Services Chapter are three sector-specific annexes: the Telecommunications Services Annex, the Financial Services Annex and the Professional Services Annex.

- The **Telecommunications** Annex sets out regulatory disciplines for telecommunications services that build on WTO commitments contained in the GATS Telecommunications Annex and Basic Telecommunications Reference Paper. It extends and updates these regulatory disciplines to reflect the developments in approaches to the regulation of markets since the conclusion of the GATS in 1990. All the disciplines in the Annex are consistent with current New Zealand regulatory settings and ensure that our unique approach to regulating telecommunications services can meet the obligations.
- The **Financial Services** Annex provides New Zealand financial service suppliers with more transparency and certainty regarding access to RCEP markets. Like telecommunications, financial services are an important underlying service that is

³⁰ Refuse disposal services, services to reduce exhaust gases, site remediation services.

³¹ Ground handling services.

³² Taxation services, veterinary services, industrial design services.

³³ Cross-border delivery of consultancy services, hardware consultancy, software implementation, and data processing services.

³⁴ Cross-border delivery into Thailand and through the establishment of a commercial presence.

³⁵ Post-secondary technical and vocational education, technical and vocational secondary education, language course and training, football and chess.

³⁶ Engineering design for industrial processes and production.

³⁷ Consultancy related to installation of computer hardware, maintenance and repair of office machinery and equipment, data processing.

essential for all international trade and investment. The obligations in the Financial Services Annex to make information available, respond to enquiries and deal with applications expeditiously, and to not restrict the transfer of information or prevent the processing of information by a financial services provider in its territory, are consistent with current New Zealand domestic regulations and practice.

- The **Professional Services** Annex encourages RCEP Parties to establish arrangements for the mutual recognition of qualifications, licensing regimes and registration procedures for professional services. The Annex aims to help facilitate the ability of professional services suppliers to be able to deliver their services across RCEP jurisdictions.

The **Movement of Natural Persons** Chapter provides rights for New Zealand business persons engaged in international trade to temporarily enter the markets of RCEP Parties to conduct trade in goods, supply services or undertake investment activities. The Chapter provides for the transparent and expeditious processing of applications for temporary entry. While enabling entry of this nature, the rules contained in the Chapter do not apply to measures affecting access to the employment market of New Zealand, or any measures regarding nationality, citizenship, residence, or employment on a permanent basis.

Investment

New Zealand already benefits from investment commitments by other RCEP parties through existing FTAs, such as AANZFTA, CPTPP as well as our bilateral FTAs with South Korea and China. However, RCEP represents a meaningful step forward because:

- New Zealand will benefit from new commitments by some RCEP parties that go beyond existing FTAs. In particular, China and ASEAN countries that are not party to CPTPP will be making investment market access commitments for the first time to New Zealand.
- New Zealand exporters currently grapple with a complex web of different rules when they trade in the RCEP region, having to navigate up to nine sets of rules stemming from existing FTAs. RCEP will establish a consistent framework and a single set of investment rules for the entire RCEP region. This will improve regulatory certainty and transparency for New Zealand businesses across the RCEP region as a whole, and give them greater confidence to invest in these markets.

The specific advantages provided by the Investment Chapter to New Zealand investors in other RCEP countries and RCEP country investors in New Zealand include:³⁸

- *Non-discrimination*: Provides that New Zealand investors and investments cannot be discriminated against by a RCEP government, compared to its own domestic investors in like circumstances, or against other foreign investors (for example, it removes the ability for more onerous authorisation requirements to be placed on a New Zealand investor by a RCEP party);

³⁸ These rules are not absolute – New Zealand (and other RCEP parties) provide for a number of exceptions to the application of these rules in their schedules. For example we have retained policy space for New Zealand's investment screening regime under the Overseas Investment Act, including to ensure that we can continue to introduce changes such as the temporary notification regime in response to the economic impact of Covid-19.

- *Standard of treatment:* Confirms that investors and investments are to be treated in accordance with the minimum standard of treatment under customary international law, including fair and equitable treatment and full protection and security.
- *Control over investments:* Enables New Zealand investors to retain greater control of their investments in other RCEP Parties. For example, it removes the ability to impose or enforce conditions on investment in relation to the volume or value of imports associated with investments. It also removes the ability to impose a nationality requirement in the appointment of senior management positions.

Membership in RCEP would also promote the investment environment in New Zealand to potential investors from the region, through generating increased knowledge of, and confidence in, New Zealand's transparent investment regime. This is expected to encourage inward investment flows into New Zealand.

New Zealand was successful in excluding Investor-State Dispute Settlement (ISDS) from RCEP. However, New Zealand's position on ISDS was not shared by all RCEP Parties and a work programme will commence, no later than two years after entry into force (to be concluded within the following three years), to consider whether or not to amend RCEP to include ISDS. Any such change would require the consent of all parties; therefore New Zealand effectively retains a veto to ensure that RCEP continues to exclude ISDS.

