



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

Regional Comprehensive Economic Partnership

NATIONAL INTEREST ANALYSIS

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Frequently used acronyms and terms

AANZFTA	The ASEAN-Australia-New Zealand Free Trade Area.
AD Agreement	Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (WTO Anti-Dumping Agreement).
APEC	Asia-Pacific Economic Cooperation.
ASEAN	The Association of Southeast Asian Nations.
COVID-19	SARS-CoV-2.
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership.
FDI	Foreign Direct Investment.
FTA	Free Trade Agreement.
GATS	General Agreement on Trade in Services. (The WTO Agreement covering trade in services).
GATT	General Agreement on Tariffs and Trade 1994. (The WTO Agreement covering trade in goods).
GDP	Gross Domestic Product.
GRTKF	Genetic Resources, Traditional Knowledge and Folklore.
GIs	Geographical indications, a sign or name used in relation to goods that have a specific geographical origin and qualities essentially attributable to that origin, for example, 'Champagne'.
Harmonized System, (HS)	The Harmonized Commodity Description and Coding System, a near-universal method for classifying international trade in goods.
ICT	Information and Communication Technology.
IP	Intellectual Property.
ISDS	Investor State Dispute Settlement.
MBIE	The Ministry of Business, Innovation and Employment.
MFAT	The Ministry of Foreign Affairs and Trade.
MPI	The Ministry for Primary Industries.
MFN	Most-Favoured-Nation, a requirement that preferential treatment extended to one country (the "most favoured") be extended to others.
National Treatment	A requirement that the same level of treatment extended to domestic entities be extended to others (for example, to other RCEP Parties).
NIA	National Interest Analysis.
NTM	Non-Tariff Measure.
OECD	Organisation for Economic Cooperation and Development.
PSR	Product Specific Rules.
RCEP	Regional Comprehensive Economic Partnership.
Safeguards Agreement	WTO Agreement on Safeguards.

SMEs	Small and Medium-sized Enterprises.
SOE	State-Owned Enterprise.
SPS (Agreement)	Sanitary and Phytosanitary. (WTO Agreement on the Application of Sanitary and Phytosanitary Measure.).
SPAM	Unsolicited commercial electronic messages.
TBT (Agreement)	Technical Barriers to Trade. (WTO Agreement on Technical Barriers to Trade).
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights.
WTO	World Trade Organization.

1 Executive summary

The Regional Comprehensive Economic Partnership (RCEP) is a plurilateral treaty-level agreement negotiated initially by the ten members of the Association of Southeast Asian Nations (ASEAN), including Brunei-Darussalam, Cambodia, Indonesia, Laos People's Democratic Republic (Laos), Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam, plus the six countries with which ASEAN has free trade agreements; Australia, China, India, Japan, South Korea, and New Zealand.

India withdrew from the RCEP negotiations in November 2019.

RCEP was signed virtually between fifteen countries, not including India, on 15 November 2020. There is a fast-track accession process in place, should India wish to join RCEP in future.

RCEP is called a comprehensive agreement because it promotes economic integration within the Asia-Pacific region through rules in a broad range of fields. It provides for future cooperation across a number of trade and economic areas; it preserves New Zealand's right to regulate for legitimate public policy purposes; it upholds the Treaty of Waitangi; it will create new opportunities for international trade and other economic benefits contributing towards improving the well-being and living standards for all New Zealanders.

There are strong commercial and strategic reasons for New Zealand to be part of RCEP. The fifteen RCEP countries account for 30% of the world's population, covering nearly a third of all international trade, and are the destination for over half of New Zealand's exports. The relative importance of the RCEP region continues to increase in the global context. Due to considerable current international trade policy turbulence - such as trade disputes and retaliation between major economic powers, the rise in protectionism and the impact of the COVID-19 pandemic - being part of this globally significant regional agreement is important for New Zealand's future economic prosperity and security.

The RCEP outcomes reflect the sensitivities and complexities of dealing with diverse countries with different levels of ambition.¹ While New Zealand sought ambitious outcomes in many areas, including on issues such as tariff elimination, the environment and labour, in the end it was not possible to

¹ There are 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, Laos, Myanmar, Philippines and Viet Nam. Note that were we to use purchasing power parity (PPP) estimates, rather than current dollar values, some of these values would be significantly higher.

achieve all of our objectives.² The concluded RCEP Agreement reflects the best outcomes achievable with the other fourteen countries.

This National Interest Analysis (NIA) assesses RCEP from the perspective of its impact on New Zealand and New Zealanders. It includes economic modelling to quantify the costs and benefits, as well as an assessment of social, cultural and environmental costs and effects. The NIA does not seek to address the impact of the Agreement on other RCEP Parties.

This NIA assesses the prospect of New Zealand entering into the RCEP Agreement, and concludes that it would be in New Zealand's national interest to do so.

The economies involved

The fifteen RCEP countries represent:

- A total population of 2.3 billion people, 30% of the world's population;³
- A total Gross Domestic Product (GDP) of \$38,813 billion, 30% of world GDP;⁴
- Five RCEP countries are members of the Group of 20 (G20), the international forum for global economic cooperation among the world's 20 largest economies: Australia, China, Indonesia, Japan, and South Korea;
- Seven of New Zealand's top ten trading partners based on two-way trade (exports and imports): China, Australia, Japan, Singapore, South Korea, Thailand and Malaysia.⁵
- The destination for 56% of New Zealand's total exports, representing 61% of New Zealand's goods exports (worth \$36.6 billion) and 45% of New Zealand's services exports (worth \$11.8 billion);⁶
- The source of 61% of foreign direct investment in New Zealand (worth \$68.7 billion);⁷

Partnering with these economies represents a significant opportunity to strengthen New Zealand's connections within Asia-Pacific - a region that is a driving force for global economic growth. More than half of New Zealand's current trade and inward investment flows through the region.

As a Party to RCEP, New Zealand will have a seat at the table of this globally significant regional economic agreement, providing the opportunity to cooperate on a broad range of economic, new and emerging issues.

RCEP will align trade rules across the region. 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 in the region.

These outcomes will provide more transparency and certainty for New Zealand businesses and investors in RCEP markets, assisting them to take advantage of shifting trade patterns and embedding them into regional value chains. The Agreement also provides a pathway to wider economic

² In mitigation, New Zealand already has a range of existing treaty-level outcomes on labour and environment with all RCEP Parties except the three Least Developed Countries (Cambodia, Laos and Myanmar).

³ UN Population Figures from Haver: 2019.

⁴ International Money Fund World Economic Outlook sourced from Haver.

⁵ Statistics New Zealand: Goods and Services Trade by Country: December 2019.

⁶ Statistics New Zealand: December 2019.

⁷ Statistics New Zealand: March 2019.

integration as it will be open to new members to join in future. The reasons for New Zealand entering into the RCEP are expanded on in Section 3 of this NIA.

Estimated economic impact

Evidence shows that trade and other forms of international engagement often provide aggregate economic and other benefits, particularly so for smaller economies.⁸ However, this international engagement can also have associated environmental, social and other costs.⁹ The overall impact of RCEP on the New Zealand economy will be a result of the complex interaction of the different aspects of the Agreement.

Independent economic modelling undertaken by ImpactEcon¹⁰ to inform this NIA estimates that RCEP will accelerate the rate of New Zealand GDP growth for about 20 years. New Zealand's GDP is estimated to be larger than if we were not in RCEP for each year that the Agreement is in force. Once RCEP is fully in effect New Zealand's annual GDP will be between 0.3 percent and 0.6 percent larger than if RCEP had not existed, equal to between NZ\$1.5 billion and NZ\$3.2 billion. The upper bound of \$3.2 billion assumes India re-joins RCEP. Should India remain outside of RCEP, the economic benefits will be towards the lower end of the range.

If RCEP goes ahead without New Zealand, the modelling estimates our GDP would be about 0.2 percent lower (NZ\$0.9 billion) as New Zealand's place in regional value 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.¹¹

ImpactEcon's estimate of RCEP's impact on New Zealand is broadly similar to other estimates using Computable General Equilibrium (CGE) modelling techniques. Petri, Plummer, Urata & Zhai (2017) and Gilbert, Furusawa & Scollay (2016) both estimate an increase in GDP of 0.6 percent. Itakura and Lee (2015) put the estimate slightly higher at 0.8 – 0.9 percent of GDP.

However, it is worth noting these three studies were conducted earlier in the negotiation process when the final outcome was less clear (including India's participation). The final outcomes are more comparable to the upper end of ImpactEcon's estimate range. Petri and Plummer (2020) estimate the gain to New Zealand by 2030 to be 0.2 percent of GDP without India, rising to 0.3 percent with India (comparable to ImpactEcon's estimates of 0.12 and 0.15 percent respectively for 2030).

⁸ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

⁹ Ibid.

¹⁰ ImpactEcon LLC: Impacts of a Regional Comprehensive Economic Partnership (RCEP) on New Zealand, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: October 2019.

¹¹ However, the modelling was completed prior to the emergence of COVID-19 and the significant economic shock that has resulted from the pandemic. 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. If RCEP countries are impacted economically in roughly the same magnitude, then the modelling results of the different scenarios will remain broadly correct. If, however, the economic impacts of COVID-19 vary significantly across the different RCEP countries then the modelling results will become less accurate.

Table 1.1: Estimated Impact of RCEP

Area	Increase in NZ GDP when fully in effect in 2045, relative to baseline	
	Percent of real GDP ¹²	Constant 2014 NZ\$
Reductions in tariffs on goods trade (Economic benefit).	-0.12 to 0.05	-\$630 million to \$260 million
Reductions in non-tariff measures (NTMs) on goods trade (Economic benefit).	0.19 to 0.39	\$940 million to \$2,020 million
Reductions in NTMs on services trade (Economic benefit).	0.03 to 0.06	\$150 million to \$310 million
Improved trade facilitation measures (Economic benefit).	0.08 to 0.12	\$410 million to \$620 million
Total Economic benefit.	0.29 to 0.62	\$1,490 million to \$3,190 million
Reductions in barriers to foreign direct investment.	0.04	\$180 million
Impact on New Zealand		
Employment	Net positive	Aggregate employment is unchanged with a modest increase in real wages.
Social Regulation	No negative impact expected	Does not inhibit the right to regulate for legitimate public policy purposes.
Health	No negative impact expected	Does not inhibit the right to regulate for legitimate public health purposes.
Immigration	No negative impact expected	Commitments do not relate to persons seeking access to the employment market of New Zealand, or to nationality, citizenship, or residence.
Human Rights	No negative impact expected	No effect on human rights in New Zealand.
Treaty of Waitangi	No negative impact expected	Nothing in RCEP prevents the Crown from meeting its obligations to Māori.
Māori	Net positive	Outcomes expected to modestly benefit Māori business owners and workers.
Women	No negative impact expected	May improve trade engagement for women business owners and workers.

¹² From the ImpactEcon Report, ranges are based on the upper and lower estimates from the scenarios including New Zealand. Estimates are based on judgements on market access outcomes achieved, 5-10% reduction in the cost of goods and services Non-Tariff Measures (NTMs) for non-CPTPP countries, and 10% reduction in customs processing times for non-CPTPP countries. (NTMs and customs time reductions from CPTPP are built into the baseline and are therefore not counted again for RCEP).

Impact on New Zealand		
Culture including the digital economy	No negative impact expected	The importance of genetic resources, traditional knowledge and folklore is acknowledged.
Environment	No negative impact expected	Does not inhibit the right to regulate for legitimate public policy purposes including the environment.

The economic, social, cultural and environmental costs and effects and fiscal impacts of RCEP are discussed in sections 7 and 8 of the NIA.

Benefits for goods exporters

New Zealand already has high quality free trade agreements (FTAs) with the fourteen RCEP Parties signing RCEP. As such, RCEP delivers few new tariff preferences, other than additional tariff elimination on certain food products and manufactured goods into Indonesia.

However, as other countries join RCEP in the future (India has a fast-track route to accession should it wish to re-join) New Zealand will have the opportunity to negotiate new market access into those economies.

With tariff barriers already low from existing FTAs, non-tariff barriers are of particular concern for New Zealand goods exporters. RCEP will help address non-tariff barriers to trade in goods by harmonising documentation requirements, reducing the time exporters spend waiting for goods to clear customs, lowering compliance costs and increasing the certainty around other country's processes through a set of more consistent rules.

This is significant at a time when the number of non-tariff measures¹³ (NTMs) affecting global trade has been rapidly increasing. In 1995 there were about 200 sanitary and phytosanitary (SPS) measures notified to the World Trade Organization (WTO). In 2019 there were well over 1,700. NTMs are common across RCEP countries. The New Zealand Institute of Economic Research estimated the cost of NTMs in the Asia-Pacific region to be US\$790 billion per year. The cost to New Zealand exporters was estimated to be at US\$5.9 billion. These represent a significant constraint on New Zealand exporters' competitiveness.¹⁴

RCEP provides a platform for enhanced regulatory cooperation to facilitate trade, reduce red tape, remove costs and foster greater business opportunities in RCEP markets. The regional integration aspect of RCEP is expected to increase demand for New Zealand inputs into regional and global value chains. New Zealand businesses will be well placed to take advantage of these opportunities and to extract more value from regional production processes through RCEP.

¹³ A non-tariff measure (NTM) is a policy measure, other than a tariff, which may restrict trade. Many NTMs are legitimate measures to achieve particular objectives, such as biosecurity or protecting consumer health and safety. A non-tariff barrier is any measure, other than a customs tariff, that acts as a barrier to international trade.

¹⁴ Ballingall J and Pambudi D, Quantifying the costs of non-tariff measures in the Asia-Pacific region: Initial estimates: NZIER public discussion paper 2016/4

Benefits for services exporters

RCEP will provide new services market access commitments by some RCEP Parties that go beyond existing FTAs. RCEP also provides New Zealand service suppliers with legal protections that guarantee market access and non-discriminatory treatment (unless subject to country-specific exceptions, they are entitled to treatment equivalent to that given to local and foreign competitors).

These provisions will provide greater openness into several RCEP markets, particularly those in ASEAN, and more certainty around the trade in services within the region. These improved services commitments would also support many of New Zealand's goods exporters, which increasingly look to undertake services-related activities to support their international businesses.

Benefits for investors

RCEP will provide investment market access commitments by some RCEP Parties that go beyond existing FTAs. In particular, China and ASEAN countries that are not party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) have made investment commitments for the first time to New Zealand. RCEP also provides New Zealand investors in the RCEP region with protection from discrimination (compared with 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.¹⁵ New Zealand's schedule of commitments contains a number of exceptions which reserve policy space including for New Zealand's investment screening regime under the Overseas Investment Act.

Modernising our trading relationships

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.

The **Electronic Commerce** chapter 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 **Competition Policy** chapter will facilitate economic efficiency and consumer welfare through the promotion of open and competitive markets which prohibit anti-competitive conduct. RCEP will ensure that those competition laws are transparent and follow due process in its enforcement.

The inclusion of a **Government Procurement** chapter is a first for ASEAN collectively. While the chapter does not provide for market access, it does provide New Zealand businesses with greater transparency and understanding of RCEP Parties' respective government procurement systems, as well as a mechanism to facilitate consultation and exchange of information on such matters.

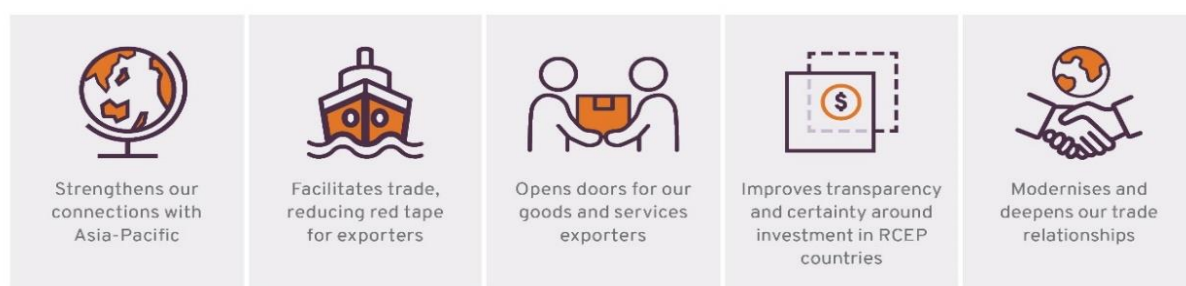
The **Small and Medium Enterprises** chapter includes commitments to ensure that economies at all levels of development, and businesses, of all sizes, can benefit from enhanced trade. This chapter provides for cooperation between the RCEP Parties to help small and medium-sized enterprises (SMEs) to understand what has been agreed and take advantage of its opportunities.

¹⁵ The Agreement does provide for the RCEP Parties to review the exclusion of ISDS within five years of entry into force, but any change requires consensus of all RCEP Parties, including New Zealand.

The ***Economic and Technical Cooperation*** chapter provides an opportunity to better coordinate New Zealand’s economic and technical cooperation activities across the RCEP region. 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.

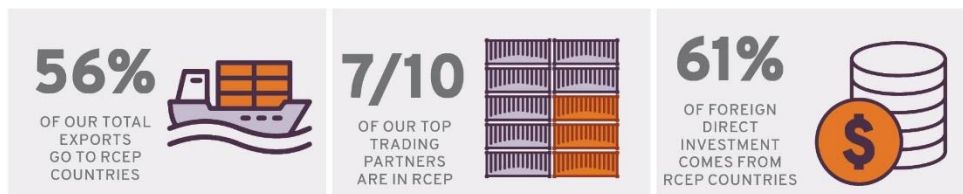
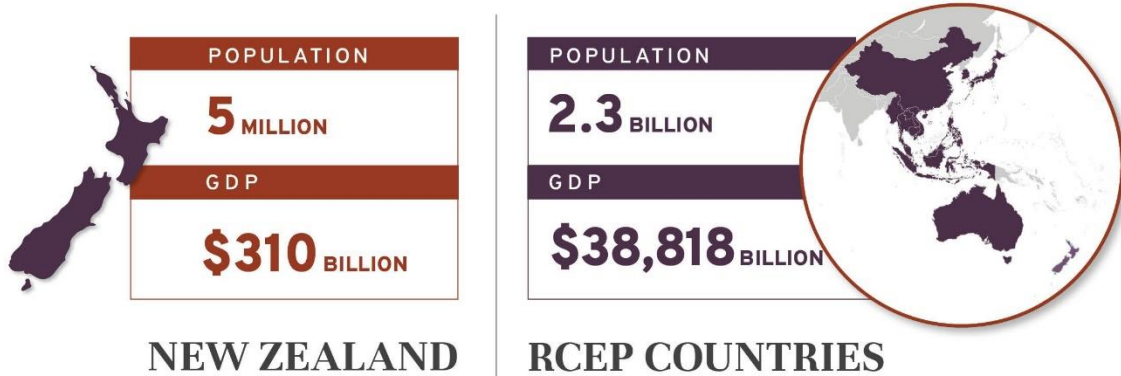
The provisions in the ***Intellectual Property*** chapter will provide exporters with increased transparency and due process on geographical indications (GIs).¹⁶ In addition, the chapter goes further than any of New Zealand’s other FTAs in recognising genetic resources, traditional knowledge and folklore.

RCEP BENEFITS FOR NEW ZEALAND

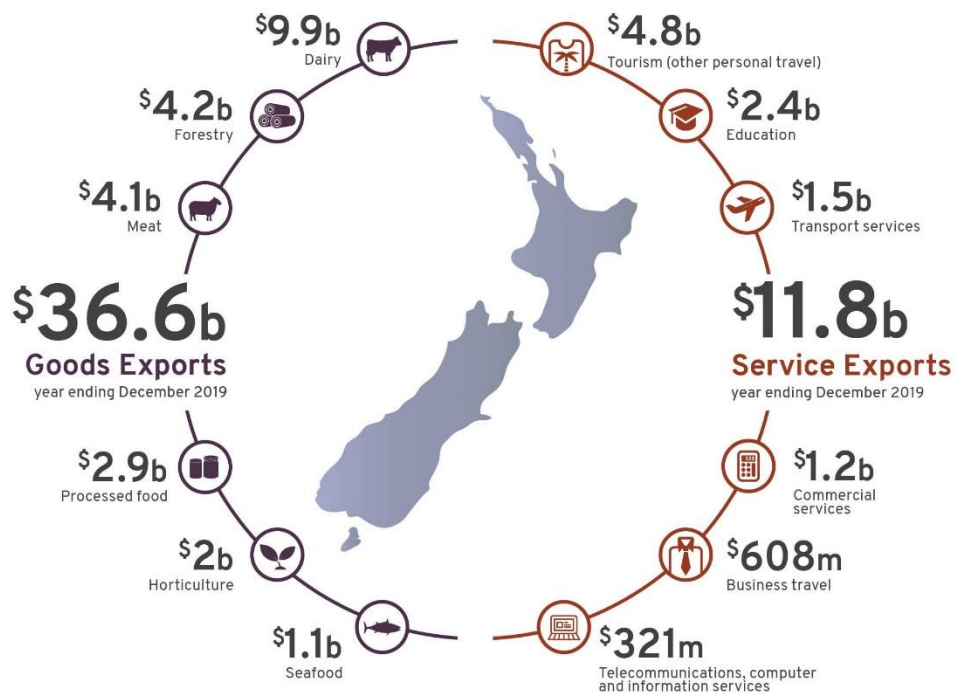


¹⁶ A geographical indication is a sign or name used to identify a good as originating in a territory, region or locality, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin – for example ‘champagne’. The issue is important to a number 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’).

RCEP KEY FACTS



NEW ZEALAND'S RCEP EXPORTS



Rights are protected

As with all of New Zealand's contemporary trade agreements, RCEP includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. Nothing in RCEP would prevent the Crown from meeting its obligations to Māori and New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement.

At the same time as supporting New Zealand's trade ambitions, RCEP preserves the Government's right to regulate for legitimate public policy purposes, in areas including health (the Pharmac model is protected),¹⁷ education, social welfare, the environment, security and taxation policy. Explicit policy space for the creative arts has also been maintained, albeit through reservations in New Zealand's services and investment schedules rather than a cross-cutting general exception (as was New Zealand's preference).

The Agreement reaffirms the RCEP Parties' commitment not to impose regulations that are not for legitimate public purposes but are unjustified, disguised or discriminatory barriers to trade.

The impacts of the RCEP provisions and their advantages and disadvantages are outlined in more detail in Sections 4 and 5 of this NIA.

Legislative amendments

Most of the obligations in RCEP are already met by New Zealand's existing domestic legal and policy regime. There are a small number of minor legislative and regulatory amendments that would be required to implement certain obligations under RCEP and thereby enable New Zealand to ratify RCEP. These are described in more detail in Section 6 of the NIA and include:

- 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. This is the same process used for New Zealand's previous plurilateral FTAs.
- An amendment to the Tariff Act 1988 to provide for the transitional RCEP safeguard mechanism under the Trade Remedies Chapter.
- An amendment to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules (PSR) for goods imported from RCEP countries.

Consultation

As highlighted in Section 9 of this NIA, throughout the RCEP negotiation process, the Ministry of Foreign Affairs and Trade (MFAT) together with other government agencies, has been active in engaging with Māori and a wide spectrum of other stakeholders. Consultations were undertaken in order to provide the opportunity for New Zealanders to seek more information about the Agreement and to offer their views so that these could be taken into account throughout the negotiation process. Like all FTAs, RCEP will be scrutinised by a parliamentary Select Committee and Parliament will consider the necessary legislative changes needed to give effect to the Agreement.

¹⁷ RCEP will not change the Pharmac model or its ability to negotiate the best price for medicines for New Zealanders.

2 Nature and timing of proposed treaty action

The Regional Comprehensive Economic Partnership (RCEP) is a plurilateral treaty-level agreement between the 10 members of ASEAN: Brunei-Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam plus five countries with which ASEAN has free trade agreements: Australia, China, Japan, South Korea, and New Zealand.

India also participated in the RCEP negotiations until November 2019, when it decided to withdraw. The RCEP text includes a fast-track accession process for India should it wish to re-join in the future, in recognition of India's status as an original negotiating participant.

RCEP was signed virtually by Trade Ministers (observed by their leaders) from fifteen of the RCEP countries on 15 November 2020.

The entry into force of RCEP is subject to the completion of the necessary domestic legal procedures by each RCEP Party. In accordance with Article 20.6 of the RCEP Agreement, RCEP will enter into force 60 days after the date on which at least six ASEAN Member signatory States and three signatory States other than ASEAN Member States have deposited their instrument of ratification, acceptance, or approval with the Depository (the Secretary-General of ASEAN). Due to the small number of minor legislative and regulatory amendments required to implement certain obligations under RCEP, New Zealand should be in a position to deposit its instrument of ratification by the end of 2021.

The RCEP text was released on signature and is available on the Ministry of Foreign Affairs and Trade's website: www.mfat.govt.nz/rcep

This Agreement does not apply to Tokelau.

3 Reasons for New Zealand becoming a Party to the Treaty

There are strong commercial and strategic reasons for New Zealand becoming a Party to RCEP. Trade is a crucial generator of our country's wealth and economic well-being, an important driver of productivity, employment and incomes.¹⁸ New Zealand's core objective in trade policy is to improve the well-being and living standards for all New Zealanders, while safeguarding the Government's right to regulate in the interests of New Zealand and our people. An important component of this is removing and reducing barriers to trade and investment, as well as establishing frameworks through which trade and investment linkages can evolve and expand, whilst ensuring these outcomes contribute towards a more productive, sustainable and inclusive economy. FTAs with key trading partners, such as RCEP countries, are an important means of achieving this.

3.1 Advancement of New Zealand's strategic interests

The strategic benefits of RCEP to New Zealand are compelling. The region is already the engine room of the world's economy and is set to become even more important. New Zealand's participation in RCEP anchors us in a regional agreement with 30% of the world's population and covering almost a third of all international trade. As a Party to RCEP, the New Zealand government will have a seat at the table of this globally significant regional economic agreement, providing the opportunity to cooperate on a broad range of issues, including economic integration and new and emerging issues. Strategic engagement with the Asia-Pacific region is important for New Zealand's future economic prosperity and security.

RCEP will be the largest FTA in the world and alongside the CPTPP, the principal evolving instrument for economic integration in our region. At a time of considerable international trade policy turbulence – trade disputes and retaliation between major economic powers, the sharpest rise in protectionism since 1995, and the COVID-19 pandemic – being part of this regional integration agreement helps secure the medium-term national interest to resist protectionism and pursue open trade and cooperation. RCEP will send a strong signal that the region is open and supportive to trade and economic linkages between countries.

New Zealand already has strong relationships with the RCEP Parties, including existing FTAs (bilateral and/or plurilateral) with all fourteen other Parties. RCEP will also serve as a milestone in other RCEP Parties' relationships. For example, RCEP will serve as the first FTA between South Korea and Japan as well as between Japan and China. As New Zealand is a small, geographically isolated country, RCEP will serve as an important platform to share and promote our values and interests as well as deepening connections within the wider region.

¹⁸ Report of the Trade for All Advisory Report Board November 2019

While liberalisation of trade through the WTO remains New Zealand's over-riding international trade policy priority, the promotion of increased trade liberalisation through RCEP, and other FTAs, supports our ambition in the WTO agenda. RCEP will establish a platform of comprehensive rules and standards to encourage trade and investment within the RCEP region at a time when the global trading system is under pressure. In addition, RCEP will be open for other Parties to join in the future. In this regard, New Zealand views RCEP as a 'building block' to support multilateralism.

3.2 Enhanced trade and economic linkages

More than half of New Zealand's total trade and foreign direct investment flows through the Asia-Pacific region. New Zealand's future prosperity is linked with its trade and investment relationships with Asia-Pacific countries. RCEP provides New Zealand with the opportunity to further develop existing trade and economic linkages. The fifteen RCEP countries represent:

- A total population of 2.3 billion people, 30% of the world's population;¹⁹
- Total Gross Domestic Product (GDP) of \$38,813 billion, 30% of world GDP.²⁰
- Five RCEP countries are members of the Group of 20 (G20), the international forum for global economic cooperation among the world's 20 largest economies: Australia, China, Indonesia, Japan, and South Korea;
- Seven of New Zealand's top ten trading partners based on two way trade (exports and imports): China, Australia, Japan, Singapore, South Korea, Thailand and Malaysia.²¹
- The destination for 56% of New Zealand's total exports, representing 61% of New Zealand's goods exports (worth \$36.6 billion) and 45% of New Zealand's services exports (worth \$11.8 billion);²²
- The source of 61% of foreign direct investment in New Zealand (worth \$68.7 billion);²³

3.3 New market access opportunities

Goods

New Zealand already has high quality FTAs with the other fourteen Parties signing RCEP in 2020. As such, RCEP delivers few new tariff preferences on goods into these countries (other than tariff elimination on certain food products and manufactured goods into Indonesia). The most significant opportunity to reduce tariff barriers for New Zealand exporters came from India's involvement in RCEP. This is because New Zealand does not have an existing FTA with India and India maintains very high tariff protection. This opportunity was not realised as India withdrew from the RCEP negotiations in November 2019. However, RCEP Parties have provided India (as an original negotiating Party) with an expedited route to accession should it wish to re-join in the future. As other countries join RCEP in future, New Zealand will also have the opportunity to negotiate new market access in those economies.

¹⁹ UN Population Figures from Haver (2019)

²⁰ International Money Fund World Economic Outlook sourced from Haver

²¹ Stats New Zealand: Goods and Services Trade by Country: December 2019

²² Stats New Zealand: December 2019

²³ Stats New Zealand: March 2019

While the Agreement is expected to bring minimal change to existing tariff barriers, RCEP is commercially meaningful for New Zealand businesses due to greater coherence of trade rules and provisions for cooperation which will help reduce non-tariff barriers and facilitate trade. These are covered in further detail below (section 3.4).

RCEP is also expected to increase New Zealand's participation in regional and global value chains. Historically, New Zealand has been less well-engaged both downstream and upstream with value chains than most of our small advanced economy peers.²⁴ Relatively few intermediate imports are inputs into New Zealand exports, nor are many of New Zealand's exports used in other country's production of exports (as they are mostly oriented to final consumption). Economically successful small economies engage more upstream along value chains than they do downstream. The regional integration impact of RCEP is expected to increase demand for New Zealand inputs into regional value chains.

Services

RCEP will provide new services market access commitments by some RCEP Parties that go beyond existing FTAs. RCEP also provides New Zealand service suppliers with legal protections that guarantee market access and non-discriminatory treatment (unless subject to country-specific exceptions, they are entitled to treatment in RCEP markets that is equivalent to that given to local and foreign competitors). These improved commitments for services are also important for many New Zealand goods exporters as they look to undertake services-related activities to support their international business (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service). These provisions allow for greater certainty around the trade of services within the RCEP region.

Investment

Under RCEP, a number of Parties will provide investment market access commitments to New Zealand for the first time (in particular ASEAN countries that are not party to the CPTPP, and China). This provides New Zealand investors with greater certainty around investing in RCEP countries, through increased transparency of the regulations affecting investment. Essentially, New Zealand investors (and vice versa for foreign investors in New Zealand) will be treated the same as domestic or other foreign investors, except where exceptions apply.

At the same time New Zealand was successful in excluding Investor State Dispute Settlement (ISDS) from RCEP.²⁵ New Zealand's schedule of commitments contains a number of exceptions which reserve policy space including for New Zealand's investment screening regime under the Overseas Investment Act.

²⁴ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

²⁵ The Agreement does provide for the RCEP Parties to review the exclusion of ISDS within five years of entry into force, but any change requires consensus of all RCEP Parties, including New Zealand.

3.4 Trade facilitation through greater coherence of trade rules

New Zealand and the RCEP countries are currently party to a number of other FTAs including: the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), New Zealand-Singapore Closer Economic Partnership, New Zealand-Thailand Closer Economic Partnership, New Zealand-Malaysia Closer Economic Partnership, New Zealand-China Free Trade Agreement, Korea-New Zealand Free Trade Agreement and CPTPP. RCEP brings these trade agreements under one 'umbrella', creating one set of rules across the region.

RCEP contains trade facilitation measures and other provisions that enhance existing rules and respond to concerns raised by New Zealand goods exporters regarding non-tariff barriers impacting trade. These outcomes are expected to 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. This is particularly beneficial for those small to medium-sized businesses, which can least afford compliance costs. Some examples include:

- Trade in Goods: enhanced transparency on import licensing procedures, commitments to facilitate future tariff transpositions, and a consultation mechanism (with clear and predictable processes and timeframes) to address non-tariff barriers;
- Perishable goods: legally binding provisions requiring all RCEP Parties to facilitate Customs clearance for perishable goods (such as fresh seafood, fruit and vegetables) where possible within six hours;
- Rules of origin: New Zealand exporters can claim preferential origin on the basis of either the 'value-add' method or 'change in tariff classification' rules;
- Proof of origin documentation: New Zealand exporters have the flexibility to choose from a variety of options for proof of origin documentation, including: third party issued certificates of origin, self-declaration by approved exporters and self-declaration by exporters and producers (subject to an implementation period).

The facilitative trade and investment framework created by RCEP is also likely to have a significant influence on the form and function of value chains across the Asia-Pacific region in the coming years. To a significant extent, these frameworks reflect New Zealand's existing policy and practice. RCEP will serve as a platform to support the integration of New Zealand business into regional value chains and provide greater consistency and certainty to traders and investors in RCEP markets. New Zealand firms will be well placed to take advantage of these frameworks, and to extract more value from regional production processes through RCEP.

3.5 Progressing New Zealand's Trade Recovery Strategy

New Zealand's trade recovery strategy seeks to ensure that New Zealand is in the best possible position to emerge from the COVID-19 pandemic as quickly as possible. COVID-19 has changed the global trade environment and relationships, causing considerable disruption to international trade and value chains. The WTO's forecast predicts world goods trade will fall by between 13% and 32% in

2020.²⁶ New Zealand's goods exports are forecast to decrease by between 6.4% and 15.6% in 2020, less than the global average because of the proportion of our exports that are agriculture and processed food, which are expected to decrease by less than manufactured products. New Zealand's exports of services will decrease by greater amounts, with international tourism, transport and education particularly hard hit. In general, however, New Zealand is in an enviable position in being a net food exporter, and has capacity to export our primary products to overseas markets.

Despite profound economic losses as a result of COVID-19, the Asia-Pacific 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.²⁷ Entry into force of RCEP will assist New Zealand's COVID-19 trade recovery strategy, by enabling New Zealand to 'bolt on' to the wider recovery in the Asia-Pacific region. RCEP will provide predictable rules and other mechanisms to facilitate New Zealand exports of goods and services and will help ensure that value chains remain open. In the context of the current COVID-19 pandemic, this takes on even greater significance as these rules will be more important than ever in constraining protectionist measures that threaten the global economic recovery.

Achieving signature of the RCEP Agreement in 2020 will send a strong signal that the RCEP region is committed to enhancing international cooperation and coordination. RCEP's entry into force will not only create more security and certainty for companies doing business overseas but also help ensure that the region becomes less vulnerable to similar crises in the future. Trade links (both exports and imports) are central to New Zealand's ability to address COVID-19, and for New Zealand to flourish as it recovers from its impact on our people and our economy. Our exports, our imports of essential goods, our trading relationships and our commitment to the rules-based system are central to that recovery.

3.6 Opportunities for new membership

Alongside CPTPP, RCEP will emerge at the forefront of trade and investment integration in the Asia-Pacific region. The accession provisions in RCEP promote the expansion of membership of the Agreement. As RCEP's membership expands, New Zealand businesses will benefit from a greater number of markets to export to and contribute to broader regional value chains.

As RCEP's membership grows, it will act as a key stepping-stone towards the objective of free and open trade within the region and beyond. RCEP promotes the APEC mission statement of building a dynamic Asia-Pacific community by championing free and open trade and investment, promoting and accelerating regional economic integration and encouraging economic and technical cooperation. The number and size of RCEP participants means that the institutional arrangements will have a sizeable impact on the region's economic integration and norm setting. New Zealand, as a founding member, will have the ability to shape the integration and rules from the beginning.

²⁶ https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

²⁷ http://apec.org/Press/News-Releases/2020/0420_PSU

3.7 The consequences of New Zealand not joining

Against the commercial and strategic benefits of RCEP, it is also important to consider the implications of New Zealand not joining the Agreement. New Zealand choosing to remain outside of RCEP may see New Zealand exporters being excluded from participating into regional value chains, as the rules of origin discourage inputs from non-RCEP countries. Collectively, this would represent lost economic growth and opportunities for New Zealand and therefore relatively lower well-being and living standards for New Zealanders over time. Should New Zealand remain outside RCEP, the preferential access relative to competitors gained in previous FTAs will be gradually eroded. Based on the modelling, New Zealand's GDP would be about 0.2 percent lower (NZ\$0.9 billion) if RCEP proceeded without New Zealand.²⁸

RCEP may add new rules as its cooperation matures, as is typical of ASEAN-centric agreements.²⁹ New Zealand would also lose the opportunity to influence the development of these future trade rules (within the region and potentially beyond), and participate in cooperation on economic and other new and emerging issues in the region. If New Zealand decides to stand aside from RCEP or join later, we will have to accept the rules and norms developed by other countries, and we lose the opportunity to advocate for our national, regional and global values and interests.

²⁸ ImpactEcon LLC: Impacts of a Regional Comprehensive Economic Partnership (RCEP) on New Zealand, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: October 2019

²⁹ 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

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

This section of the NIA outlines the advantages and disadvantages to New Zealand from entering into RCEP. The counterfactual for comparison is RCEP entering into force with all other fourteen countries, but without New Zealand.

The sub-sections below consider the 20 chapters and annexes of RCEP, setting the rules or frameworks for different areas. The net effect of these different elements in RCEP on New Zealand is assessed in Section 7 of this NIA.

4.1 Trade in Goods

The Trade in Goods chapter sets out the rules RCEP countries will apply for qualifying imports from other RCEP countries, including the elimination of tariffs (“customs duties”).

Each RCEP Party has agreed a “schedule” of tariff commitments that is included in Annex I of the Agreement. This is standard practice in FTAs. Each schedule specifies the full list of national tariff lines of that country³⁰, specifying the preferential rate that will apply to qualifying imports from other RCEP countries.

Most RCEP Parties apply the same treatment to all other RCEP Parties on each tariff line, but where an RCEP Party applies different treatment on the same tariff line dependent on which RCEP member is exporting the product, this is either set out clearly in that Party’s schedule, or the schedule is split into sections that apply to different RCEP Parties.

4.1.1 Advantages of entering RCEP, Trade in Goods

New Zealand has existing FTAs with Australia, China, Japan, South Korea, and the ASEAN Member States (through a combination of bilateral FTAs and plurilateral FTAs such as CPTPP and AANZFTA). RCEP will provide regional integration of goods market access outcomes secured across these existing FTAs.

³⁰ Each country in RCEP follows the Harmonized Commodity Description and Coding System (Harmonized System or HS) to structure its national tariff. The HS is a near-universal method for classifying international trade.

RCEP improves on New Zealand's existing goods market access into Indonesia secured under AANZFTA including:

- Elimination of the 5% unbound tariff on beef exports (other cuts with bone in), and all sheepmeat exports.
- Elimination of the 5% applied MFN 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, persimmons, tomatoes and many manufactured goods (including ship or boat propellers and blades, pumps, motors and electrical circuit boards).

In addition to tariff ("customs duties") liberalisation, the RCEP goods market access legal text will promote improvements in the facilitation of trade in goods over existing FTAs and address costly and time-consuming non-tariff barriers to trade in goods in (Section B of Chapter 2 on Trade in Goods). The facilitative trade framework created by RCEP is likely to have a significant influence on the form and function of value chains across the RCEP region in the coming years.

Some of these improvements include enhanced transparency on import licensing procedures (Article 2.19), commitments on future tariff transpositions and exchanging of relevant verification information (Article 2.14), future trade in goods discussions on good regulatory practice on measures affecting trade in goods and enhancing cooperation on the use of good regulatory practice Annex 18A (2)(e).

The Agreement will provide an avenue for New Zealand to address non-tariff barriers maintained by an RCEP Party by providing for a consultation mechanism with clear and predictable processes and timeframes. RCEP also includes a provision that allows for a future work programme for sectoral initiatives (Article 2.21). Once implemented, this could see the introduction of 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 (Article 2.13).³¹ This contributes to New Zealand's long-standing aim to eliminate agricultural export subsidies globally.

4.1.2 Disadvantages of entering RCEP, Trade in Goods

No disadvantages have been identified for New Zealand from entering RCEP resulting from the tariff commitments that other RCEP Parties would make to New Zealand.

New Zealand's existing comprehensive and high quality FTAs with RCEP Parties will continue to provide the highest level of preferential goods market access. For some goods exporters these existing FTAs will remain the preferred agreement to trade under.

³¹ These commitments were made in the 2015 Ministerial Decision on Export Competition, adopted in Nairobi, Kenya.

New Zealand does not have an existing FTA with India, so its withdrawal from the negotiation in November 2019 dealt a blow to New Zealand's RCEP objectives. India is a large and fast-growing economy (GDP of NZ\$4,482 billion), and there is strong New Zealand business interest in opening up access into the Indian market. If India were to join RCEP in the future, New Zealand would look to ensure that tariffs were removed for New Zealand exporters to India. New Zealand exporters currently incur customs duties worth an estimated \$72 million each year on exports to India, including on all forestry products (10% MFN rate), fish and fish products (30% MFN rate), sheepmeat (30% MFN rate), dairy products (as high as 150% MFN rate), horticulture products including kiwifruit and apples (30% to 50% MFN rate) and wine (150% MFN rate).

New Zealand's reciprocal tariff commitments under RCEP will similarly have no disadvantages. New Zealand's economy is already largely open, with most goods imported into New Zealand facing no import tariff. The tariffs New Zealand has in place are relatively low (mostly five percent, and none more than ten percent). These remaining tariffs have already been eliminated for imports from certain RCEP Parties, including Australia, China, ASEAN Member States and South Korea given preferential access under existing FTAs. New Zealand's tariff commitments for RCEP Parties under all other existing FTAs will at the latest, in the case of Japan under CPTPP, be entirely duty-free by 2024.

4.2 Rules of Origin

The Rules of Origin (RoO) chapter establishes rules to determine whether goods traded between the RCEP Parties are considered to "originate" in an RCEP Party, and therefore qualify for relevant tariff preferences (described in Section 4.1 above) and other benefits provided in the Agreement. All FTAs include such rules.

Under RCEP Rules of Origin (Article 3.2), goods are originating if they are:

- Wholly obtained (WO) in the territory of one of the RCEP Parties (such as fruits, plants or animals);
- Produced entirely in the territory of one or more of the RCEP Parties, exclusively from originating materials from the RCEP Parties; or
- Produced by one or more of the RCEP Parties using non-originating materials (i.e. non-RCEP materials), provided the non-originating materials meet the criteria set out in Annex 3A (Product-Specific Rules (PSR)).

Under the third option, in general, the PSR provide traders with co-equal value add or change in tariff classification rules that establish the level of production that needs to be undertaken on a non-originating good to give it originating status.

For a limited number of products there are three co-equal rules: a value based rule (Regional Value Content), a change in tariff classification rule (CTC) and a process rule. Providing co-equal rules means a trader can choose which rule they use, depending on which approach best suits their business model and capability.

In addition, where a rule in the PSR annex is 'WO' (meaning the good needs to be wholly obtained), the good can also gain originating status if it is produced entirely in the territory of one or more of the RCEP Parties exclusively from originating materials (Article 3.3). This provision provides further flexibility in how a good can gain originating status.

4.2.1 Advantages of entering RCEP, Rules of Origin

Rules of Origin, in themselves, do not confer an advantage or disadvantage to New Zealand. They are a recognised part of FTAs to determine what products are eligible for the preferential tariffs agreed between RCEP Parties. Rules of Origin can be a key determinant in how easily exporters are able to utilise the preferential market access provided in an FTA.

There are three options in RCEP for evidencing origin (Article 3.16), i.e. the documentation required of a trader seeking preferential tariff treatment, including:

- third-party issued certificates of origin;
- self-declaration by approved exporters; and
- self-declaration by exporters and producers (subject to an implementation period).

Self-declaration by the producer, exporter or importer is New Zealand's preferred approach as this reduces transaction costs for businesses looking to use RCEP tariff preferences. The ability for some New Zealand exporters to self-declare origin is more trade facilitative than the outcome secured in AANZFTA which requires a certificate of origin only to demonstrate compliance and eligibility of tariff preferences.