Intellectual Property

The intellectual property (IP) commitments made in RCEP provide increased certainty for exporters when protecting and enforcing their IP rights in the RCEP region. This is accomplished by providing a regional framework for:

- harmonising and aligning procedures and standards for the protection and enforcement of intellectual property rights;
- reducing regulatory and business compliance costs associated with those procedures;
- enhancing the transparency and due process in the IP regimes of the Parties; and
- facilitating information sharing, cooperation and capacity building between RCEP Parties to ensure high quality IP rights are granted or registered and they can be enforced.

An additional feature contained in RCEP, but not included in all our existing FTAs with these partners, is the inclusion of a consultation mechanism to facilitate efficient resolution of any issues regarding the implementation of the obligations in the Chapter. This would provide an alternative to the more elaborate and costly formal Dispute Settlement Chapter.

A key benefit for New Zealand in the RCEP IP Chapter is the outcomes on geographical indications³⁹ (GIs), which extend advantages previously secured in CPTPP to a wider group of trading partners. In particular, RCEP requires Parties to adopt or maintain due process

³⁹ A geographical indication is a sign or name used to identify a good as originating in a territory, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin – for example 'champagne'. The issue is important to a number of New Zealand producers who export products with names claimed as GIs by the EU but considered generic in many other markets (for example the cheeses 'feta' and 'parmesan').

and transparency obligations in respect of any regime they provide for the protection of GIs. There would be a range of advantages for New Zealand exporters, including:

- The ability to challenge the protection of a name as a GI in another RCEP Party, if the name is known to consumers in the Party concerned as the common descriptive term for the relevant good. This would reduce the risk that New Zealand exporters of those goods might be prevented from using common descriptive terms to describe their goods.
- Where an RCEP Party has entered into an international agreement with a third Party that includes obligations to protect specific names as GIs, exporters would have a reasonable period of time and opportunity to provide comments on whether or not those names should be protected.
- Increased transparency and due process in RCEP Parties' processes for the protection of GIs, irrespective of whether protection was through domestic procedures or under any international agreement

Another feature of the RCEP agreement is recognition that *some* Parties require, in their patent systems, prior and informed consent, access and benefit sharing for accessing and using genetic resources and traditional knowledge and folklore (GRTKF). This is the furthest that any of New Zealand's FTAs have gone in recognising GRTKF. It is a significant step at the international level to reaffirm the region's commitment to the rights and interests of indigenous peoples in genetic resources and traditional knowledge. The text also retains the policy flexibility required for Parties to implement the most appropriate GRTKF measures domestically.

A modern FTA

RCEP will include chapters in a number of areas that are new for some RCEP parties and will modernise New Zealand's trading relationships with these parties in line with our best practice from recent FTAs.

- An **Electronic Commerce** Chapter, which will allow businesses and consumers to transact online with confidence; protect the privacy and rights of consumers; and establish a framework for discussing fast-changing and emerging issues. The Chapter will introduce specific rules on e-commerce for the first time in a trade agreement with South Korea, and expand existing rules in AANZFTA and the New Zealand-China FTA. The inclusion of these e-commerce obligations will modernise the trading relationship with our RCEP partners, particularly those not party to CPTPP.
- A **Competition Policy** Chapter which will facilitate economic efficiency and consumer welfare through the promotion of open and competitive markets. The Chapter requires Parties to have in place competition laws and maintain independent competent authorities to enforce laws which prohibit anti-competitive conduct and promote consumer welfare. This will be an important step forward in the region. RCEP will ensure that those competition laws are transparent and follow due process in its enforcement. The Chapter also establishes systems to facilitate cooperation between the Parties' competition authorities.

- A **Government Procurement (GP)** Chapter which promotes more transparent procurement processes. Cooperation provisions will also provide an avenue that can be used to enhance mutual understanding of RCEP Parties' respective government procurement laws, regulations and procedures; and a mechanism to facilitate consultation and exchange of information on such matters. While CPTPP contains more ambitious GP commitments, RCEP represents a modest step forward through securing improved GP commitments with Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines and Thailand. It is significant as the first time that major ASEAN economies such as Indonesia, Thailand and the Philippines will take meaningful Government Procurement commitments. This establishes a foundation for us to expand on in future.
- A **Small and Medium Enterprises (SMEs)** Chapter which requires Parties to share complete information about RCEP online and include links to other information of relevance to SMEs doing business within RCEP Parties. The provisions align with the practice in New Zealand of ensuring businesses have good access to information, so they can make the best decisions to manage and grow their business.
- The **Economic and Technical Cooperation** Chapter aims to enhance and implement the benefits of economic growth and development through the RCEP agreement. It provides an opportunity to better coordinate New Zealand's economic and technical cooperation activities across the RCEP region, without committing New Zealand to any particular activity. It also enhances New Zealand's reputation as a trusted, valued and fair trading partner, by recognising the constraints faced by developing and least developed ASEAN Member States.

Annex 2 – Text of RCEP Agreement

Note: Available at: www.mfat.govt.nz/rcep

Proactively released by the
Minister for Trade and Export Growth

Annex 3 – RCEP National Interest Analysis

Note: Available at: www.mfat.govt.nz/rcep

Proactively released by the
Minister for Trade and Export Growth

Annex 4 – ImpactEcon Modelling

Note: Available at: www.mfat.govt.nz/rcep

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