For self-declaration, the Agreement contains a 'data set' that must be provided (Annex 3B, *Minimum Information Requirements*), but leaves it to the trader as to how they provide the necessary data.

The Agreement also establishes a new category of exporter, - 'Approved Exporter' who are able to self-declare the origin of their goods (Article 3.21). Each Party will authorise its own Approved Exporters.

This range of options, with flexibility within options, enables traders to select a means to declare the origin of goods that best fits in with the capacity and capability of their business.

De Minimis

Article 3.7 *De Minimis* provides for a small tolerance (10% of the value of the good) for a good to still gain origin status, even if the good does not meet the applicable change in tariff classification requirement in the PSR annex (provided the good meets all the other applicable requirements of the chapter). This 10% value-based tolerance or *de minimis* rule applies across all goods (chapters 1-97 of the tariff) but only applies to a CTC rule.

For example, if the CTC rule does not allow manufacture from non-originating parts for a certain good, this provision softens that requirement by allowing the good to still be originating provided the value of the non-originating parts does not exceed 10% of the value of the good.

In addition, for textiles and apparel goods (in chapters 50-63 of the tariff document) there is also a 10% *de minimis* based on the weight of non-originating materials.

Accumulation of inputs

Recognising the regional nature of the Agreement, the rules provide a means to allow materials to be cumulated across the RCEP Parties during a production process (Article 3.4). The cumulation provision allows manufacturers to source materials and utilise production processes from across the RCEP Parties and then include these materials and processes in the final determination of whether a good has origin status.

On entry into force the ability to cumulate materials is limited to originating goods that is goods that already have origin status. There is provision for RCEP Parties to undertake a future review to consider the extension of the cumulation rule – allowing inputs, whether or not they meet the originating criteria, to be counted as part of the qualifying content for goods produced and traded between all RCEP Parties (known as ‘full cumulation’).

Flexibility in the transport and storage of goods between exporting and importing Parties

The direct consignment provisions in the Agreement (Article 3.15, *Direct Consignment*) set out the controls and evidentiary requirements applied to goods transiting through a third country between the exporting and importing RCEP Parties, and allow the good to retain origin status and still qualify for preferential tariff rates despite such third country transit. Such provisions are valuable for New Zealand exporters given our geographical isolation.

The Agreement provides controls that must be adhered to for a good in transit (remain under customs control and only undergo certain processes), but provided these controls are met, the amount of time a good can spend in transit is not limited. This provides additional flexibility for New Zealand exporters. For example, a business operating a ‘hubbing’ operation can move stock from New Zealand to a third party that is closer to a range of potential markets, and then move the stock to the importing Party in a timely fashion when needed.

In addition, should the importing Customs agency seek to verify whether the controls over goods in transit have been satisfied, the Agreement encourages an importing Customs authority to use existing commercial shipping or freight documents to demonstrate the transit, and if needed the storage, of the goods. Such a practice reduces ‘red tape’ and hence cost for New Zealand exporters.

Minor errors or discrepancies in origin documents do not invalidate those documents

Article 3.26, *Minor discrepancies or errors*, ensures that minor errors or discrepancies in documentation cannot be the sole reason to render origin documents invalid, provided these errors or discrepancies do not bring the origin of the goods into doubt. This is important because where traders’ documentation is rendered invalid by the importing Customs authority, the necessary information to verify origin status under an FTA may be deemed ‘not provided’ and the imported good may be disqualified from accessing preferential tariff rates under the FTA.

Examples of minor errors or discrepancies are an accidental inversion of digits, or a discrepancy in the date of shipping between the date on the certificate of origin and the bill of lading. Article 3.26 therefore removes a potential avenue for goods to be unnecessarily denied preferential tariff rates, thereby providing additional surety to traders.

4.2.2 Disadvantages of entering RCEP, Rules of Origin

No disadvantages have been identified for New Zealand resulting from the RCEP Rules of Origin as negotiated. However not all of New Zealand's negotiating objectives were met, for example full cumulation. New Zealand will continue to pursue these objectives through our ongoing trade policy work with the RCEP region, including through reviews undertaken by the RCEP Joint Committee or Committee on Trade in Goods, or (with ASEAN) the AANZFTA upgrade.

4.3 Customs Procedures and Trade Facilitation

The Customs Procedures and Trade Facilitation chapter establishes the framework the RCEP Parties customs authorities will operate under to facilitate trade. The chapter builds on the commitments in the World Trade Organisation Agreement on Trade Facilitation and extends these obligations in some areas.

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

RCEP specifically recognises the different stages of readiness by RCEP Parties to implement the commitments in this chapter. Therefore, it provides an implementation period to allow certain RCEP Parties to meet their commitments (Article 4.21 and Annex 4A).

4.3.1 Advantages of entering RCEP, Customs Procedures and Trade Facilitation

The enhanced commitments in the RCEP Agreement 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.

RCEP contains specific provisions to ensure the consistent application of customs procedures and processes and for information related to trade to be as open and transparent as possible, including the opportunity to comment on potential changes (Article 4.4). RCEP requires each Party to ensure their customs laws and regulations are consistently implemented at all ports and border crossings within its customs territory (eliminating regional or port-specific variations).

The Agreement also requires RCEP Parties to publish, where possible on the internet, information that is easily accessible on a wide range of trade-related areas (Article 4.5). This information includes:

- import, export and transit procedures
- rates of duties, taxes and fees, and charges imposed by Government agencies

- import and export restrictions and prohibitions
- appeal and review procedures

Further, to the extent possible, RCEP Parties will publish proposed new laws or regulations, or amendments to existing laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposals. Where a new or amended law or regulation is to be implemented, that notification must be provided as early as possible before its date of entry into force.

RCEP will require RCEP Parties to provide advance rulings for imports which would provide certainty and predictability for New Zealand exporters, and make compliance with Customs laws and regulations and requirements easier (Article 4.10). New Zealand businesses often report that uncertainty about the treatment of their goods can represent a significant cost or barrier to trade. RCEP provides for written advance rulings for the origin, classification and the valuation of goods, and for rulings to be binding for at least three years.

RCEP sets an expectation that, to the extent possible, all goods should be cleared by Customs within 48 hours of arrival and lodgement of all necessary documents for customs clearance (Article 4.11). If goods are to undergo further examination, the examination should be limited to what is reasonable and necessary and be undertaken without delay. Of particular relevance to New Zealand, RCEP recognises expedited clearance for perishable goods, such as seafood or fresh fruit and vegetables, where such goods are to be released within six hours of arrival and submission of all necessary documentation.

The improved predictability and transparency of importing and exporting processes are particularly significant for economies such as New Zealand with a large proportion of small and medium-sized businesses (SMEs). This is because higher trade administration and transaction costs are a bigger challenge for SMEs than for larger enterprises.

4.3.2 Disadvantages of entering RCEP, Customs Procedures and Trade Facilitation

No disadvantages have been identified for New Zealand resulting from the RCEP Customs Procedures and Trade Facilitation rules as negotiated. However not all of New Zealand's negotiating objectives were met, for example possible limitations in access to advance rulings in some RCEP Parties. New Zealand will continue to pursue these objectives through our ongoing trade policy work with the RCEP region, including through reviews undertaken by the RCEP Joint Committee or Committee on Trade in Goods, or (with ASEAN) the AANZFTA upgrade.

4.4 Sanitary and Phytosanitary Measures

Imports, particularly primary products, can face measures designed to protect human, animal or plant life or health against pests, diseases and food-borne risks (referred to collectively as SPS measures: sanitary, human and animal health; and phytosanitary, plant health). For example, imported fruit may

require treatments and inspections to ensure absence of pests, and food may be required to have pesticide levels below certain maximum residue limits.

All RCEP Parties are members of the WTO SPS Agreement, which allows countries to determine their own level of protection for health and safety, but also requires that any restrictions on trade need to be non-discriminatory, transparent and scientifically justified. The Sanitary and Phytosanitary (SPS) Chapter in RCEP sets out the basic framework for developing, adopting and applying SPS measures in the RCEP region.

4.4.1 Advantages of entering RCEP, SPS

The Sanitary and Phytosanitary (SPS) Chapter 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 SPS Agreement.

Consistent with the WTO SPS Agreement the overall objective is to allow RCEP Parties to take the measures necessary to protect human, animal or plant life or health, also requiring that any restrictions on trade need to be non-discriminatory, transparent and scientifically justified (Article 5.2).

In addition to the WTO SPS Agreement and consistent with the WTO Trade Facilitation Agreement, the SPS Chapter includes the objectives to protect (human, animal or plant life or health) while facilitating trade. The reference to facilitating trade is additional to the WTO SPS Agreement. Trade facilitation measures include improving the efficiency of border procedures and strengthening cooperation, communication and consultation among the RCEP Parties.

The RCEP SPS Chapter includes key elements of equivalence (Article 5.5), regionalisation (Article 5.6), risk analysis (Article 5.7) and transparency (Article 5.12). It strengthens and includes practical implementation of WTO SPS Agreement rights and obligations including audit (Article 5.8), certification (Article 5.9), import checks (Article 5.10) and technical consultation (Article 5.14) and provides for decisions made in the context of the SPS Chapter to be set-out in bilateral or plurilateral arrangements (Article 5.16). It has provisions to ensure that RCEP Parties take into account the decisions of the WTO SPS committee and international standards, guidelines and recommendations. Recognising that language barriers are a significant deterrent to trade between RCEP Parties, the SPS Chapter contains several provisions where RCEP Parties must provide documents in English (article 5.9 and Article 5.12).

4.4.2 Disadvantages of entering RCEP, SPS

Nothing in the SPS Chapter would require New Zealand to change its approaches to adopting or enforcing sanitary and phytosanitary measures necessary to protect New Zealand's human, animal or plant life or health from pests and diseases. As a result, there are no disadvantages to New Zealand from entering RCEP from a SPS perspective.

Due to sensitivities surrounding trade in agriculture, fisheries and forestry products by some RCEP Parties, the RCEP dispute settlement provisions do not apply to the SPS Chapter (Article 5.17). This disadvantage is mitigated by provisions in the SPS chapter to review the non-application of dispute settlement two years after entry into force; and a commitment that a Party may apply dispute settlement to the SPS chapter when it becomes a Party to any future FTA in which it takes on a similar obligation. Recourse may still be made to the WTO dispute settlement mechanism for breach of WTO SPS Agreement obligations.

4.5 Standards, Technical Regulations, and Conformity Assessment Procedures

The Standards, Technical Regulations and Conformity Assessment Procedures (STRACAP) chapter aims to address the trade barriers and costs associated with standards, technical regulations and conformity assessment procedures. The chapter builds on the RCEP Parties' existing rights and obligations in the WTO Technical Barriers to Trade (TBT) Agreement and seeks to eliminate unnecessary technical barriers to trade, enhance transparency and promote regulatory cooperation and good regulatory practice. RCEP Parties are required to take into account particular existing and future WTO TBT Committee decisions and recommendations that were made since the original WTO TBT Agreement (Article 6.5). This includes taking into account principles for the effective development of international standards, and enhanced transparency requirements.

The chapter also encourages RCEP Parties to accept technical regulations from another Party as equivalent to its own, to use international standards as the basis for their technical regulations, and to take a performance-based approach to product requirements (Article 6.7). If a Party does not do these things, it may be required to justify its approach, if requested by another Party.

With a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments, RCEP Parties also recognise the importance of accepting the results of conformity assessment procedures conducted by another Party, and must accept conformity assessment results whenever possible (Article 6.8).

Across these areas, there is a focus on strengthening coordination and communication amongst RCEP Parties. The chapter includes an enabling provision for RCEP Parties to develop bilateral or plurilateral implementing arrangements to strengthen the implementation of the STRACAP chapter and to facilitate trade between RCEP Parties (Article 6.13). This is in addition to the inclusion of provisions for sectoral initiatives.

Recognising that language barriers are a significant deterrent to trade between RCEP Parties, the STRACAP Chapter contains a provision where RCEP Parties must provide documents in English (Article 6.11).

The approach taken in the STRACAP chapter is broadly aligned with New Zealand's policy settings and the outcomes achieved in the TBT chapters of our previous FTAs.

4.5.1 Advantages of entering RCEP, STRACAP

The diversity of regulatory measures among RCEP Parties can make it difficult and expensive for exporters to understand and comply with the different requirements in each market. These can create TBTs that significantly increase transaction and compliance costs for exporters, particularly when regulations are more trade-restrictive than necessary to achieve a legitimate objective or are developed in a non-transparent way.

The STRACAP chapter aims to address these issues and facilitate trade among RCEP Parties, which would ultimately benefit New Zealand exporters. RCEP includes provisions to enhance transparency in the development of TBT measures in the RCEP region (Article 6.11) and promote greater regulatory cooperation (Article 6.9) 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 reducing transaction costs for businesses, and to provide mechanisms such as technical discussions and contact points for RCEP Parties to address specific trade issues with the aim of reducing or eliminating unnecessary TBTs (Article 6.9, Article 6.10 and Article 6.12).

4.5.2 Disadvantages of entering RCEP, STRACAP

Nothing in the STRACAP Chapter would require New Zealand to change its regulatory regime, so RCEP is not expected to bring any disadvantage to New Zealand's development of standards and conformance. As a result, there are no disadvantages to New Zealand from entering RCEP from a STRACAP perspective.

The Dispute Settlement Mechanism does not apply to disputes raised exclusively under the STRACAP chapter, weakening its enforceability (Article 6.14). This disadvantage is mitigated by provisions in the STRACAP chapter to review the non-application of dispute settlement two years after entry into force. In addition, the chapter contains provisions requiring RCEP Parties to respond as early as possible to any issues which arise, including a requirement to enter into technical discussions within 60 days to achieve a mutually satisfactory solution (Article 6.10). New Zealand still has recourse to the WTO dispute settlement mechanism for any breach of WTO TBT Agreement obligations by RCEP Parties.

4.6 Trade Remedies

Trade remedies allow governments to provide temporary relief to domestic industry from unfair competition from abroad or an unexpected surge in imports. WTO rules cover three types of trade remedy:

- Anti-dumping duties: applied, in certain circumstances, on an imported product that has been exported at a lower price than its "normal value";

- Subsidies and countervailing measures: the WTO rules seek to limit trade-distorting subsidies, and provide for countervailing duties to offset the use of certain subsidies by other countries;
- Safeguard action: temporary measures applied to allow domestic producers to adjust to sudden surges in imports.

The Trade Remedies chapter provides that RCEP Parties retain their rights and obligations under the relevant WTO agreements (Article 7.9 and Article 7.11), and includes an annex that identifies a range of practices that promote the goals of transparency and due process in anti-dumping and countervailing duty proceedings (Annex 7A practices relating to Anti – Dumping and Countervailing Duty Proceedings).

The chapter provides that a Party may apply transitional safeguard measures with respect to imported goods from another Party if, as a result of the reduction of tariffs under RCEP, there is an increase in imports which causes, or threatens to cause, serious injury to that Party's domestic industry (Article 7.2). All RCEP Parties have access to this mechanism under the same conditions.

As in previous negotiations, New Zealand's agreement to the inclusion of a transitional safeguard mechanism was conditional on achieving sufficiently ambitious goods market access outcomes, including on key areas of trade interest. RCEP Parties have agreed that the transitional safeguard mechanism will be available for 8 years after the customs duty is eliminated or reduced to a Party's final commitment on a particular good. This is the longest transition period New Zealand has agreed in an FTA to date, but this proved necessary in order to facilitate the conclusion of negotiations with some RCEP Parties – some of whom originally proposed that the RCEP safeguard mechanism should be permanent rather than time-bound.

4.6.1 Advantages of entering RCEP, Trade Remedies

The RCEP Trade Remedies chapter preserves New Zealand's rights and obligations under the relevant WTO agreements (the Anti-Dumping Agreement, the Agreement on Subsidies and Countervailing Measures, and the Safeguards Agreement). 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.

4.6.2 Disadvantages of entering RCEP, Trade Remedies

The Trade Remedies chapter does not impose any additional obligations or require any changes to New Zealand's current trade remedies regime.

As frequently occurs in FTA negotiations, some RCEP countries were only able to agree tariff liberalisation on particular products of key export interest for New Zealand (particularly, some agricultural products) in conjunction with “transitional safeguard mechanisms” that would allow them to remedy any serious injury experienced by their domestic sectors as a result of tariff liberalisation under RCEP. If applied, such transitional safeguards could potentially temporarily undermine agreed market access outcomes granted in RCEP. The Trade Remedies chapter mitigates this – and hence protects market access outcomes for New Zealand exporters – by establishing clear processes to discipline and limit the ability of RCEP Parties to take transitional safeguard actions. This includes notification and consultation obligations (Article 7.3), and limits on the scope and duration of transitional safeguard measures (Article 7.5).

Such transitional safeguard actions would also be available for New Zealand. Note that while New Zealand has similar provisions in other FTAs, to date there has not been a need to utilise these.

4.7 Trade in Services

The Trade in Services chapter seeks to facilitate the expansion of cross-border trade in services and provides New Zealand services exporters with improved market access opportunities into several RCEP countries. The areas of financial services, telecommunications and professional services are covered by separate bespoke annexes under RCEP.

New Zealand’s services market access secured in existing FTAs, including AANZFTA (covering all ASEAN Member states), CPTPP (Japan), our bilateral FTAs with China and South Korea, have been consolidated within RCEP, providing greater transparency and visibility of export opportunities across the RCEP region. RCEP ensures that services market access commitments remain current and provides greater certainty for New Zealand services exporters.

RCEP Parties have committed to the progressive liberalisation and transparency of market access commitments. A number of RCEP Parties are initially taking their market access commitments in a ‘positive list’ format. This ‘positive list’ format requires RCEP Parties to provide an exhaustive list of the services sectors in which they are ‘locking in’ access for New Zealand’s services exporters. Any conditions on that access, for example foreign equity limitations, must be explicitly outlined to ensure transparency for other RCEP Parties.

After the Agreement has been in force for six years, all those RCEP countries that have initially opted for the ‘positive list’ approach must have transitioned to a ‘negative list’ (except for Cambodia, Laos and Myanmar who are provided fifteen years for this transition process)(Article 8.12). The ‘negative list’ framework provides exporters with a simple way to determine whether the services chapter applies to their area of business in another RCEP market. Under a ‘negative list’ approach, RCEP Parties commit to provide market access, except in areas where restrictions are listed in individual RCEP Parties’ schedules. Fifteen years after entry into force of the Agreement, New Zealand will have expanded the range of countries with whom we have ‘negative list’ FTAs to include Cambodia, Indonesia, Laos, Myanmar, Philippines, and Thailand.

RCEP includes a number of new mechanisms for future liberalisation. Improving on commitments made by ASEAN in the AANZFTA negotiation, New Zealand service exporters are provided with increased certainty that the access they are given, in a range of sectors, will be equal to that provided to other ASEAN FTA partners. In the event an ASEAN country opens its market further within certain negotiated sectors, that access is 'locked in' for good. This protects the competitive advantage of, and provides for greater certainty for, New Zealand service exporters.

4.7.1 Advantages of entering RCEP, Trade in Services

The services sector plays an increasingly important role in the global economy and the growth and development of the New Zealand economy through the generation of opportunities for greater income, productivity, and employment. Manufacturing activities and competitiveness increasingly depend on services.³² New Zealand service providers exported NZ\$26.1 billion worth of services in 2019.³³ New Zealand's performance in trade in services, as a share of total exports, is above that for the rest of the world, and above the average of Organisation for Economic Cooperation and Development (OECD) countries.³⁴

The Trade in Services chapter will facilitate trade in services between New Zealand and all other RCEP Parties, particularly those in ASEAN. Entering RCEP will make it easier for New Zealand service exporters to understand what export opportunities exist throughout the region and provide certainty that these opportunities will remain in place. The Agreement will consolidate the existing rules and market access commitments in existing FTAs with RCEP Parties. RCEP reduces the maligned 'spaghetti bowl' effect – the confusion and lack of transparency created by the numerous FTAs concurrently existing between RCEP Parties.

Enhanced market access commitments

RCEP will provide New Zealand services exporters with improved access commitments over and above existing FTA commitments. Examples of new market access commitments include:

- i) Indonesia: New commitments in:
 - Education services: post-secondary technical and vocational education, technical and vocational secondary education, language course and training, football and chess;
 - Engineering services: engineering design for industrial processes and production;
 - Computer related services: consultancy related to installation of computer hardware, maintenance and repair of office machinery and equipment, and data processing.

- ii) Philippines: New commitments in:

³² UNCTAD, <https://unctad.org/en/Pages/DITC/Trade-in-Services.aspx>.

³³ NZ Statistics, Goods and services trade by country: Year ended December 2019 <https://www.stats.govt.nz/information-releases/goods-and-services-trade-by-country-year-ended-december-2019>

³⁴ Trade for All Advisory Board Report, page 29. <https://www.tradeforalladvisoryboard.org.nz/wp-content/uploads/2019/11/FINAL-with-cover-Trade-for-All-report.pdf>

- Professional services: bookkeeping, integrated engineering, veterinary medicine, environmental planning, architecture, interior design, forestry, customs broker, optometry, and respiratory therapy;
- Computer and related services;
- Education services: adult education services, including for cross-border delivery;
- Environmental services: refuse disposal services, services to reduce exhaust gases, site remediation services; and
- Air transport services: ground handling services.

iii) Thailand: New commitments in:

- Professional services: taxation services, veterinary services, industrial design services;
- Computer related services: cross-border delivery of consultancy services, hardware consultancy, software implementation, and data processing services;
- Research and development services;
- Distribution services; and
- Education services: cross-border delivery into Thailand and through the establishment of a commercial presence.

iv) Laos: New commitments in:

- Professional services: legal services, taxation services, accounting services, architectural services, and engineering services;
- Research and Development services;
- Distribution services;
- Education: cross border services in secondary and higher education services; and
- Air transport services.

v) Cambodia: New commitments in:

- Research and development services.

The ability of New Zealand service exporters 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, particularly with the impact of the COVID-19 pandemic. The commitments in this area exceed what was achieved with ASEAN markets during the AANZFTA process. Cross-border export education has huge potential for the New Zealand export education sector and RCEP includes meaningful market access commitments from our ASEAN partners.

Mechanisms for future liberalisation

The RCEP services chapter includes a most-favoured nation provision (MFN) rule (Article 8.6). This obligation means that, in negotiated services sectors, New Zealand service suppliers will automatically receive the benefits of any additional liberalisation that RCEP Parties might provide to third countries in future agreements. This will help to protect the competitive position of New Zealand services

exporters throughout the region, including in sectors of significant commercial interest to New Zealand.

The Agreement also includes a ‘ratchet’ mechanism (Article 8.7). This means that, in negotiated sectors, RCEP Parties commit to automatically extend the benefits of any future autonomous liberalisation to all other RCEP Parties. This mechanism future-proofs the RCEP agreement and ensures that its commitments remain up-to-date and commercially meaningful.

Protecting Sensitive Sectors

Social services established for a public purpose, and services provided in the exercise of governmental authority, are not subject to the rules in the trade in services chapter. Further, New Zealand makes no market access commitments in health services and public education services. This preserves New Zealand’s ability to take decisions in the future to favour local providers or impose quotas in these sensitive sectors.

Domestic Regulation

The RCEP Services Chapter also includes ‘Domestic Regulation’ provisions which facilitate service suppliers who need to obtain a license and/or registration to deliver services in RCEP markets (Article 8.15). These rules set standards for the procedures used for the examination/assessment of applicants, the cost of submitting such applications, and providing feedback received on these applications. These rules will make registration and qualification processes more navigable for New Zealand service providers struggling to come to grips with foreign regulatory environments.

4.7.2 Disadvantages of entering RCEP, Trade in Services

The chapter’s rules are designed to facilitate the expansion of the services trade, and in doing so impose certain obligations on RCEP Parties. Some countries may face adjustment costs and the need for reform to meet the level of services trade liberalisation under RCEP. For New Zealand, these obligations are low-cost to fulfil, as our domestic regulatory regime already operates in an open and non-trade restrictive way. The obligations in RCEP are less restrictive than in some existing FTAs. Consequently, no regulatory change is required to meet the obligations contained in the Trade in Services Chapter.

The services outcome did not meet all of New Zealand’s original negotiating objectives. New Zealand would have preferred all services market access commitments be made on a ‘negative list’ basis immediately and for ambitious commitments on MFN, covering most services sectors. Unfortunately, the number of sectors in which RCEP Parties have committed to MFN is modest. Nonetheless, the review process and the commitment to begin transition to a ‘negative list’ within three years of entry into force of the Protocol will provide a pathway to progressively improve market access for New Zealand exporters over time.

4.8 Financial Services

The Financial Services annex (Annex 8A) establishes a framework of rules governing the cross-border trade in financial services among RCEP Parties. Financial services are an important underlying service and is essential for all international trade and investment – as well as being a growing New Zealand export. New Zealand exported \$868.2 million worth of financial services in 2019 (up from \$757.7 million in 2017 and \$552.9 million in 2015).

4.8.1 Advantages of entering RCEP, Financial Services

The Financial Services annex provides New Zealand financial service suppliers with improved transparency and certainty regarding access to RCEP markets. The provisions relating to transparency within the annex will benefit New Zealand businesses that operate in RCEP markets and use financial services as it will provide an enhanced level of clarity and certainty (Article 7 of Annex 8A).

The Financial Services annex includes obligations on RCEP Parties 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. These provisions are consistent with current New Zealand regulations and practice.

In addition to the obligations established in the Trade in Services Chapter, the Financial Services annex includes a strong prudential exception to ensure financial regulators (for New Zealand this includes the Reserve Bank of New Zealand) have the ability to put in place measures that support the stability of the financial system (Article 4 of Annex 8A). The annex also contains a commitment (subject to exceptions) to refrain from preventing transfers of information or processing of information necessary to conduct business and on the supply of new financial services (Article 5 of Annex 8A).

4.8.2 Disadvantages of entering RCEP, Financial Services

New Zealand already has an open and transparent financial services policy regime. This, together with the policy space preserved under RCEP to regulate for prudential reasons, means there would be little policy risk and minimal disadvantage for New Zealand to enter RCEP with respect to financial services. Like the WTO and all New Zealand FTAs, RCEP preserves policy space to apply any form of prudential regulation, such as laws or regulations to protect investors and depositors, or to ensure the integrity and stability of the financial system more broadly.

4.9 Telecommunication Services

The annex on Telecommunications Services (Annex 8B) sets out regulatory disciplines to underpin effective market access and competitive markets in telecommunications services in the RCEP area.

The telecommunications sector is both an important infrastructure enabler for trade in goods and services, as well as a distinct services sector in its own right. Better connectivity helps facilitate services delivery and electronic commerce, and enables more inclusive participation in global trade.

The annex builds on the disciplines developed 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 the 1990s.

All the disciplines in the annex are consistent with current New Zealand regulatory settings. In particular, the annex acknowledges that regulatory needs and approaches will differ from market to market and that each RCEP Party may determine how best to implement its obligations (Article 3 of Annex 8B). This reaffirms the flexibility for New Zealand to rely on competition in the market as well as regulatory intervention in the market to meet its obligations.

4.9.1 Advantages of entering RCEP, Telecommunication Services

The RCEP Telecommunications Services annex (Annex 8B) provides New Zealand exporters of telecommunications services with greater certainty that telecommunications regulation in RCEP markets will be transparent, objective and non-discriminatory. Disciplines that ensure telecommunications services are freely available and competitive provide value not only for telecommunications exporters but also for New Zealand businesses operating offshore, whether to facilitate operations, enable service delivery or to connect with customers.

By agreeing the Telecommunications Services annex, RCEP Parties have indicated that their telecommunications sectors are consistent with international best practice and focused on benefiting users. The rules in the annex provide certainty for New Zealand businesses operating in RCEP markets or looking to enter those markets by providing a common set of expectations regarding regulation of telecommunications. This includes rules providing for enhanced transparency of that regulation.

The rules in the annex include requirements to ensure:

- service suppliers can access and use public telecommunications and networks, including for the movement of information across borders (Article 4 of Annex 8B);
- public telecommunications suppliers provide mobile number portability (Article 5 of Annex 8B);
- major suppliers do not engage in anti-competitive practices (Article 6 of Annex 8B);
- telecommunications regulatory bodies are independent (Article 12 of Annex 8B);
- RCEP Parties provide information on conditions affecting access and use of telecommunications (Article 16 of Annex 8B).

The annex acknowledges that regulatory needs and approaches will differ from market to market and that Parties may determine how best to implement the obligations in the annex (Article 3 of Annex 8B).

4.9.2 Disadvantages of entering RCEP, Telecommunication Services

There are no significant disadvantages that could arise from this annex for New Zealand. All the disciplines in the annex are consistent with current New Zealand regulatory settings. The provision on

approaches to regulation ensures New Zealand's approach to regulating the telecommunications sector can meet the obligations.

4.10 Professional Services

The annex on Professional Services (Annex 8C) supplements the commitments made in the Trade in Services Chapter. The rules encourage professional bodies to establish dialogue on mutual recognition of qualifications, licensing and registration between RCEP Parties. The annex also requires transparency of standards and criteria for licensing and certification in professional services regimes.

4.10.1 Advantages of entering RCEP, Professional Services

The professional services sector is an area of the New Zealand economy in which businesses are increasingly looking at export opportunities. The RCEP region provides a significant market where this expertise is increasingly sought after. The mutual recognition, encouraged by this annex in paragraph 3, aims to facilitate the delivery of these services across borders and, consequently, access to a larger range of consumers and markets.

4.10.2 Disadvantages of entering RCEP, Professional Services

The annex recognises the independence of professional bodies within RCEP countries. It does not require recognition in these professions. It only provides a mechanism for the relevant regulators and professional bodies to enter into dialogue for mutual recognition by profession within their country (paragraph 2 of Annex 8C).

4.11 Temporary Movement of Natural Persons

The Temporary Movement of Natural Persons chapter will enhance access into RCEP countries for business persons engaged in trade in goods, the supply of services, and the conduct of investment activities. It is designed to assist individuals and businesses taking up the commercial opportunities offered through RCEP. Importantly, the chapter does not apply to people seeking employment in New Zealand or to immigration matters, such as citizenship or permanent residency applications.

The Temporary Movement of Natural Persons chapter operates based on country-specific commitments set out in Annex IV. Each country's Schedule in Annex IV specifies the conditions and limitations for entry and temporary stay provided to specified categories of businesspeople from RCEP countries.

4.11.1 Advantages of entering RCEP, Temporary Movement of Natural Persons

The chapter requires all RCEP Parties to administer streamlined and transparent procedures for temporary entry applications. RCEP Parties have agreed that when they receive applications from

New Zealanders seeking temporary entry to trade in goods, supply services or conduct investment they will:

- process, as expeditiously as possible, applications for entry (Article 9.6.1);
- upon request and within a reasonable period of time after receiving a complete application, notify the applicant of the receipt of the application and the resulting decision (Article 9.6.2);
- make publically available the requirements for temporary entry (Article 9.7.1);
- promptly publish any changes to relevant regulation (Article 9.7.1);
- endeavour to publish this information in the English language (Article 9.7.2);
- ensure that fees for processing applications do not represent an unjustifiable impediment to movement (Article 9.4.2);
- on request, a reasonable period of time after receiving an application, endeavour to notify applicants on the status of that application (Article 9.6.2);
- maintain mechanisms to respond to enquiries on regulation affecting temporary entry (Article 9.7.1(d));
- where able under domestic laws, endeavour to accept applications for immigration formalities in electronic format (Article 9.6.4); and
- where appropriate, accept copies of documents authenticated in accordance with its laws in place of original documents where domestic law allows (Article 9.6.5).

These commitments ensure improved transparency, certainty and reasonableness of costs for those undertaking business travels within the RCEP region. Facilitating this movement of people will ensure that New Zealanders are able to make the most of the trade and investment commitments contained in RCEP.

Like the Trade in Services Chapter, the rules relating to temporary movement of natural persons include schedules of commitments from each of the RCEP countries these are included in Annex IV. Some ASEAN RCEP countries have made additional commitments on temporary movement of natural persons, beyond those in AANZFTA.

Granting temporary entry into RCEP Parties does not exempt the applicant from meeting any applicable licensing requirements, including any mandatory codes of conduct, to practise a profession (Article 9.4 (4)).

4.11.2 Disadvantages of entering RCEP, temporary movement of natural persons

New Zealand's country-specific temporary movement of natural persons commitments in Annex IV of RCEP are based on commitments in New Zealand's existing FTAs. They are consistent with current policy settings related to business visitors, intra-corporate transferees, installers of services and independent professionals. These commitments do not affect the regulation of New Zealand's licensing regimes or other professional requirements (i.e. professional codes of conduct). The chapter specifically provides limited recourse to RCEP dispute settlement procedures for refusal to grant temporary entry (Article 9.9). Only in the event that a refusal to grant temporary entry reflects a pattern of practice by the relevant authority and when the applicant has exhausted all administrative remedies, will there be grounds for referral to the dispute settlement mechanism.

4.12 Investment

The Investment chapter will establish a rules-based framework that will facilitate free and open flows of investment in the RCEP region. These rules are designed to assist investors to enter the market and compete on an equal footing with domestic investors and other international competitors.

The manner in which investment market access commitments are made in RCEP is through a 'negative list' framework. This format provides investors a simple way to determine what restrictive measures affect their investment in another RCEP market. Under a 'negative list' approach, RCEP Parties commit to provide market access except in areas where a restriction is listed in an individual Party's schedule. These restrictions are referred to as 'non-conforming measures' or 'reservations' and are set out in the Schedule in Annex III (Schedules of Non-Conforming Measures for Services and Investment). Each Party's schedule has two parts, List A and List B:

- List A sets out existing measures (laws, regulations, practices and procedures) that RCEP Parties retain the right to maintain in their present form. Such measures may restrict the access of foreign investors, or may discriminate in favour of domestic investors. List A reflects the current level of openness provided in a market and cannot be made more restrictive in the future. For most RCEP Parties, these existing measures are also subject to a 'ratchet' clause. This means if a Party liberalises one of these measures in the future, the benefits of that action are automatically 'locked in' for other RCEP Parties and the measure cannot subsequently revert to a more restrictive form.
- List B sets out reservations for sectors, subsectors, or activities where RCEP Parties reserve the right to maintain the existing measures and adopt new measures that may be more discriminatory in the future. The 'ratchet' clause does not apply to any measure covered by List B.

If a RCEP Party does not list any restrictions for a particular industry, it means that Party is committed to not applying any measures that would be inconsistent with certain Investment Chapter obligations, such as discriminatory practices that favour local investors, and is committing to keep that market open for RCEP investors.

Coverage of permanent residents in investment chapter

RCEP's Investment Chapter provides coverage of permanent residents on a 'reciprocal' basis. Permanent residents of RCEP Parties are covered by the rules of the investment chapter if both RCEP Parties recognise and provide equivalent treatment for its own permanent residents in respect of measures in respect of investment. While this is not New Zealand's preferred outcome, New Zealand permanent residents continue to have full coverage under our existing FTAs with most RCEP Partners through CPTPP, the CER Investment Protocol, New Zealand-Korea FTA, and AANZFTA.

Investor State Dispute Settlement

Investor State Dispute Settlement (ISDS) is a dispute resolution mechanism that allows investors to pursue remedies directly against governments in relation to breaches of investment provisions. Consistent with New Zealand's preferred outcome, RCEP does not include ISDS. During negotiations,

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 (Article 10.18). Any such change would require the consent of all RCEP Parties, including New Zealand.

4.12.1 Advantages of entering RCEP, Investment

Joining RCEP would benefit New Zealand investors, providing improved conditions when making investments and doing business in the RCEP region. RCEP will reduce barriers to investment and facilitate the navigation of complex regulatory systems by establishing a consistent framework and a single set of rules for the RCEP region.

New Zealand has existing agreements with several other RCEP Parties through existing FTAs. Whilst the outcomes of the Investment Chapter did not necessarily represent a further liberalisation of non-conforming measures of RCEP Partners under our existing FTAs, the Investment Chapter is important as it establishes certainty and transparency across the RCEP region which gives New Zealand investors greater confidence to enter these markets.

In addition, RCEP is the first agreement New Zealand has entered into with the ten ASEAN countries where commitments are recorded as a 'negative list'. It is a significant step forward from the existing commitments in AANZFTA.

Foreign Direct Investment (FDI) from RCEP countries already amounts to approximately 61 percent of all FDI into New Zealand³⁵, and is an important source of capital to support building New Zealand's productive and inclusive economy. Membership in RCEP would also send a positive signal to investors in other RCEP Parties about the investment environment into New Zealand by generating increased confidence and knowledge in New Zealand's stable and transparent investment regime, which would be expected to encourage inward investment flows into New Zealand.

Investment protections

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

- *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)(Article 10.3 and Article 10.4);
- *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 (article 10.5);
- *Control over investments*: enables New Zealand investors to retain greater control of their investments in other RCEP countries. An example is it removes the ability to impose or enforce

³⁵ Statistics New Zealand: March 2019.

conditions on investment in relation to the volume or value of imports associated with investments (Article 10.6). It also removes the ability to impose a nationality requirement in the appointment of senior management positions (Article 10.7). RCEP would allow investors to appoint their own experts to governance and senior management positions.

4.12.1 Disadvantages to New Zealand of entering RCEP, Investment

The obligations in the Investment Chapter will facilitate and protect investment flows between RCEP countries and on the whole would not create additional obligations on New Zealand. This is because existing agreements and customary international law are already reflected in New Zealand's investment policy and regime.

While New Zealand's commitments under RCEP are consistent with current law and practice, there is potential that they could limit New Zealand's future policy flexibility. For example, New Zealand would make commitments not to impose performance requirements and/or requirements on senior management and boards of directors except in areas covered by specific List A and B reservations in New Zealand's Schedule of Non-Conforming Measures (New Zealand sees such obligations as a net advantage, and seeks such outcomes in FTAs). These List A and B reservations relate to areas of policy (including health, public education and social security), reflect the same types of exception New Zealand has included in previous FTAs, and on the whole are deemed to preserve appropriate future policy space.

4.13 Intellectual Property

New Zealand exporters face varying degrees of uncertainty when protecting and enforcing their intellectual property (IP) rights in the RCEP region. In response to this uncertainty, RCEP Parties have agreed to specific provisions covering copyright and related rights (Section B), trade-marks (section C), GIs (Section D), patents (Section E), industrial designs (Section F), GRTKF (Section G), and unfair competition (Section H), country names (Section I), and measures for facilitating enforcement of those rights when infringed (Section J). There are also provisions setting out a framework for sharing of information, capacity-building and cooperation between the RCEP Parties. The obligations outlined in this chapter for New Zealand all fall within current regulatory settings and are generally in line with previous trade agreements, including CPTPP and the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). These agreed provisions reinforce the RCEP Parties' rights and obligations to each other under the TRIPS Agreement.

4.13.1 Advantages of entering RCEP, Intellectual Property

The commitments made under this Agreement 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 IP Rights;
- reducing regulatory and business compliance costs associated with those procedures;

- enhancing the transparency and due process in the IP regimes of RCEP Parties; and
- facilitating information sharing, cooperation and capacity building between RCEP Parties, especially for developing and least developed RCEP Parties, to ensure high quality IP rights are granted or registered and they can be enforced.

An additional feature is the inclusion of a consultation mechanism, where New Zealand can request consultations to seek a timely and mutually satisfactory solution, on any IP obligation within the scope of the Agreement that are not being met or fulfilled.

Geographical indications³⁶

A key benefit for New Zealand is the outcomes on geographical indications (GIs), which extend those previously agreed to under CPTPP to a wider group of trading partners (Section D). The Agreement requires RCEP Parties to adopt or maintain due process 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, to address the risk that exporters of those goods might be prevented from using common descriptive terms to describe their goods (Article 11.30).
- 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 (Article 11.34).
- 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

Traditional Knowledge

Another feature of the Agreement is recognition that some RCEP Parties require in their patent systems prior and informed consent, and access and benefit sharing for accessing and using GRTKF (Article 11.53(2)) – a first for a New Zealand FTA. This 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 RCEP Parties when considering GRTKF.

4.13.2 Disadvantages of entering RCEP, Intellectual Property

No immediate disadvantages to New Zealand have been identified. However, there is a risk that by including the extensive provisions governing the protection and enforcement of IP rights in the Agreement, it could limit New Zealand's future policy flexibilities to appropriately address any emerging IP-related issues as they arise.

³⁶ 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.

4.14 Electronic Commerce

New Zealand recognises the potential of electronic commerce (e-commerce) to generate opportunities for economic growth, development and inclusive trade. The Electronic Commerce chapter aims to promote the adoption of domestic frameworks capable of building trust and confidence among e-commerce users, as well as avoiding the imposition of unnecessary barriers to the use and development of e-commerce. The chapter sets out disciplines for e-commerce that apply in addition to relevant rules in other chapters. All of the obligations are consistent with current practice in New Zealand.

E-commerce plays a significant role in international trade in goods and services. This includes cross-border goods trade conducted using e-commerce platforms, traditional goods trade being facilitated through increased digitalisation of processes, services delivered digitally, as well as trade in products delivered through the internet (such as e-books).

The Electronic Commerce chapter contains provisions covering trade facilitation, encouraging the adoption of paperless trading (Article 12.5) and enabling electronic authentication (Article 12.6). A second group of provisions aims to create a conducive environment for e-commerce by establishing obligations relating to consumer and privacy protection (Articles 12.7 and 12.8), unsolicited commercial electronic messages (SPAM) (Article 12.9), electronic transaction frameworks (Article 12.10), and transparency of government measures (Article 12.12).

Importantly, RCEP Parties have agreed to maintain their current practice of not imposing customs duties on electronic transmissions (e.g. e-books) (Article 12.11). The chapter also contains rules that prevent barriers to cross-border transfer of information, while upholding the government's ability to take contrary measures for legitimate public policy, such as privacy protection, or measures in its essential security interests (Article 12.15).

The chapter contains a cooperation section in areas such as research and training initiatives, assisting SMEs, and encouraging business sectors to develop means for enhancing accountability and consumer confidence (Article 12.16). There is also a provision that recognises the value of cooperation on cybersecurity matters.

4.14.1 Advantages of entering RCEP, Electronic Commerce

RCEP markets present a huge opportunity for New Zealand, including for New Zealand companies that sell goods and services online. China has the most digital consumers of any market in the world and ASEAN is a growing market in the digital space.

RCEP will introduce specific rules on e-commerce for the first time in a trade agreement between New Zealand and South Korea. RCEP will also provide additional e-commerce disciplines to build on those we have agreed in AANZFTA and our FTA with China. The inclusion of these e-commerce obligations will modernise the trading relationship with our RCEP partners, particularly those not party to CPTPP.

The COVID-19 crisis has highlighted the value in agreeing rules on e-commerce. Many of the ways in which the challenges of the COVID-19 crisis are being addressed are digital. COVID-19 has increased demand for digital services and products, including in RCEP markets. Many New Zealand businesses are already operating digitally or providing digital services and products, and will be able to access those markets, confident that there are clear rules to enable e-commerce.

The e-commerce chapter helps protect New Zealand consumers and businesses engaging online within RCEP markets through a focus on consumer protection and personal information protection. The chapter includes requirements in Section C for RCEP Parties to have a legal framework to ensure protection of personal information of e-commerce users, as well as laws on online consumer protection. This helps build public confidence in the use of e-commerce, and that the information and rights of businesses and consumers will be respected. The requirement in Article 12.8 for RCEP Parties to adopt or maintain privacy frameworks will help put laws in place to protect personal information that is sent across borders in the course of business. RCEP Parties must also publish information on how consumers can pursue remedies and how businesses can comply with legal requirements on consumer and privacy protection. In New Zealand's case, these obligations are already met through our broader regulatory framework covering privacy and consumer protection. RCEP will ensure requirements also apply to New Zealand businesses and consumers engaged in cross-border e-commerce transactions within RCEP markets.

The e-commerce provisions will also assist New Zealand businesses in harnessing the efficiencies of e-commerce. A particularly important outcome is the inclusion of rules in Article 12.14 and 12.15 that prohibit RCEP Parties from preventing cross-border transfer of information or requiring computing facilities to be located in their territory, similar to those in CPTPP. RCEP is the first time we have agreed such rules with Cambodia, China, Indonesia, South Korea, Laos, Myanmar, Philippines and Thailand. These provisions recognise the value of information flows and will remove unnecessary barriers to the transfer of business information, which is of benefit to New Zealand companies that rely on the transfer of information.

4.14.2 Disadvantages of entering RCEP, Electronic Commerce

Concerns have been raised about the potential for e-commerce rules, particularly relating to data, to impact on the Government's right to regulate. All of the e-commerce obligations sit within New Zealand's current policy settings. In addition, RCEP contains a number of agreement-wide exceptions that preserve the Government's right to regulate. The provisions on data contain additional policy space so that the Government can regulate to achieve legitimate public policy objectives (for example, to ensure robust privacy and consumer protection or to address new uses of technology), provided such measures are not applied in an arbitrary or unjustifiably discriminatory way, and do not constitute a disguised restriction on trade. The Government is also able to implement measures contrary to the rules on data when it is in New Zealand's essential security interests.

New Zealand has consistently advocated for the extension of the WTO moratorium covering Customs Duties on Electronic Transmissions, and has already agreed to make the non-imposition of customs duties on electronic transmissions permanent with several RCEP Parties through other FTAs (e.g. in

CPTPP with Australia, Brunei, Japan, Malaysia, Singapore and Viet Nam). It was not possible to achieve a similar outcome in RCEP, although RCEP Parties did agree to maintain their current practice of not charging customs duties while the WTO moratorium on Customs Duties on Electronic Transmissions continues (Article 12.11). Should there be a change in approach in the WTO, RCEP Parties are required to come back together and review the non-imposition of customs duties on electronic transmissions in RCEP. This will reinforce the WTO moratorium, providing certainty for New Zealand users of e-commerce that RCEP Parties will not move to impose customs duties on electronic transmissions while the WTO moratorium continues. The moratorium does not prevent New Zealand introducing or amending domestic taxation measures, such as GST.

4.15 Competition

In negotiating competition chapters in FTAs, New Zealand seeks to ensure that efficient competition laws and regulations are maintained and enforced in a fair and transparent way. New Zealand also has a strong interest in ensuring that consumers are protected from anti-competitive behaviour and any misleading or deceptive conduct.

The development of competition policies, laws and institutions across the RCEP region will provide New Zealand businesses with an increasingly stable and predictable regulatory environment. Over time, the development of robust competition policy and regulation across the RCEP region will contribute to the higher economic growth rates of all RCEP Parties, which in turn will provide improved opportunities for New Zealand firms operating in these markets.

4.15.1 Advantages of entering RCEP, Competition

The Competition chapter requires RCEP Parties to adopt or maintain laws which prohibit anti-competitive activities (Article 13.13). This reduces the risk of the benefits of increased trade and investment under the Agreement being compromised by activities which restrict or distort competition. The requirement is consistent with New Zealand's well-developed and well-functioning competition laws. The Commerce Act 1986 prohibits anti-competitive conduct, and the Commerce Commission is primarily responsible for enforcing the Act. The Fair Trading Act protects consumers against being misled or treated unfairly, prohibiting misleading and deceptive conduct, unsubstantiated claims, false representations and certain unfair practices.

The Competition chapter also provides that competition laws and their enforcement shall be consistent with the principles of transparency, non-discrimination, and procedural fairness (Article 13.13). This ensures that there is a stable and predictable business environment for New Zealand businesses operating in the RCEP region. These principles are consistent with the approach New Zealand already takes in the implementation of competition laws and policies and are in line with the APEC *Principles to Enhance Competition and Regulatory Reform*.

In line with these outcomes, the Competition Chapter requires that RCEP Parties have in place competition laws that prohibit anti-competitive conduct, and authorities responsible for enforcing those competition laws. It also seeks to facilitate economic efficiency and consumer welfare through

the promotion of open and transparent markets, and prohibiting the use of misleading practice, or false and misleading descriptions. This chapter increases the protection of confidential information (Article 13.5), and cooperation in the promotion of competition, economic efficiency, consumer welfare and the reduction of anti-competitive practices (Article 13.4). This is consistent with New Zealand's view that competition policy is an important area for economic cooperation.

The Competition chapter also requires RCEP Parties to adopt or maintain laws which prohibit the use in trade of misleading practices, or false or misleading descriptions (Article 13.7). These laws are aimed at consumer protection and play a role in creating efficient and competitive markets, creating benefits for New Zealand consumers purchasing goods or services in the RCEP region. Such issues increasingly transcend national borders and international cooperation is important in addressing misleading practices, or false or misleading descriptions.

RCEP Parties are also required to apply their national competition law to all commercial activities (Article 13.3(5)). This creates a more competitive operating environment which in turn can lead to increased efficiency and economic growth as well as enhanced consumer welfare. However, a mechanism exists to exempt certain commercial activities from laws prohibiting anti-competitive conduct. This ensures that the New Zealand government has the policy flexibility required to carve out specific areas of interest where there may be public policy or public interest circumstances to do so.

The chapter also increases cooperation between RCEP Parties relating to the enforcement of competition laws, and deterring cross-border anti-competitive business conduct (Articles 13.4 and 13.6). This will have a positive impact on the RCEP region's business environment, promoting competition over the long-term. The cooperation provisions also encourage the sharing of best practice, addressing competition issues that arrive across the region and maintaining contacts which can be called upon if more serious issues arise.

4.15.2 Disadvantages of entering RCEP, Competition

There are no significant disadvantages that could arise from this Chapter for New Zealand. New Zealand has had a well-developed and well-functioning competition law for a number of years. As such, New Zealand would not need to amend its competition laws or policy to meet these requirements.

4.16 Small and Medium Enterprises

New Zealand's small and medium-sized enterprises (SMEs) account for around 40 percent of employment but only 35 percent of value-added – suggesting they are less productive on average than larger firms. SMEs can face many challenges relative to large firms including difficulty taking advantage of economies of scale, getting access to credit or investment, or lack of appropriate skills.³⁷ Increasing

³⁷ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

SME participation in trade may be one way to improve productivity and wages in SMEs.³⁸ In negotiating the RCEP Small and Medium Enterprises chapter, New Zealand sought to enable SME participation in the value chains that will be established once RCEP comes into force.

4.16.1 Advantages of entering RCEP, Small and Medium Enterprises

Most of New Zealand's businesses and traders are small. SMEs (defined as having less than 50 employees) account for 99 percent of New Zealand's businesses.³⁹ Given the prevalence of SMEs in New Zealand's business landscape, the majority of New Zealand's exporters are SMEs, although they only make up a small fraction of total trade. Despite a high number of SME exporters in absolute terms, the participation rate of SMEs as direct exporters is relatively low. In 2018, less than a quarter of New Zealand SMEs export. This compares to one third of large firms.

The global value chains which will be established once the Agreement comes into force will provide new opportunities for New Zealand SMEs to engage in RCEP markets – whether as direct exporters, suppliers to large firms that export, or importers of competitively-priced foreign inputs and technologies. Research by the OECD suggests that in countries where export propensity by SMEs is higher (measured as SME's share of exports divided by the share of output); the wage gap between SMEs and large firms is smaller.⁴⁰

Stronger participation by New Zealand's SMEs in RCEP markets may help New Zealand SMEs learn, evolve and exploit economies of scale; reinforcing growth and employment, and enhancing productivity. Technological progress, including the expansion of e-commerce, may help to reduce barriers for SMEs to engage in trade.⁴¹ To facilitate this, RCEP Parties have agreed to strengthen their cooperation in areas such as the use of e-commerce by SMEs and encouraging innovation and use of technology (Article 14.3).

The Small and Medium Enterprises chapter will help New Zealand SMEs become aware of the opportunities created by the Agreement and enable them to access information on a Party's domestic laws and regulations (Article 14.2). Entering RCEP would allow New Zealand to influence RCEP's Committee on Sustainable Growth⁴² sharing of knowledge and best practices in line with New Zealand's interests. This will assist with the design and implementation of cooperation activities in RCEP economies which support the internationalisation of New Zealand's SMEs, including through equipping them to effectively participate in global value chains once RCEP comes into force.

New Zealand would incur a minimal cost in establishing and maintaining online information about the Agreement.

³⁸ Ibid

³⁹ Source: Statistics New Zealand

⁴⁰ <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Plenary-Session-3.pdf>

⁴¹ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

⁴² The RCEP Committee on Sustainable Growth will cover work relating to small and medium enterprises; economic and technical cooperation; and emerging issues.

4.16.1 Disadvantages of entering RCEP, Small and Medium Enterprises

There are no other disadvantages for New Zealand expected to arise from this chapter.

4.17 Economic and Technical Cooperation

The purpose of the Economic and Technical Cooperation (ETC) chapter is to help implement and enhance the benefits of RCEP among RCEP Parties. Potential areas where RCEP Parties may look to collaborate on ETC activities include (but are not limited to) trade in goods and services, investment, intellectual property, e-commerce, competition and small and medium enterprises' issues (Article 15.3.2). The ETC activities will be mutually determined by RCEP Parties, through the RCEP Committee on Sustainable Growth, and included in a work programme (Article 15.5).

4.17.1 Advantages of entering RCEP, Economic and Technical Cooperation

This chapter provides an opportunity to better coordinate New Zealand's economic and technical cooperation activities across the RCEP region. RCEP Parties have agreed to prioritise activities that, amongst other things, provide capacity building and technical assistance to developing country RCEP Parties and least developed country RCEP Parties, and enhance access to information for businesses. Prioritising these areas will help ensure that all RCEP Parties are able to implement RCEP as soon as possible and utilise it once it comes into force. The Chapter will also enhance 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.

4.17.2 Disadvantages of entering RCEP, Economic and Technical Cooperation

There are no disadvantages for New Zealand expected to arise from this Chapter. Article 15.4 ensures that resources for economic and technical cooperation will be provided voluntarily and agreed upon by the cooperating RCEP parties.

4.18 Government Procurement

The purpose of the Government Procurement⁴³ chapter is to promote fair and transparent conditions of competition in the government procurement markets covered by the Agreement. It also promotes cooperation between RCEP Parties through information exchange on government procurement issues. While the chapter does not provide for market access to RCEP Parties' government procurement markets, it does provide a foundation on which to improve commitments that would benefit New Zealand businesses in the future.

It is a positive outcome to have secured a chapter on Government Procurement, which reflects New Zealand's ambition that a modern and comprehensive FTA should include commitments on government procurement. It is the first such chapter for ASEAN collectively.

⁴³ Government procurement is the acquisition of goods and services, including construction services, by government entities from third parties to fulfil their public functions.

4.18.1 Advantages of entering RCEP, Government Procurement

The Government Procurement chapter would provide New Zealand businesses with greater transparency on RCEP Parties' government procurement laws, regulations and procedures (Article 16.4). Annex 16A specifies the ways in which RCEP parties publicise their government laws, regulations and procedures, as well as tender notifications. The cooperation provisions within the chapter will provide an avenue that can be used to enhance mutual understanding of RCEP Parties' respective government procurement laws, regulations and procedures (Article 16.5).

New Zealand has government procurement commitments in existing FTAs already with the following RCEP Parties: Brunei-Darussalam, Singapore, Viet Nam, Australia, Japan, South Korea, Thailand and China. RCEP represents a modest step forward to securing improved government procurement commitments in future with Cambodia, Indonesia, Laos, Malaysia, Myanmar, and Philippines.

4.18.2 Disadvantages of entering RCEP, Government Procurement

New Zealand would not be required to change its current procurement policy on entering RCEP, as the obligations for New Zealand are consistent with New Zealand's established government procurement policy frameworks and practice. Accordingly, there are no disadvantages for New Zealand expected to arise from this chapter.

4.19 Legal and Institutional Provisions

FTAs include legal and institutional provisions that cover matters such as how and when the Agreement will enter into force, how other countries may join the Agreement, how RCEP Parties should resolve issues in the case of a dispute, and what exceptions are allowed. In RCEP, the legal and institutional provisions are covered by the Preamble, and chapters on Initial Provisions and General Definitions, General Provisions and Exceptions, Dispute Settlement, and Final Provisions.

4.19.1 Advantages of entering RCEP, Legal and Institutional Provisions

RCEP's preamble text expressly recognises the RCEP Parties' right to regulate in pursuit of legitimate public welfare objectives. The preamble also refers to the three pillars of sustainable development (being economic development, social development and environmental protection) and the important role that economic partnerships play in promoting sustainable development.

Where New Zealand has another FTA with one of the RCEP Parties, Article 20.3 (*Relation to Other Agreements*) confirms the ability for New Zealand exporters to take advantage of whichever agreement provides the most favourable treatment for goods, services, investment, and persons. In addition, the final provisions chapter states that RCEP would not undermine any of New Zealand's rights under the WTO Agreements.

The General Provisions and Exceptions chapter contains a provision to facilitate the prevention of corruption. Article 17.9 (*Measures against Corruption*) provides that each Party shall, in accordance with its laws and regulations, take appropriate measures to prevent and combat corruption regarding matters covered by this Agreement.

The General Provisions and Exceptions chapter also sets out a number of exceptions which provide a safety net to ensure that RCEP does not impair the New Zealand government's ability to make policy and undertake measures to further that policy. These exceptions would allow New Zealand to benefit from the negotiated outcomes of RCEP while still having the freedom to introduce policies that would be otherwise inconsistent with the commitments in the Agreement.

The General Provisions and Exceptions Chapter incorporates the GATT and GATS general exceptions (Articles XX and XIV respectively) which allow RCEP Parties to, for example, adopt measures necessary to protect public morals, human, animal or plant life or health or; those related to the conservation of exhaustible natural resources, provided a measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

RCEP contains a number of other exceptions, including:

- A Treaty of Waitangi exception that would allow New Zealand to take measures it deemed necessary to accord more favourable treatment to Māori in respect of matters covered by RCEP, including in fulfilment of its obligations under the Treaty of Waitangi. The exception also states that the interpretation of the Treaty of Waitangi, including the nature of the rights and obligations arising under it, shall not be subject to dispute settlement (Article 17.16);
- A security exception that allows a RCEP member to take any action which it considered necessary for the protection of its essential security interests in a number of circumstances (Article 17.13);
- A 'balance of payments' exception that provides policy flexibility in the case of serious balance of payments and external financial difficulties (article 17.15); and
- A taxation exception which stipulates that nothing in the Agreement will apply to a taxation measure except to the extent the WTO agreement grants or imposes right and obligations with respect to such taxation measures. Additionally, the taxation exception provides helpful guidance on what taxation measures are. The exception states that RCEP will not affect the rights and obligations of any Party under any tax convention. In the event of any inconsistency relating to a taxation measure between RCEP and any such tax convention, the tax convention will prevail (Article 17.14).

In a number of previous FTAs, New Zealand has negotiated language in the FTA text which clarifies that the exception in GATT Article XX(f) (which allows measures necessary for the protection of national treasures of artistic, historic or archaeological value) allows the Government to take measures to protect specific sites of historical or archaeological value, or to support creative arts of national value. Unfortunately, we were not able to negotiate the inclusion of such language in RCEP. CPTPP is an example of another FTA that also does not have this language. 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.

The Institutional Provisions chapter establishes the institutional arrangements for RCEP and the structure for the meetings of the RCEP ministers, RCEP Joint Committee and other Committees/Sub-committees. The RCEP Joint Committee will oversee and guide implementation of the RCEP

Agreement. Its core functions include supervising and coordinating the work of subsidiary bodies to be established, either at the outset or in the future, pursuant to the Agreement (Article 18.3).

The Institutional Provisions chapter establishes four thematic committees which will consider work arising from a cluster of chapters (Article 18.6):

- (a) a Committee on Goods, to cover work on trade in goods; rules of origin; customs procedures and trade facilitation; sanitary and phytosanitary measures; standards, technical regulations, and conformity assessment procedures; and trade remedies;
- (b) a Committee on Services and Investment, to cover work on trade in services including financial service; telecommunication services, and professional services; temporary movement of natural persons; and investment;
- (c) a Committee on Sustainable Growth, to cover work on small and medium enterprises; economic and technical cooperation; and emerging issues; and
- (d) a Committee on the Business Environment, to cover work on intellectual property; electronic commerce, competition and government procurement.

The functions of these committees are set out in Annex 18A. These thematic committees will meet annually or as mutually determined by RCEP Parties. Through the committees established under this chapter, RCEP would provide an opportunity to facilitate the flow of goods and services from exporters into the RCEP regional economy. New Zealand will benefit by having a seat at the table, steering the design and implementation of programmes in RCEP economies which support our interest in the agreed committees of goods, services and investment, sustainable growth, and the business environment.

These provisions will ensure RCEP Parties are able to efficiently and effectively consult and cooperate with each other on issues and opportunities related to RCEP's implementation. Entering RCEP would allow New Zealand to influence the Joint Committee and various sub-committees' sharing of knowledge and best practices in line with New Zealand's interests.

The Dispute Settlement chapter (Chapter 19) provides a robust and binding state to state to dispute settlement procedure to resolve disputes arising between RCEP Parties and thereby helps to ensure that New Zealand can take advantage of the RCEP commitments and obligations. If a dispute involves a least developed country, particular consideration would be given to the special situation of the least developed country Party (article 19.18). Investor State Dispute Settlement will not apply to New Zealand in RCEP.

4.19.2 Disadvantages of entering RCEP, Legal and Institutional Provisions

The legal and institutional provisions do not present any disadvantages to New Zealand. This reflects the fact that most of the provisions are cross-cutting in nature providing important clarifications and exceptions to other obligations in the Agreement. Additionally the provisions, including the dispute settlement procedures and the exceptions, are reciprocal in nature, ensuring the effective implementation of RCEP obligations and the preservation of New Zealand and other RCEP countries' ability to regulate in the public interest.

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, chapter by chapter, the legal obligations that would be imposed on New Zealand under RCEP. As noted in section 6 below, the vast majority of the obligations described in this section will be met by New Zealand's existing domestic legal and policy regime. Only a small number of amendments to the Tariff Act 1988 and the Customs and Excise Regulations 1996 will be required to align New Zealand's domestic legal regime with the legal obligations under RCEP.

5.1 Initial Provisions and General Definitions

The Initial Provisions and General Definitions Chapter establish RCEP as a free trade area, consistent with Article XXIV of GATT 1994 and Article V of GATS (Article 1.1). This chapter also sets out the general definitions that apply across the Agreement (Article 1.2) and the overarching objectives for the Agreement (Article 1.3).

5.2 Trade in Goods

National Treatment on Internal Taxation and Regulation

The National Treatment obligation requires each Party to afford national treatment to the goods of the other RCEP Parties in accordance with Article III of the GATT 1994 (Article 2.3).

Reduction and/or Elimination of Customs Duties

Unless the Agreement states otherwise, each Party is required to progressively eliminate its customs duties on originating goods in accordance with its Schedule of Tariff Commitments (Article 2.4.1). In addition to this, exporting RCEP Parties are eligible, at the time of importation, for the (MFN) applied rate of customs duty for those goods in a Party, where that rate is lower than the rate of customs duty provided for in that Party's Schedule of Tariff Commitments (Article 2.4.2). Subject to each Party's laws and regulations, each Party must allow an importer to apply for a refund of any excess duty paid for a good (Article 2.4.2). Each Party must make publically available any changes to the MFN applied rate of customs duty no later than the date the change applies (Article 2.4.3).

Acceleration of Tariff Commitments

RCEP Parties may consult on the acceleration or improvement of tariff commitments set out in the Schedule of Tariff Commitments. Consultations must be held between the requesting Party and one or more other RCEP Parties following such a request (Article 2.5.2). The acceleration or improvement of tariff commitments on an originating good set out in a Party's Schedule of Tariff Commitments can either be agreed between that Party and at least one other Party (Article 2.5.2) or be decided unilaterally by that Party (Article 2.5.3). In these circumstances, any such improvement or acceleration of tariff commitments must be extended to all RCEP Parties and be notified to the other RCEP Parties as early as practicable before the new rate of customs duty takes effect (Article 2.5.4).

Tariff Differentials

Provided a good acquires its originating status in accordance with Article 3.2 (Originating Goods), Article 2.6 ensures that preferential tariff treatment is granted even where an importing Party applies differential tariff rates to particular RCEP parties. Furthermore, for an originating good identified by the importing Party in an appendix in its schedule of tariff commitments in Annex I the RCEP country of origin will be the exporting Party, provided that the good meets the requirements specified in that Appendix (Article 2.6.3).

However, in the event that the exporting Party of an originating good does not qualify as the RCEP country of origin in accordance with the requirements specified in the Appendix, the RCEP country of origin for that originating good will be the Party where the highest value was added among originating materials used in the production of that originating good in the exporting Party. In this case, the originating good is eligible for preferential tariff treatment applicable to the originating good of that Party (Article 2.6.4).

An importer can make a claim for preferential tariff treatment at either: the highest rate of customs duty that the importing Party applies to the same originating good from any of the RCEP Parties, where originating materials used in the production of such good acquired their respective originating status (provided that the importer is able to support such a claim), or the highest rate of customs duty that the importing Party applies to the same originating good from any of the RCEP Parties (Article 2.6.7).

Article 2.6, including each Party's Appendix, will be reviewed within two years of the date of entry into force of the Agreement and thereafter, every three years or as agreed the RCEP Parties, with a view to further reducing or eliminating the conditions and requirements.

Treatment of goods

A Party must classify goods in trade among the RCEP Parties in conformity with the harmonized system (Article 2.7). For the purposes of determining the customs value of goods traded among the RCEP Parties, and to facilitate customs clearance of goods in transit from or to the RCEP Parties, the provisions of GATT 1994 must be applied (Article 2.8 and 2.9 respectively).

Application of customs duties

Articles 2.10, 2.11 and 2.12 set out conditions for the total or partial removal of the application of customs duties in a range of circumstances.

Temporary admission of goods is covered by Article 2.10. In accordance with the laws and regulations of each Party, goods entered for a specific purpose, intended for re-exportation within a specific period, and having not undergone any change, should be relieved totally or partially from payment of import duties and taxes.

Temporary admission of containers and pallets is covered by Article 2.11. Duty-free temporary admission of containers and pallets will be granted in accordance with the laws and regulations or the provisions of the related international conventions for which the importing Party is a signatory. Definitions of a container and pallet are set out in Articles 2.11.1 (a) and 2.11.1 (b), respectively. The Article requires that RCEP Parties allow for the prompt departure of containers, not require any security or impose any penalty by reason of any difference between the port of entry and departure, or condition release of any security on the container's exit through a particular port, and not require that the carrier of the container on entry be the same on exit.

Article 2.12 ensures the import of samples of no commercial value will be granted duty-free entry, subject to the importing Party's laws and regulations, regardless of their origin.

Agricultural Export Subsidies

Article 2.13 reaffirms the commitment by RCEP Parties to eliminate scheduled export subsidies for agricultural goods that was made in the 2015 WTO Ministerial Decision on Export Competition. Furthermore, RCEP Parties declare their support for the objective of the multilateral elimination of export subsidies for agricultural goods and agree to work together to prevent their reintroduction.

Periodic amendments to schedule of tariff commitments

All RCEP Parties are required to ensure that future amendments to the tariff nomenclature do not impair the tariff commitments made under the FTA (Article 2.14).

Modification of Concessions

Article 2.15 sets out a negotiation process where a Party may, in exceptional circumstances and with agreement from all other interested RCEP Parties, seek approval from the RCEP Joint Committee to modify or withdraw a concession.

Application of Non-Tariff Measures

In accordance with each Party's WTO rights and obligations, no Party may adopt or maintain a non-tariff measure on an imported good (Article 2.16.1). Each Party must ensure the transparency of any non-tariff measures (Article 2.16.2).

General Elimination of Quantitative Restrictions

Article 2.17.1 states that RCEP Parties are not permitted to prohibit or restrict the importation of any good of another Party. Furthermore, RCEP Parties are not allowed to prohibit or restrict the exportation or sale for export of any good of another Party. The only exception to this is if the prohibition or restriction is in accordance with Article XI of the GATT, which is incorporated into RCEP.

Notwithstanding this obligation, where a Party adopts a prohibition or restriction consistent with their WTO obligations, the RCEP Party must, upon request, inform the other RCEP Parties and provide affected RCEP Parties with a reasonable opportunity for consultation (Article 2.17.2).

Technical Consultations on Non-Tariff Measures

A Party can request in writing technical consultations with another Party on a measure that it considers to be adversely affecting its trade (Article 2.18.1). A requested Party must respond to such requests and a mutually satisfactory solution must be agreed by the consulting RCEP Parties (Article 2.18.3). Other RCEP Parties may request to join the consultations (Article 2.18.4). If the consultations are considered urgent or involve perishable goods, a request can be made within a shorter period (Article 2.18.5). Technical consultations under this Article must be notified annually to the Committee on Trade in Goods (Article 2.18.6).

Import Licensing Procedures

Article 2.19 contains a number of obligations relating to import licensing including a prohibition on measures that are inconsistent with the WTO Import Licensing Agreement (Article 2.19.1), and an obligation on RCEP Parties to notify the other RCEP Parties of any new or modified import licensing procedures (Article 2.19.3). RCEP Parties may enquire about another Party's licensing rules and procedures (Article 2.19.7), and if a Party denies an import license application with respect to the goods of another Party, it must, on request, provide the applicant with an explanation of the reasons for the denial (Article 2.19.9).

Fees and Formalities Connected with Importation and Exportation

Article 2.20 requires each Party to ensure that all fees and charges (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charge are applied consistently with GATT Article III:2, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports and exports for fiscal purposes (Article 2.20.1). RCEP Parties are also prohibited from requiring consular transactions in connection with the importation of any good of the other RCEP Parties (Article 2.20.3), and are required to make available online a list of the fees and charges it imposes in connection with importation or exportation (Article 2.20.2). Finally, RCEP Parties are prohibited from requiring consular transactions, including related fees and charges, in connection with the importation of a good of another RCEP Party. Further to this, no RCEP Party can require that any customs documentation supplied in connection with the importation of any good of another Party be endorsed, certified, or otherwise sighted or approved by the importing Party's overseas representatives (Article 2.20.3).

Sectoral Initiatives

RCEP Parties may decide to initiate a work programme on sector-specific issues which, if established, will be overseen by the Committee on Trade in Goods who will endeavour to finalise a work programme no later than two years after the initiation of the work programme (Article 2.21.1). Sectors to be included in the work programme may include those sectors proposed by RCEP Parties during the course of negotiations (for example, cosmetics, wine and distilled spirits, as proposed by New Zealand).

Any work programme initiated should be conducted in a manner that enhances the RCEP Parties' understanding of the issue, facilitates input from businesses and other stakeholders, and explores possible actions (Article 2.21.3). The Committee on Trade in Goods may make recommendations to the RCEP Joint Committee based on outcomes from the work programmes (Article 2.21.4).

5.3 Rules of Origin

The Rules of Origin (RoO) chapter establishes the rules for determining whether goods traded between RCEP Parties are considered to 'originate' in the RCEP region. Goods must qualify as 'originating' in order to qualify for the benefits, including preferential tariff rates, under the Agreement.

Section A: Rules of Origin

Article 3.2 provides three avenues through which goods can qualify as 'originating'. A good will qualify as originating if it:

- is wholly obtained or produced entirely in the territory of an RCEP Party (wholly obtained goods are listed in Article 3.3) (Article 3.2 (a));
- is produced entirely in the territory of an RCEP Party, exclusively from originating materials (Article 3.2 (b)); or
- is produced entirely in the territory of one or more of the RCEP Parties using non-originating materials, provided that the good meets the criteria set out in the Product Specific Rules (PSR) annex (Article 3.2 (c)).

The two main methods set out in the PSR annex for determining whether a good qualifies as originating under Article 3.2 (c) are:

- Change in tariff classification (CTC): under this approach, a good will qualify as originating if the non-RCEP materials used in its production have undergone a specified change in tariff classification.
- Regional value content (RVC): this approach, which is provided as an alternative option primarily for industrial products, is based on the value added by producers within the RCEP region.

Where the PSR annex has more than one rule for a good, the identified rules are co-equal, meaning that an exporter or manufacturer can elect to use either the CTC or RVC rule depending on which approach best suits their business model. Furthermore, where the PSR identified in the Schedule is "WO" (wholly obtained), the good can also gain origin by also being produced exclusively from originating materials from one or more of the RCEP Parties as provided under Article 3.2(b).

Article 3.4 provides for the cumulation of materials when determining the origin of goods. On entry into force, the ability to cumulate materials is limited to originating goods, which are goods that already have origin status. However, paragraph 2 of Article 3.4 requires RCEP Parties to undertake a review to consider the extension of the cumulation to 'full' cumulation.

Article 3.5 sets out the two formulas to be used to calculate the RVC of a good.

Article 3.6 lists specific processes or activities that are not sufficient to give a non-originating good origin status.

Article 3.7 provides for a small tolerance for a good to be considered originating, even if it does not meet the applicable change in tariff classification requirement, provided the good meets all the other applicable requirements of the ROO chapter. This de minimis provision only applies under a CTC rule, and provides a 10% tolerance on the value of any good, and a 10% weight tolerance for goods in chapters 50 to 63 of the Harmonized System.

Articles 3.8 to 3.12 set out in more detail specific conditions in relation to determining the origin status of a good, specifically:

- Article 3.8 establishes that packing materials and containers used to transport or ship a good will not be taken into account when determining origin of the good. Furthermore, packaging materials and containers for which a good is packaged for retail sale, and are classified together with the good, will not be taken into account when determining origin, if the good is wholly obtained or produced entirely in a Party, or gains origin through a CTC rule in the PSR annex. Where a good gain originating status through an RVC requirement in the PSR annex, packing materials and containers must be taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.
- Article 3.9 establishes that accessories, spare parts, tools, and instructional and other information that is normally provided with a good (for example, a spare tyre) be considered as part of the good and be disregarded in determining whether the non-originating materials in the good have met the requirements of a CTC or process rule set out in the PSR annex. If a RVC rule is being utilised, the value of the accessories and other materials are to be taken into account as originating or non-originating materials, as the case may be, in calculating the RVC of the good.
- Article 3.10 provides that 'indirect materials' (such as fuels, solvents and lubricants) will be treated as originating materials when used in the production, testing or inspection of another good without regard to where the indirect material was produced.
- Article 3.11 provides that a fungible good or material be treated as originating based on physical segregation or where commingled by the use of an accepted inventory management method, provided that the inventory management method selected is used throughout the fiscal year.
- Article 3.12 provides that where a non-originating material is produced and becomes an originating good, it is considered an originating good in subsequent production processes.

Article 3.13 provides that the unit of qualification of a good shall be in accordance with the classification for the good under the Harmonized System.

Article 3.14 establishes a mechanism for RCEP Parties to hold discussions on alternative ways to treat certain goods.

Article 3.15 provides that a good be transported directly between the exporting and importing RCEP Parties, and where this does not occur, establishes requirements for when a good transits through either a Party, other than the exporter or importer, or through a non-Party.

Section B: Operational Certification Procedures

Section B sets out procedures each Party must apply to implement the origin requirements in the chapter. These requirements are summarised below.

The chapter provides two forms of origin documentation:

1. a 'certification of origin' which may be completed by the exporter, producer or authorised representative (Article 3.17)
2. a declaration of origin completed by an exporter or producer (Article 3.18) or an 'Approved Exporter' subject to minimal information requirements (annex 3B).

In addition, a Party may issue a 'back-to-back proof of origin' where goods transit through that Party (Article 3.19) and RCEP Parties shall not deny a claim for preferential treatment where an invoice is not issued by the exporter or producer of the goods (Article 3.20).

Article 3.21 allows each Party to establish an 'Approved Exporter' programme. An approved exporter is required to meet publically available criteria and is able to self-declare the origin of their goods. RCEP Parties that implement an Approved Exporter programme are required to make information available to other RCEP Parties on the exporters it grants Approved Exporter status to.

Article 3.22 outlines the requirements to make a claim for preferential tariff treatment. An importer is required to hold a valid proof of origin document when making an application on an import declaration and provide this documentation to the authorities in the importing Party, if required. The Article further states that proof of origin may not be required if:

1. Customs value of the imported goods does not exceed US\$200 or the equivalent amount in the importing Party's currency, or any higher amount established by the importing Party; or
2. the importing Party has waived the requirement in relation to the type of good being imported;

but the importation may not form part of a series of importations carried out or planned to evade compliance with importing Party's laws governing claims for preferential tariff treatment.

The Article also requires an importer, when requested by the importing Party, to provide evidence that good qualifies as originating, and that any relevant requirements about transport through RCEP Parties or non-Parties have been complied with. In addition, the Article allows an importing Party to accept a proof of origin document outside the normal timeframe in certain situations.

Recognising that a claim under the Agreement for a preferential tariff rate may not always be made at the time of importation, Article 3.23 requires RCEP Parties to allow an importer to apply for preferential tariff treatment after the importation and seek a refund of any excess duties paid, provided the good would have qualified for preferential tariff treatment when it was imported and adequate supporting documentation can be provided.

Article 3.24 details the means a Party may use to verify whether a good qualifies for origin status under the chapter. The Article provides the importing Party with options on how they undertake a

verification activity, sets timelines for the information requested under each option to be provided, and requires a written notification of the result of the verification activity.

A Party can deny access to preferential tariff rates where the requirements of the chapter are not met (Article 3.25), but will disregard minor discrepancies or errors in origin documents provided the origin of the goods is not in doubt (Article 3.26).

Each Party is required to ensure that exporters, producers, issuing bodies or competent authorities who hold records relating to a proof of origin are required to hold those records for three years or longer in accordance with a Party's relevant laws and regulations. These records can be held in any form as long as they can be promptly retrieved (Article 3.27).

To ensure the efficient implementation of the chapter, RCEP Parties can consult with each other when necessary (Article 3.28) or develop an electronic system to exchange information (Article 3.29).

In addition, each Party must have penalties against violations of laws and regulations relating to the chapter (Article 3.31), and maintain the confidentiality of the information collected in accordance with the chapter and in accordance with its laws and regulations (Article 3.32).

5.4 Customs Procedures and Trade Facilitation

This chapter includes a range of obligations in respect of customs administration and trade facilitation, including customs cooperation. These commitments fall within current policy settings and include:

- Ensuring customs procedures and practices are predictable, consistent, and transparent (Article 4.7). This includes ensuring comprehensive information on customs laws and requirements is easily accessible (Article 4.5), the consistent application of customs laws and regulations across ports of entry (Article 4.4), and the issuing of advance rulings on origin, classification and valuation (Article 4.10). There is also a commitment to establish enquiry points to answer enquiries from traders and provide access to trade documents (Article 4.6).
- Ensuring the expeditious clearance and release of goods. Each Party shall establish procedures to enable pre-arrival processing of imported goods (Article 4.9). All imported goods, to the extent possible, should be released by Customs as quickly as possible, but no longer than 48 hours from arrival (Article 4.11). Express consignments and perishable goods should be released by Customs within six hours (Article 4.15 and Article 4.11).
- Ensuring the ability to review and appeal any decision made by Customs, and for the outcome of the review or appeal to be provided in writing, including the reasoning behind the outcome of the review and appeal (Article 4.18).
- Encouraging the use of international best practice on customs and to the extent possible, the use of automated systems including the electronic submission of import requirements in advance of the arrival of the goods to expedite the release of goods (Article 4.12).
- Encouraging cooperation between RCEP Parties' customs agencies to implement the Agreement, including resolving any matters arising from the implementation, simplifying and harmonising customs procedures and any other issues RCEP Parties agree upon (Article 4.19).

The chapter also recognises the different levels of readiness between RCEP Parties to implement commitments in the Agreement, so provides for the deferred implementation of specified commitments by RCEP Parties (Article 4.21). Details of the deferred commitments are provided in Annex 4A to the chapter.

5.5 Sanitary and Phytosanitary Measures

The SPS chapter delivers an outcome that upholds the principles and application of the WTO SPS Agreement and facilitates trade while also preserving New Zealand's existing biosecurity and food safety regimes. The RCEP SPS chapter will complement and provide regulatory coherence with the existing SPS agreements that New Zealand has with its RCEP partners under the AANZFTA, China FTA, CPTPP, Korea FTA, Malaysia FTA, Singapore CEP and Thailand CEP.

The SPS chapter is focussed on practical implementation of the WTO SPS Agreement rights and obligations, including through provisions that SPS measures are science-based; that is, based on the standards of the relevant international standard setting bodies, or based on a scientific risk assessment. Key elements of the SPS chapter are equivalence (Article 5.5), adaptation to regional conditions (Article 5.6), risk analysis (Article 5.7) and transparency (Article 5.12). The SPS chapter also has provisions on audit (Article 5.8), certification (Article 5.9), import checks (Article 5.10), emergency measures (Article 5.11), cooperation (Article 5.13), and technical consultations (Article 5.14). The SPS chapter enables the development of bilateral or plurilateral arrangements setting out understandings and details for applying the SPS chapter (Article 5.16).

Equivalence

Article 5.5.1 aims to strengthen cooperation on equivalence, in accordance with the WTO SPS Agreement and takes into account international standards, guidelines and recommendations. Article 5.5.2 provides that a Party shall recognise the equivalence of a SPS measure if an exporting Party objectively demonstrates its measure achieves the same level of protection as the importing Party's measure, or that the exporting Party's measure has the same effect in achieving the objective as the importing Party's measure.

Article 5.5.4 provides for determining equivalence with respect to a single measure, a group of measures, or on a systems-wide basis. The Article expands on the WTO SPS Agreement consultation obligations on achieving equivalence recognition, including information exchange and explaining the rationale (Article 5.5.5(a)), specific risks (Article 5.5.5(b)), and process for making an equivalence determination (Article 5.5.6). Consideration of a request for recognition of equivalence shall not be in itself a reason to disrupt or suspend trade in the product or products in question (Article 5.5.7) and when an importing Party recognises equivalence the decision will be communicated in writing and the measure implemented within a reasonable period of time (Article 5.5.8).

Adaptation to regional conditions

Article 5.6 strengthens decisions of the WTO SPS Committee and international standards, guidelines and recommendations by requiring that they be taken into account (Article 5.6.1). The article incorporates key principles or processes contained within documents adopted by the WTO SPS

Committee, including the concept of RCEP Parties cooperating on the recognition of regional conditions with the objective of acquiring confidence in the procedures followed by each Party for such recognition (Article 5.6.2).

The importing Party is also required to; explain its process and plan for making a determination of regional conditions (Article 5.6.3); initiate an assessment for a determination of regional conditions on receipt of sufficient information from an exporting Party (Article 5.6.4); record and communicate decisions in writing (Article 5.6.7), including the rationale if the assessment does not result in recognising regional conditions (Article 5.6.8); and to implement the measure, all within a reasonable period of time (Article 5.6.7).

Risk analysis

Article 5.5 of the WTO SPS Agreement and associated WTO SPS Committee guidance focusses on the processes that the importing WTO Member follows to determine its appropriate level of sanitary or phytosanitary protection and undertakes a risk assessment as part of developing new sanitary or phytosanitary measures. Article 5.7 of the RCEP SPS Chapter strengthens cooperation on risk analysis in accordance with the SPS Agreement, while taking into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations (Article 5.7.1). The article introduces greater transparency and the opportunity for RCEP Parties to comment on the importing Party's process of conducting risk analysis (Article 5.7.2(a)). RCEP parties shall consider risk management options that are not more trade restrictive than required to achieve the appropriate level of sanitary or phytosanitary protection (Article 5.7.2(b)).

Audit

Article 5.8 provides that any audit must be systems-based and designed to check the effectiveness of the regulatory controls of the exporting Party's competent authorities. When an importing Party undertakes an audit, it must take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations (Article 5.8.1).

Prior to commencing an audit, there is a requirement for the importing Party and exporting Party to exchange information on the objectives and scope of the audit and other matters related specifically to the commencement of an audit (Article 5.8.3).

The importing Party must also provide the exporting Party with an opportunity to comment on the findings of an audit and take any such comments into account before making its conclusion and taking any action. The importing Party must also provide a report or its summary, setting out its conclusions in writing to the exporting Party within a reasonable period of time (Article 5.8.4).

Certification

Article 5.9 requires that, in applying certification requirements, each Party must take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations (Article 5.9.1); and limit certification requirements only to the extent necessary to protect human, animal or plant life or health (Article 5.9.4).

RCEP Parties recognise that different systems, other than certificates, may be capable of delivering the same sanitary or phytosanitary objective and an importing Party may allow assurances with respect to sanitary or phytosanitary requirements to be provided through means other than certificates (Article 5.9.3).

Article 5.9.2 provides that an exporting Party is required to ensure that documents, including certificates, provided by the competent authorities of the exporting Party and required by the importing Party are in the English language, unless the importing Party and exporting Party agree otherwise. This provision does not prevent RCEP Parties from including information for certification in other languages in addition to the English language. This provision addresses the importance of having a common language to facilitate trade, recognising empirical analysis of the relationship between language barriers and bilateral trade flows, thus proving language to be a significant deterrent to bilateral trade between countries.

Import checks

Each Party to take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations (Article 5.10.1); and ensure that import checks are based on the risks associated with importations (Article 5.10.2). In the event of an import check revealing a non-compliance that the response is appropriate to the risk; and if an importing Party prohibits or restricts trade on the basis of non-compliance then it must notify the importer or its representatives and, if the importing Party considers necessary, the exporting Party (Article 5.10.3). If there is a significant or recurring pattern of non-compliance, RCEP Parties concerned must discuss the non-compliance to ensure that the appropriate remedial actions are taken to reduce the non-compliance (Article 5.10.4).

Emergency measures

Under Article 5.11.1, a Party that adopts an emergency measure that may have an effect on trade must immediately notify the relevant exporting RCEP Parties in writing. The relevant exporting RCEP Parties may request discussions with the importing Party, and such discussions must be held as soon as practicable (Article 5.11.2). Each Party in the discussions must provide relevant information and take due account of any information that is provided (Article 5.11.2). The Party adopting the emergency measure must review the measure within a reasonable period of time, and make results of the review available on request (Article 5.11.3). If the measure is maintained after the review, the Party adopting the measure should review the measure periodically based on the most recent information available and on request explain the reason for continuing the measure (Article 5.11.3).

Transparency

Article 5.12.3 requires each Party to take into account the relevant decisions of the WTO SPS Committee and international standards, guidelines, and recommendations. Article 5.12.4 requires each Party to notify changes to SPS measures that may have a significant effect on the trade of other RCEP Parties through the online WTO SPS notification submission system or the RCEP SPS chapter contact points or already established communication channels of the RCEP Parties.

Except in cases of urgency, a Party shall allow at least a 60 day period for other RCEP Parties to provide written comment and, if appropriate and feasible, the notifying Party must consider any scientific or trade concerns and the availability of alternative measures (Article 5.12.5 and Article 5.12.6).

Upon request, the notifying Party must provide a Party with documents or summary of the documents describing the requirements of the draft SPS measures notified to the WTO within 30 days in the English language (Article 5.12.7); and of the adopted SPS measure within a reasonable period of time in the English language (Article 5.12.8)

A Party, upon a reasonable request from another Party, must provide relevant information and clarification regarding any SPS measure within a reasonable period of time, including the SPS requirements that apply for the specific imported product, the status of the requesting Party's application and procedures for authorising the import of specific products (Article 5.12.9).

An exporting Party must provide timely and appropriate information to relevant RCEP Parties where there is a significant change in animal or plant or food safety issues in that exporting Party that may affect trade; and as promptly as possible, provide information to the importing Party if the exporting Party identifies that an export consignment that may be associated with a significant SPS risk has been exported (Article 5.12.9 and Article 5.12.10).

An importing Party must provide timely and appropriate information to relevant RCEP Parties where there is significant or recurring sanitary or phytosanitary non-compliance associated with exported consignments identified by the importing Party; or a SPS measure adopted provisionally against or affecting the export of another Party (Article 5.12.11).

Cooperation

Article 5.13.1 requires RCEP Parties to explore opportunities for further cooperation, including capacity building, technical assistance, collaboration and information on sanitary and phytosanitary matter of mutual interest subject to the availability of appropriate resources. In undertaking cooperation activities, RCEP Parties are must endeavour to coordinate with bilateral, regional and multilateral work programmes with the objective of avoiding unnecessary duplication and maximising the use of resources (Article 5.13.3). RCEP Parties are encouraged to share information and experiences of their cooperation activities (Article 5.13.4).

Technical consultations

Article 5.14 sets out a mechanism for technical consultations where a Party considers a sanitary or phytosanitary measure is affecting trade with another Party, including a request for detailed explanation of the measure (Article 5.14.1) and a request to hold technical consultations in an attempt to resolve any concerns on specific issues (Article 5.14.2). The requested Party is required to respond promptly (Article 5.14.2). The consulting RCEP Parties are required to make every effort to reach a mutually satisfactory resolution to the concerns or specific issues raised (Article 5.14.2). Where technical consultations are requested, these need to take place within 30 days of receipt of the request; and aim to resolve the matter within 180 days of the date of the request, or a timeframe agreed between RCEP Parties (Article 5.14.3).

5.6 Standards, Technical Regulations, and Conformity Assessment Procedures

The Standards, Technical Regulations, and Conformity Assessment Procedures chapter builds on New Zealand's existing rights and obligations under the WTO TBT Agreement.

Affirmation and Incorporation of the TBT Agreement

Certain key provisions of the TBT Agreement are incorporated into the RCEP Agreement, which means that those provisions may be relied on for the purposes of dispute settlement (Article 6.4).

International Standards, Guides, and Recommendations

In determining whether an international standard, guide or recommendation exists (within the meaning of Articles 2 and 5, and annex 3 of the TBT Agreement), that Party must take into account the principles set out in the WTO Decision of the TBT Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and annex 3 of the Agreement and subsequent relevant decisions and recommendations in this regard, adopted by the WTO TBT Committee (Article 6.5).

Standards

RCEP will encourage the exchange of information and cooperation in the preparation, adoption and application of standards (Article 6.6.4).

Technical Regulations

RCEP Parties will use international standards as the basis for their technical regulations and shall give positive consideration to accepting as equivalent technical regulations of other RCEP Parties. Where a Party does not accept equivalence of technical regulations, it must explain the reasons for its decision (Article 6.7.1 and 6.7.2).

Each Party shall give positive consideration to accepting as equivalent technical regulations of another Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations. Where a Party does not accept a technical regulation of another Party as equivalent to its own it shall, on request of the other Party, explain the reasons for its decision (Article 6.7.3 and 6.7.4).

Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, RCEP Parties shall allow a reasonable interval between the publication of technical regulations and their entry into force, in order to provide sufficient time for producers in exporting RCEP Parties to adapt their products or methods of production to the requirements of importing RCEP Parties. In this case, "reasonable interval" means not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation (Article 6.7.6).

On request of another Party, the requested Party shall provide, to the extent practicable, relevant information, including studies or documents (except for confidential information), on which it has relied in its development (Article 6.7.7).

The RCEP Agreement provides that each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its whole territory (Article 6.7.8).

Conformity Assessment Procedures

RCEP provides that RCEP Parties recognise the importance of accepting the results of conformity assessment procedures taken in another Party, with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments. RCEP confirms that each Party shall ensure, whenever possible, that results of conformity assessment procedures in another Party are accepted, even when those procedures differ from its own, unless those procedures do not offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures (Articles 6.8.2 and 6.8.3).

If a Party does not accept the results of a conformity assessment procedure that has been conducted in another Party's territory then it must, on request, explain the reasons for its decision (Article 6.8.4).

The chapter contains other requirements relating to conformity assessment, including that:

- Each Party shall, wherever possible, permit the participation of conformity assessment bodies in another Party in its conformity assessment procedures on a non-discriminatory basis. That is, the Party must accord the body with treatment no less favourable than it accords to conformity assessment bodies located in its own territory or in the territory of any other Party (Article 6.4.9).
- RCEP Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between RCEP Parties (Article 6.4.8).

Cooperation

The chapter includes a number of provisions relating to cooperation including:

- RCEP Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures (Article 6.9.1). Such cooperation may include; cooperation between conformity assessment bodies, both governmental and non-governmental; advice, technical assistance or capacity building relating to the development and application of standards, technical regulations, and conformity assessment procedures; and enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures (Article 6.9.3).
- A Party shall, upon the request of another Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations, and conformity assessment procedures (Article 6.8.2).
- A Party shall, on request of another Party, give due consideration to any sector-specific proposal for cooperation under the chapter (Article 6.9.4).

- Contact points will be established to facilitate implementation and information exchange under the chapter (Article 6.12).
- RCEP Parties can develop implementing arrangements and set out areas of cooperation of mutual interest (article 6.13).

Technical discussions

A Party may request technical discussions with another Party to resolve any matter that arises under the STRACAP chapter. The matter must be discussed within 60 days of the request, unless otherwise mutually determined by the RCEP Parties concerned, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means agreed by the RCEP Parties concerned. (Article 6.10).

Transparency

Upon written request, RCEP Parties shall provide the requesting Party the following:

- If already available, the full text or summary of its notified technical regulations and conformity assessment procedures in the English language. If unavailable, the Party shall provide to the requesting Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures, within a reasonable period of time agreed by the RCEP Parties concerned and, if possible, within 30 days (Article 6.11.2).
- The objectives of, and rationale for, a technical regulation or conformity assessment procedure that the requested Party has adopted or is proposing to adopt (Article 6.11.3).

Each Party must allow a person of another Party to participate in consultation procedures that are available to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws and regulations, on terms no less favourable than those accorded to its own persons (Article 6.11.5).

When a Party detains an imported consignment, at the point of entry due to non-compliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, of the reasons for the detention (Article 6.11.6).

Unless otherwise provided in this chapter, any information or explanation requested by a Party pursuant to this chapter shall be provided by the requested Party, in print or electronically, within a reasonable period of time agreed by the RCEP Parties concerned and, if possible, within 60 days (Article 6.11.7).

5.7 Trade Remedies

Section A of the trade remedies chapter relates to RCEP Safeguard measures.

Section A – RCEP safeguard measures

Application

Article 7.2 sets out that RCEP Parties may only apply a transitional RCEP safeguard measure if, because of the reduction or elimination of customs duties under RCEP, a good from another RCEP Party (or RCEP Parties collectively) is being imported in such increased quantities so as to cause, or threaten to cause, serious injury to a domestic industry which produces a like or directly competitive good.

A Party may only impose a transitional RCEP safeguard measure in the form of:

- i) A suspension of any further reduction in the rate of customs duty for that good as provided for under RCEP; or
- ii) An increase in the customs duty for that good to a level that does not exceed the lesser of:
 - a. The most-favoured nation (MFN) applied rate of customs duty in effect on the day the RCEP safeguard measure is applied; or
 - b. The most-favoured nation (MFN) applied rate of customs duty in effect on the day before the date of entry into force of the RCEP Agreement for that Party.

A transitional RCEP safeguard measure may not be imposed by a Party in the form of tariff rate quotas or quantitative restrictions on a good.

Notification, Consultation, and Investigation

Article 7.3.1 requires a Party to provide written notification to other RCEP Parties when it initiates a safeguard investigation, makes a finding of serious injury or threat thereof, applies or extends a transitional RCEP safeguard measure, or takes a decision to modify an existing transitional RCEP safeguard measure.

Article 7.3.3 states that a Party must also provide other RCEP Parties with a copy of the public version of the report prepared by its competent authorities (which in New Zealand's case is the Ministry of Business, Innovation and Employment).

Article 7.3.5 requires that a Party which is proposing to apply or extend a transitional RCEP safeguard measure must provide adequate opportunity for prior consultations with RCEP Parties who have a substantial interest as exporters of the good concerned.

Article 7.4 sets out that RCEP Parties can only apply a transitional RCEP safeguard measure following an investigation carried out in accordance with the procedures that are set out in Article 7.3 and Article 7.4.2 of the WTO Safeguards Agreement. An RCEP Party is required to complete such an investigation within one year of the date of initiation.

Scope and Duration

Article 7.5.1(a) states that a Party may only impose a transitional RCEP safeguard measure to the extent, and for such a time, as is necessary to prevent or remedy serious injury to domestic industry, and to facilitate adjustment by that domestic industry.

Article 7.5.1(b) states that a transitional RCEP safeguard measure may not be applied for more than three years, unless there are exceptional circumstances (which must be established in accordance

with the investigation procedures set out in the chapter), in which case the measure may be extended for one year. The total duration, including any extensions, must not exceed four years.

Article 7.5.1(c) prohibits a transitional RCEP safeguard measure from being imposed beyond the expiration of the transitional safeguard period, which is defined in Article 7.1(i) as the period from entry into force of the Agreement until eight years after the customs duty is eliminated or reduced to its final commitment on a particular good.

This Article also sets out that a Party may not impose a transitional RCEP safeguard measure in the first year after RCEP enters into force (Article 7.5.2); that a transitional RCEP safeguard measure must be progressively liberalised throughout its duration (Article 7.5.3); that when terminated, the customs duty on a good that has been subject to a safeguard measure must return to the rate it would have been if the safeguard had not been imposed (according to that Party's Schedule of Commitments); and that a stand-down period of either the duration of the previous safeguard (minimum one year) must pass before a transitional RCEP safeguard measure can be imposed on the same good (Article 7.5.5).

De Minimis and Special Treatment

Article 7.6 states that a Party may not impose a transitional RCEP safeguard measure against a good of another Party if that Party's share of imports of the good in question is less than three percent of total imports from all RCEP Parties (provided that imports from all RCEP Parties who have less than three percent share collectively account for no more than nine percent of total imports). This Article also provides that a transitional RCEP safeguard measure may not be imposed on goods from a least-developed ASEAN Member State.

Compensation

A Party which proposes to apply or extend a transitional RCEP safeguard measure must, in consultation with affected exporting RCEP Parties, provide mutually agreed adequate trade compensation. This compensation must be in the form of concessions that either i) have substantially equivalent trade effects, or ii) are equivalent to the value of any additional duties expected to result from the safeguard measure (Article 7.7.1). Requests for trade compensation may not be made of the least-developed ASEAN Member States (Article 7.7.6).

Consultations to agree adequate trade compensation must be initiated within 30 days from the date the safeguard measure was applied. If no agreement can be reached within 30 days, any Party against whose good the transitional RCEP safeguard measure has been applied may suspend the application of substantially equivalent concessions which affect the goods of the Party that is maintaining the safeguard measure. Written notification must be provided to the Party applying the safeguard measure at least 30 days before suspending concessions.

This right of suspension may not be exercised for the first three years during which a transitional RCEP safeguard measure is in effect, as long as the measure has been applied consistently with the provisions of the Agreement. The obligation to provide compensation, and the right to suspend concessions, terminate at the same time as the transitional RCEP safeguard measure.

Provisional measures

Article 7.8 sets out the conditions under which a Party may apply a provisional safeguard measure in critical circumstances where a delay would cause damage that would be difficult to repair. A Party's competent authorities must, before applying a provisional measure, have made a preliminary determination that there is clear evidence that imports from another RCEP Party have increased due to tariff reductions or elimination under RCEP, and that this increase is causing or threatens to cause serious injury to a competing domestic industry (Article 7.8.1).

A Party must make a written notification to other RCEP Parties prior to applying a provisional measure, and must initiate consultations with RCEP Parties that have a substantial interest in the good concerned immediately after the provisional measure is applied (Article 7.8.2).

The duration of a provisional measure may not exceed 200 days, during which time a Party must comply with the investigation requirements set out in Article 7.4.1 of this chapter.

Global safeguards

Article 7.9 requires that a Party that initiates a safeguard investigatory process under Article XIX of GATT 1994 and the WTO *Safeguards Agreement* must provide (upon request) other RCEP Parties with a written notification or an electronic copy of all pertinent information as required under Article 12.1, 12.2 and 12.4 of the WTO Safeguards Agreement. A Party will be deemed to be in compliance with this obligation if it has notified the WTO Committee on Safeguards in accordance with Article 12 of the WTO Safeguards Agreement.

Pursuant to Article 7.9.4, Parties may not apply, in respect of the same good and at the same time, the following:

- A transitional RCEP safeguard measure; and
- A safeguard measure under Article XIX of the GATT 1994 and the Safeguards Agreement;

Section B of the trade remedies chapter addresses antidumping and countervailing duties.

General Provisions

Article 7.11.2 states that when the investigating authority of a Party carries out an on-the-spot investigation (in order to verify information provided by a respondent as part of a dumping or countervailing duty investigation) the investigating authority must promptly notify the respondent of the visit, and must endeavour to provide at least seven days' advance notice. They must also, endeavour, at least seven days before, to provide the respondent with a list of topics to be addressed and documentation that may be required.

Article 7.11.3 requires a Party's investigating authorities to maintain a non-confidential file for each investigation and review. This file must contain all non-confidential documents and non-confidential summaries of confidential information which are part of the record of the investigation or review. In the case of non-confidential summaries, this is to be done to the extent feasible without revealing confidential information. Article 7.11.4 further states that the non-confidential file must be available to all interested RCEP Parties throughout the investigation or review process, in either physical or electronic form.

Notification and Consultations

Article 7.12.1 requires a Party's competent authorities, upon receipt of a properly documented antidumping application, to endeavour to provide written notification to the other Party at least seven days before initiating an investigation.

Similarly, Article 7.12.2 requires a Party's competent authorities, upon receipt of a properly documented countervailing duty application, to endeavour to provide written notification to the other Party at least 20 days before initiating an investigation, and to invite the other Party to hold consultations. They must endeavour to hold consultations within this 20-day period. The Party intending to initiate the investigation must i) upon request of the other Party, provide a copy of the non-confidential version of the countervailing duty application that was received, and ii) endeavour to provide adequate opportunity for the other Party to submit comments and additional information as appropriate (Article 7.12.3).

Prohibition on Zeroing

Article 7.13 requires that a Party establishes, assesses or reviews margins of dumping under Articles 2, 9.3, 9.5 or 11 of the WTO Anti-Dumping Agreement, this Article requires that Party to count all individual dumping margins, whether positive or negative, for weighted-average-to-weighted average or –transaction-to-transaction comparisons.

Disclosure of Essential Facts

Article 7.14 requires a Party to ensure, to the extent possible, that full and meaningful disclosure of the essential facts in an anti-dumping or countervailing duty investigation is made at least 10 days prior to a final determination being made. These disclosures are required to be made in writing, and shall allow interested RCEP Parties sufficient time to submit comments. Comments from interested RCEP Parties that are received within relevant timeframes should be taken into account.

Treatment of Confidential Information

Article 7.15 requires a Party's competent authorities requiring that interested RCEP Parties to submit confidential information as part of an anti-dumping investigation to also provide non-confidential summaries of this information. In accordance with Article 6 of the WTO Anti-Dumping Agreement, such summaries must contain sufficient detail to permit a reasonable understanding of the substance of the information, in order to allow other interested RCEP Parties to respond and defend their interests.

Non-Application of Dispute Settlement (Article 7.16)

Article 7.16 establish that no Party has recourse to dispute settlement for any matter arising under this section or Annex 7A (Practices relating to Anti-Dumping and Countervailing Duty Proceedings).

5.8 Trade in Services

The Trade in Services chapter contains rules which all RCEP Parties have agreed to follow, while the country-specific market access commitments are made in annexes II and III.

Individual RCEP participants, in those annexes, apply a sub-set of the rules to specific services sectors (Article 8.3). This sub-set of rules is known as ‘reservable obligations’. Each Party has negotiated which sectors these reservable obligations will apply to.

Reservable Obligations

Four of the obligations are subject to reservations:

- *National Treatment*: each Party must grant services suppliers of other RCEP Parties’ treatment no less favourable than the treatment it gives its own service suppliers in like circumstances (Article 8.4).
- *Most-favoured-nation*: each Party must grant services suppliers of other RCEP Parties treatment no less favourable than the treatment it gives to services suppliers from any other country (whether or not a Party to RCEP) in like circumstances. This obligation means that service suppliers from RCEP Parties would receive the benefits of any additional liberalisation that New Zealand might provide to third countries in future agreements (in the sectors agreed by New Zealand)(Article 8.6).
- *Market Access*: a Party cannot place certain types of numerical restrictions on the participation of RCEP service providers in their market or require specific types of legal entity to be formed to deliver those services (Article 8.5).
- *Local Presence*: an RCEP member cannot require a supplier to establish an in-country commercial presence to deliver services within that market. Initially, this obligation will only apply to RCEP Parties who have taken a negative list approach to scheduling but will apply to all RCEP Parties once they transition to a ‘negative list’ (article 8.11).

Non-reservable Obligations

There are some rules which all RCEP Parties have agreed will apply to all services sectors. These are termed non-reservable obligations. These obligations are:

- *Domestic Regulation* (Article 8.15) RCEP Parties endeavour to ensure their qualification requirements and procedures and technical standards are:
 - based on objective and transparent criteria.
 - not more burdensome than necessary to ensure the quality of the service.RCEP Parties must also endeavour to ensure their licensing requirements also meet these criteria and, additionally, that they are not in themselves a restriction on the supply of a service. Standards are also set for the administration of these authorisation regimes. These focus on:
 - the ability of providers to submit applications/examinations;
 - the procedures for review of these applications/examinations; and
 - the fees charged for these processes.

- *Transparency:* RCEP Parties have agreed to standards of transparency of regulation relating to trade in services. These standards relate to publication of relevant regulation and the designation of a contact point for enquiries on these regulations (Article 8.14).
- *Monopolies and Exclusive Service Suppliers:* RCEP Parties agree that any existing monopoly providers will not abuse their monopoly position in a way which undermines the market access and national treatment commitments that a Party has undertaken (Article 8.17).

Exclusions

There are a number of areas that are explicitly excluded from coverage of the chapter. These are services supplied in the exercise of government authority, government procurement, cabotage in maritime transport services, and some air services (Article 8.2.3). In addition, the obligations do not apply in respect of subsidies or grants provided by a Party (Article 8.22).

Reservations

As noted above, RCEP Parties are permitted to have exceptions to the ‘reservable’ obligations (article 8.7 and Article 8.8). These are either termed ‘limitations’ (for RCEP Parties using the ‘positive list’ approach) or ‘reservations’ (for RCEP Parties using the ‘negative list’ approach).

New Zealand has made commitments using a ‘positive list’. This means the ‘reservable’ obligations only apply against those sectors listed in our annex II market access schedule. Additionally, New Zealand has taken a range of limitation in the sectors in which it is applying these reservable obligations. Some of the key limitations are:

- a requirement that certain types of overseas investments are screened by the Overseas Investment Office i.e. if a service supplier is looking to establish a commercial presence to deliver their services;
- non-application of these rules to our SOEs;
- preservation of complete policy space for social services established for a public purpose;
- a creative arts exemption, creating policy space for regulation in the creative arts sector;
- limiting access to the national dairy herd testing database;
- a foreign equity limitation in the ownership of Chorus;
- any measure which falls within the Broadcastings Commissions obligation to promote Māori language and culture;
- the ability of the New Zealand Film Commission to provide government assistance;
- the requirements of the Financial Reporting Act 1993 and the Companies Act 1993;
- the role of the Accident Compensation Act in the insurance sector; and
- the role of the Earthquake Commission in the residential property disaster insurance sector.

Other RCEP participants using the ‘positive list’ approach are Cambodia, China, Laos, Myanmar, Philippines, Thailand and Viet Nam.

Article 8.12 requires a party making commitments in a ‘positive list’ to transition to a ‘negative list’ approach within three years (or 12 years for Cambodia, Laos and Myanmar).

Under a ‘negative list’ approach, RCEP Parties commit to provide market access except in areas where restrictions are listed in individual RCEP Parties’ annex III schedules. RCEP Parties using the ‘negative list approach use two lists, List A and List B. List A:

- contains a factual list of current ‘non-conforming measures’ which describe regulation which does not meet the criteria of the reservable obligations;
- is subject to a ‘standstill’ provision, meaning that the Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed; and
- is subject to a ‘ratchet’ clause which means that if the Government liberalises a service by repealing or amending a restriction, that liberalisation gets locked-in as the new (more liberal) level of commitment.

List B sets out sectors that are exempted from any one or more of the reservable obligations. In these areas, each government retains the right to regulate in a manner described in those reservations (e.g. in a restrictive or discriminatory way), and the ‘ratchet’ clause does not apply. New Zealand is required to begin transitioning to this negative list approach three years after entry into force and complete this transition process within six years after entry into force.

RCEP countries using the negative list approach are Australia, Brunei, Indonesia, Japan, South Korea, Malaysia, and Singapore. When transitioning to a negative list, New Zealand will include new reservations which capture other ‘non-conforming measures’ and additional policy space which relate to those sectors we do not currently commit.

5.9 Financial Services

The financial services Annex (Annex 8A) contains a range of obligations relating to trade in financial services. For the purposes of the annex, and consistent with the WTO, the term “financial services” means any service of a financial nature, and includes all insurance and insurance-related services, and all banking and other financial services (Article 1).

New Financial Services

Article 3 obliges a Party to endeavour to permit a financial institution of another RCEP country established in the territory of the host Party to supply a new financial service in the territory of the host Party that the host Party would permit its own financial institutions, in like circumstances, to supply without adopting a law or modifying an existing law. For greater certainty, a Party may issue a new regulation or other subordinate measure in permitting the supply of the new financial service.

Recognition

Article 6, an RCEP Party may recognise prudential measures of any international standard setting body, another Party, or a non-Party in determining how the Party's measures relating to financial services shall be applied. If recognition is achieved through an agreement or arrangement, the Party must provide adequate opportunity for other interested RCEP Parties to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between RCEP Parties to the agreement or arrangement.

Transparency

As per Article 7, each Party commits to promote regulatory transparency in financial services and must ensure that measures governed by the financial services Annex are administered in a reasonable,

objective and impartial manner. The Annex contains specific rules on publication and consultation of financial services regulations. There are also transparency obligations around the application process for the supply of financial services. For example, a Party's regulatory authority shall make an administrative decision on a completed application of a financial service supplier of another Party relating to the supply of a financial service within 180 days (Article 7.10 of Annex 8A).

Financial Services Exceptions, Prudential Measures and Treatment of Certain Information

Articles 4, 5 and 8 capture a number of exceptions set out in the Financial Services annex that apply to all RCEP Parties. These exceptions ensure that:

- *Article 4:* RCEP Parties may adopt or maintain measures for prudential reasons, including to protect investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.
- *Article 5:* RCEP Parties are not obligated to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.
- *Article 8:* RCEP Parties may adopt or enforce measures necessary to secure compliance with laws or regulations that are not inconsistent with this annex, including those relating to the prevention of deceptive and fraudulent practices or to deal with the effects of a default on financial services contracts.

Transfers of Information and Processing of Information

Article 9.2 states that a Party shall not take measures that prevent transfers of information (including transfers of data by electronic means) or prevent the processing of information if it is necessary for the conduct of the ordinary business of a financial service supplier in its territory.

Notwithstanding paragraph 2:

- a Party may require, for regulatory or prudential reasons, a financial service supplier in its territory to comply with domestic regulation in relation to data management and storage and system maintenance, as well as to retain within its territory copies of records (paragraph 3).
- a Party may protect personal data, personal privacy and the confidentiality of individual records and accounts including in accordance with its domestic laws and regulations (paragraph 4).

Self-regulatory organisations

Under Article 10, a Party is required to ensure that self-regulatory organisations observe the obligations contained in the National Treatment article in the Trade in Services chapter.

Payment and Clearing Systems

Article 11 requires each Party to give financial institutions of another Party established in its territory access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. The Article does not confer access to the Party's lender of last resort facilities.

Consultations and Contact Points

Article 12 sets up a consultation mechanism whereby a Party may request consultations with another Party regarding any matter under the Agreement that affects financial services, and the other Party

shall consider the request. Under Article 13, each Party establishes a contact point to respond to any requests for consultation.

Dispute Settlement

Article 14 requires that panels of arbitral tribunals established pursuant to the Dispute Settlement Chapter (Chapter 19) for disputes on prudential issues and other financial matters have the necessary expertise relevant to the specific financial service under dispute.

5.10 Telecommunication Services

The annex on Telecommunications Service (Annex 8B) applies to measures of a Party affecting trade in public telecommunications services. It does not apply to measures affecting cable or broadcast distribution of radio or television programming, except to ensure that cable or broadcast suppliers have access to and use of public telecommunications (Article 2).

Approaches to Regulation

Article 3 confirms that RCEP Parties can determine how best to implement their obligations. A Party can engage in direct regulation or rely on the role of market forces.

Access and Use

Article 4 requires each Party to ensure that service suppliers of another Party can access and use any public telecommunication network or service offered in its territory or across its borders on a timely basis and on transparent, reasonably and non-discriminatory terms and conditions. Conditions on such access and use are only permitted to safeguard the public service responsibilities of suppliers of public telecommunications networks or services, or to protect the integrity of public telecommunications networks or services (Article 4.5).

Under Article 4.3, each Party must ensure that service suppliers of another Party may use public telecommunications services or networks for the movement of information in its territory or across its borders and to access information in databases or otherwise stored in machine-readable form. A Party may take such measures as are necessary to ensure the security and confidentiality of messages, and protect the personal information of end users of public telecommunications, so long as such measures are not applied in an arbitrary or unjustifiable manner or act as a disguised restriction on trade (Article 4.4).

Number Portability

Article 5 requires each Party to ensure that suppliers of public telecommunications services provide number portability for mobile services (to the extent technically and economically feasible) on a timely basis, and on reasonable and non-discriminatory terms and conditions.

Competitive Safeguards

Article 6 requires RCEP Parties to adopt or maintain appropriate measures to prevent major suppliers from conducting anti-competitive practices.

Treatment by Major Suppliers

Article 7 requires RCEP Parties to ensure that a major supplier treats suppliers of public telecommunications networks or services of another Party no less favourably than its subsidiaries and affiliates or non-affiliated service suppliers in like circumstances.

Resale

Each Party may determine which public telecommunications services must be offered for resale by a major supplier (Article 8). This should be based on the need to promote competition or to benefit the long-term interest of end-users. When a Party determines that a service must be offered for resale, the Party must ensure that the major supplier does not impose unreasonable or discriminatory conditions, or limitations on the resale.

Interconnection

Article 9.1 requires RCEP Parties to ensure that suppliers of public telecommunications networks or services provide interconnection with the suppliers of public telecommunications networks or services of another Party.

RCEP Parties must ensure that any commercially sensitive or confidential information of, or relating to, users acquired as a result of interconnection arrangements is not used for any purpose other than for providing these services (Article 9.2).

Article 9.3 requires each Party to ensure that major suppliers provide interconnection for the facilities and equipment of suppliers of public telecommunications networks or services of another Party at a technically feasible point in the major supplier's network. The article sets out the conditions under which interconnection should be provided. Under Article 9.5, each Party must ensure that procedures applicable for interconnection to a major supplier are made publicly available.

Each Party must ensure that a major supplier provides suppliers of public telecommunications services of another Party with the opportunity to interconnect their facilities and equipment with those of the major supplier through a reference interconnection offer, the terms and conditions of an existing interconnection agreement, or a new interconnection agreement made through commercial negotiation (Article 9.4). Each Party must ensure these interconnection agreements or offers are made publicly available (Article 9.6).

Provisioning and Pricing of Leased Circuit Services

Under Article 10, each Party is required to ensure that major suppliers in its territory provide suppliers of public telecommunications networks or services of another Party with leased circuit services (that are public telecommunications services) on a timely basis and on terms and conditions, and at rates, that are reasonable, non-discriminatory and transparent.

Co-location

Under Article 11, each Party must ensure that a major supplier that has control over essential facilities allows suppliers of public telecommunications networks or services of another Party to physically co-locate their equipment necessary for interconnection on a timely basis, and on terms and conditions and at rates that are reasonable, non-discriminatory and transparent (Article 11.1).

Where physical co-location is not practical, a Party must endeavour to ensure that the major supplier provides an alternative solution (Article 11.2). Article 11.3 permits each party to determine which premises are subject to these obligations in Article 11.1 and Article 11.2).

Independent Telecommunications Regulatory Body

Each Party is required to ensure its telecommunications body or bodies are separate from and not accountable to any supplier of public telecommunications services (Article 12.1). In addition, each Party is required to ensure that regulatory decisions and the procedures used by its telecommunications regulatory body are impartial with respect to all market participants (Article 12.2).

Universal Service

Under Article 13 each Party has the right to define the kind of universal service obligations (USOs) it wishes to maintain. These USOs will not be regarded as anti-competitive provided they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary.

Licensing

Under Article 14 each Party should ensure that, where a licence is required to supply telecommunications networks or services, all licensing criteria and procedures it applies, the period of time it normally requires to reach a decision on an application, and the general terms and conditions of licences are publicly available. RCEP Parties are required to notify a licence applicant of the outcome without undue delay (Article 14.2) and must give the applicant the reason for the decision if requested (Article 14.3).

Allocation and Use of Scarce Resources

Under Article 15, each Party is required to administer its procedures for the allocation and use of scarce resources related to telecommunications in an objective, timely, transparent and non-discriminatory manner. Each Party must make public the current state of allocated frequency bands but is not required to provide detailed identification of frequencies allocated for specific government use (Article 15.2).

When making a spectrum allocation for commercial telecommunication services, each Party must endeavour to rely on an open and transparent process that considers the public interest. RCEP Parties also must endeavour to rely generally on market-based approaches in assigning spectrum for terrestrial commercial telecommunications services (Article 15.4).

Article 15.5 imposes a requirement on RCEP Parties to ensure suppliers of public telecommunications networks or services of another Party established in its territory are given access to telephone numbers in a non-discriminatory manner.

Transparency

Article 16 requires each Party to endeavour to ensure its telecommunications regulatory body seeks input on proposed laws or regulations and gives suppliers of public telecommunications networks or services of another Party an opportunity to comment. In addition, RCEP Parties are required to ensure

that relevant information on conditions affecting access and use of public telecommunications networks or services is publicly available.

Relation to international organisations

Article 17 requires that RCEP Parties recognise the importance of international standards for global compatibility and interoperability of telecommunications networks and services, and undertake to promote such standards through the work of relevant international bodies.

International Submarine Cable Systems

Under Article 18, where a Party has authorised a supplier of public telecommunications networks or services in its territory to operate an international submarine cable system as a public telecommunications network or service, Article 18 requires that Party to ensure the supplier provides suppliers of telecommunications networks or services of another Party reasonable and non-discriminatory access.

Unbundling of Network Elements

Article 19 requires each Party must endeavour to ensure that a major supplier in its territory offers to public telecommunications service suppliers access to network elements on an unbundled basis. This must be offered on terms and conditions that are reasonable, non-discriminatory and transparent. Each Party may determine the network elements to be made available.

Access to Poles, Ducts and Conduits

Article 20 requires each Party to endeavour to ensure that a major supplier in its territory provides access to poles, ducts, conduits, or any other structure as determined by the Party, owned or controlled by the major supplier, to suppliers of public telecommunications services of another Party in its territory. Access must be provided on a timely basis, on terms and conditions and at rates that are reasonable, non-discriminatory and transparent, subject to technical feasibility. A Party may determine the poles, ducts, conduits or other structure it requires major suppliers in its territory to provide access to, and will take into account certain factors in making this determination, including the competitive effect of lack of access, whether such structures can be substituted, or other specified public interest factors.

Flexibility in Choice of Technology

Under Article 21, RCEP Parties are not permitted to prevent suppliers of public telecommunications networks or services from choosing the technologies they use to supply their services. However, RCEP Parties can apply a measure that limits the technologies that a supplier of public telecommunications networks or services may use to supply its services, if that measure is designed to achieve a legitimate public policy objective and does not create unnecessary obstacles to trade (Article 21.2).

International Mobile Roaming

While RCEP Parties are not required to regulate rates or conditions for international mobile roaming services, they are required to endeavour to cooperate on promoting transparent and reasonable rates for international mobile roaming services under Article 22. RCEP Parties may take steps to achieve this, such as ensuring information on rates is easily accessible for consumers or minimising impediments to roaming. RCEP Parties may promote competition in international roaming rates,

including through commercial arrangements or measures affecting rates. A Party may also cooperate with other RCEP Parties to implement measures (Article 22.3).

Article 22.4 governs situations where two RCEP Parties have entered into an arrangement to reciprocally regulate rates or conditions for wholesale or retail international mobile roaming services. Where there is such an arrangement, if one Party chooses to regulate rates or conditions for wholesale or retail international mobile roaming services, it must ensure that a supplier of public telecommunications services of the other Party has access to those rates or conditions for its customers that are roaming in the first Party.

Resolution of Telecommunications Disputes

Article 23 requires each Party to ensure that suppliers of public telecommunications networks or services of another Party:

- have timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes; and
- may obtain a review of a determination or decision by the relevant telecommunications regulatory body if it has been aggrieved by a final determination or decision.

The article also prohibits RCEP Parties from allowing the making of an application for review to constitute grounds for non-compliance with the determination or decision, unless otherwise determined by the relevant body.

5.11 Professional Services

The Professional Services annex (Annex 8C) seeks to encourage relevant authorities within RCEP to recognise one another's professional qualifications and licensing and registration regimes. Because the relevant bodies are often independent from government regulators, the rules in the annex only require RCEP Parties to encourage their relevant bodies to discuss the creation of mutual recognition of these regimes.

More specifically, each Party is required to:

- Under Article 1, consult with relevant bodies to seek to identify professional services where two or more RCEP Parties are interested in establishing dialogue on recognition (paragraph 1);
- Under Article 2, encourage relevant bodies to establish dialogues with a view to recognition (paragraph 2);
- Under Article 3, encourage relevant bodies to negotiate recognition arrangements (paragraph 3);
- Under Article 4, encourage relevant bodies to take into account other professional services agreements when developing mutual recognition arrangements (paragraph 4);
- Under Article 6, encourage relevant bodies to work towards the development of mutually acceptable professional standards and criteria in agreed areas e.g. examinations and experience (paragraph 6); and

- Under Article 8, encourage relevant bodies to refer to relevant international frameworks when developing common standards for professions (paragraph 7).

There is also a suggestion that a Party may consider granting relevant licenses to practice where the foreign supplier's licence enables this. Alternatively, a Party may take steps to implement a temporary or project-specific licensing or registration regime where considered appropriate (paragraph 5).

RCEP Parties must also make available, on request, where practicable, relevant information on standards and criteria for licensing and certification within the applicable field of professional services (paragraph 7).

5.12 Temporary Movement of Natural Persons

The Temporary Movement of Natural Persons chapter (Chapter 9) ensures efficient application processing procedures and transparency around requirements for temporary entry into RCEP territories. It does not apply to people seeking access to the employment market of any Party, nor does it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis (Article 9.2).

There are requirements on RCEP Parties to meet certain standards for the processing of relevant immigration formalities. All RCEP Parties must:

- Under Article 9.6.1, make a decision as expeditiously as possible after receiving a completed application;
- Under Article 9.6.2, upon request, a reasonable time after the application has been received, inform the applicant of the decision, and if the application has been approved, of the period of stay and other conditions;
- Under Article 9.6.3, where an applicant requests it, within a reasonable time period of receiving a complete application, endeavour to notify the applicant of the status of an application;
- Under Article 9.4.2, ensure fees for processing an application are reasonable, in that they do not in themselves represent an unjustifiable impediment to movement;
- Under Article 9.7.1(b), make publically available the requirements for temporary entry including explanatory material and relevant forms and documents;
- Under Article 9.7.1(d), maintain mechanisms to respond to enquiries on regulation affecting temporary entry;
- Under Article 9.6.4, where able under domestic laws, endeavour to accept applications in electronic format; and
- Under Article 9.6.5 where appropriate, accept copies of documents authenticated in accordance with its laws in place of original documents where domestic law allows it.

New Zealand already meets these requirements under current policy settings. These commitments also fall within the bounds of what New Zealand has committed within its previous FTA practice.

Relevant authorities maintain the ability to deny an application for temporary entry if prescribed application procedures are not followed and any of the eligibility requirements are not met (Article 9.4.3). Further, even where temporary entry is granted, a business-person must still meet any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities (Article 9.4.4).

New Zealand Commitments

Each Party is required under Article 9.4 to set out in a country-specific schedule to Annex IV its commitments regarding temporary movement of natural persons. A Party must include in its schedule any conditions and limitations for the entry and temporary stay of designated categories of persons.

New Zealand has made commitments as summarised in the following table in respect of Business Visitors, Intra-Corporate Transferees, Installers and Servicers, and Independent Services Suppliers.

Category	Description of Category	Conditions and Limitations
Business Visitors	A natural person of a Party whose remuneration and financial support is derived entirely from sources outside New Zealand and is seeking temporary entry to New Zealand for business purposes, such as: (i) for the purpose of negotiating and concluding the sale of goods or services but is not engaged in making direct sales to the general public or in supplying goods or services themselves; or (ii) as an investor, or duly authorised representative of an investor, for the purpose of establishing, expanding, monitoring, or disposing of an investment, but not with the intention of establishing or operating any business on the business visitor's own account.	Entry for a period not exceeding in aggregate three months in any calendar year.
Intra-Corporate Transferees	An executive, manager or a specialist: (i) who is an employee of a goods supplier, service supplier or investor of a Party with a commercial presence in New Zealand; and (ii) whose salary and any related payments are paid entirely by the service supplier or enterprise that employs the intra-corporate transferee.	Entry for a period of initial stay up to a maximum of three years.
Installers and Servicers	A natural person who is an installer or servicer of machinery and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment. An installer or servicer cannot perform services which are not related to the service activity which is the subject of the contract.	Entry for periods not exceeding three months in any twelve-month period.
Independent Service Suppliers	Self-employed Services supplier working on a contractual basis, without a requirement for commercial presence. In the following category only: Independent Professionals: Definition: Self-employed natural person with advanced technical or professional skills, without the	In specified sectors, and subject to economic needs tests, entry for a period of stay up to a maximum of 12 months.

	<p>requirement for a commercial presence, working under a valid contract in New Zealand.</p> <p>Independent professionals must also have (i) a qualification resulting from three or more years of formal post-secondary school education leading to a recognised degree or diploma and (ii) six or more years of experience.</p> <p>Both (i) and (ii) must be in the field in which the Independent Professionals wish to supply their professional services.</p>	
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Cooperation and Committee

Parties may discuss agreed areas of cooperation to facilitate the temporary entry and stay of natural persons (Article 9.8). These discussions will take into consideration areas proposed by the RCEP Parties during the course of negotiations or other areas as agreed by all RCEP Parties.

5.13 Investment

There are two kinds of obligations that the New Zealand government will owe to investors and investments under RCEP: those in respect of which RCEP Parties may enter reservations; and those that are derived from obligations owed at customary international law and in respect of which RCEP Parties may not enter reservations. The key obligations of each type are described below.

Reservable obligations

Subject to specific reservations or exceptions in the services and investment schedules of the Agreement, the following rules to facilitate investment flows have been included:

- **National Treatment:** Investors and investments are entitled to non-discriminatory treatment compared to domestic investors and investments in a Party “in like circumstances” (Article 10.3);
- **Most-Favoured-Nation (MFN) Treatment:**⁴⁴ Investors and investments are entitled to treatment no less favourable than treatment given “in like circumstances” to investors and investments from any other country. This means for instance that New Zealand investors will receive benefits of any better treatment a RCEP Party provides to other foreign investors under future agreements. However, the obligation does not encompass international dispute resolution procedures or mechanisms (Article 10.4). There is a footnote against the term “in like circumstances” in both National Treatment and Most-Favoured-Nation Treatment of the Investment chapter. This footnote says that whether the treatment is accorded depends on the

⁴⁴ The Most-Favoured Nation Treatment provisions will not apply to Cambodia, Laos, Myanmar and Viet Nam. It was agreed that the other RCEP Parties are therefore not obliged to accord investors of these countries or covered investments Most-Favoured Nation Treatment. RCEP Parties have a shared understanding that Viet Nam will revisit its position on the Most-Favoured Nation Treatment provisions in the future. The Most-Favoured Nation obligation applies to Viet Nam in our existing agreement under CPTPP.

totality of circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives;

- *Prohibition of Performance Requirements*⁴⁵: Stipulated requirements may not be imposed on investors or investments. Including restrictions on volume or value of imports or exports, and level or percentage of exports or domestic content (Article 10.6);
- *Senior Management and Board of Directors*: This article contains two obligations. Firstly, RCEP Parties may not require the appointment of a certain nationality to a senior management position. Secondly, while a Party can require that a majority of the board of directors (or any committee of a board), be of a particular nationality or resident in the territory, it may not do so if this would materially impair the ability of the investor to exercise control over its investment (Article 10.7).

Investment reservations

Article 10.8 allows RCEP Parties to maintain or adopt measures that are inconsistent with the core obligations listed above (i.e. ‘reservations’ and ‘non-conforming measures’). Each Party has identified these non-conforming measures in individual schedules that are contained in two Lists to the Agreement.

List A sets out existing non-conforming measures such as legislation at a central, regional or local level of government that does not conform with one or more of the reservable obligations. List A has three key features:

- It contains a factual list of current ‘non-conforming measures’.
- It is subject to a ‘standstill’ provision meaning that the Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed in List A.⁴⁶
- It is subject to a ‘ratchet’ clause which means that the Party must automatically extend the benefits of any future liberalisation of these measures to all other RCEP Parties, and that liberalisation gets locked-in as the new (more liberal) level of commitment.⁴⁷

An amendment to the measures listed in List A, to the extent it does not decrease the conformity of the measure, can be made:

- For Cambodia, Indonesia, Laos, Myanmar, and Philippines as it existed at the date of entry into force; and
- For Australia, Brunei, China, India, Japan, South Korea, Malaysia, New Zealand, Singapore, Thailand, and Viet Nam as it existed immediately before the amendment.

List B lists reservations for sectors and activities where the Party has reserved the right to maintain existing discriminatory measures or adopt new or more discriminatory measures in the future. In these areas, a Party retains the full right to regulate in a restrictive way and the ‘ratchet’ clause does not apply.

⁴⁵ Cambodia, Laos and Myanmar are not subject to two of the prohibitions.

⁴⁶ In addition, Cambodia, Philippines, Thailand and Viet Nam have negotiated a time-limited ability to add, withdrawal or modify List A reservations for overlooked measures in existence at the date of entry of force. Such measures will be notified to the Depositary and the other Parties.

⁴⁷ Cambodia, Indonesia, Laos, Myanmar and Philippines have made no ‘ratchet’ commitments in their Party-specific List A schedules. RCEP Parties have agreed that Indonesia and Philippines will revisit their positions and consider possible ‘ratchet’ commitments in the future.

Non-reservable obligations

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

- *Treatment of Investment:* 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 (Article 10.5).
- *Transfers:* Obliges each Party to permit transfers relating to a covered investment freely and without delay into and out of their territory (Article 10.9).
- *Compensation for Losses:* Compensation for losses relating to armed conflict, civil strife, or state of emergency are to be provided no less favourable than accorded, in like circumstances, to investments or investors of another Party, non-Party or their own (Article 10.11).
- *Expropriation:* A Party can only expropriate or nationalise a covered investment for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process of law (Article 10.13).

This obligation does not apply to certain actions that comply with Chapter 11 (Intellectual Property) and the TRIPS Agreement.

Work Programme

ISDS is not included in the Investment chapter. Any change to the approach to ISDS, and to application of the investment chapter to taxation measures (Article 10.13), will be the subject of ongoing discussions that should be concluded within five years of entry into force (Article 10.18).

5.14 Intellectual Property (IP)

The IP chapter includes a number of provisions that are modelled off or build on provisions in the TRIPS Agreement.

Section A contains General Provisions and Basic Principles, including the objectives (Article 11.1), Scope (Article 11.2), relation to other agreements (Article 11.3) and principles (Article 11.4 of the IP Chapter).

Article 11.5 requires each Party to give effect to the provisions of the IP chapter. In other words, each Party is required to implement the minimum standards set out in the IP chapter. Article 11.5 also permits RCEP Parties to implement more extensive protection of intellectual property rights in their domestic law than is required by the IP chapter. The provision provides clarity that other obligations in the IP chapter that might be read as a 'ceiling' do not require a Party to unwind protection that is already provided over and above the provisions of the IP chapter.

Establishment and exhaustion of Intellectual Property rights

Article 11.5 also provides that each Party is free to determine how to implement the provisions of the IP chapter in its own legal system and practice. The Article provides scope for RCEP Parties to decide the appropriate method of implementing their obligations under the IP chapter. Article 11.6 provides that each Party is free to establish its own regime for exhaustion of intellectual property rights.

National Treatment

Article 11.7 requires each Party to accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights. In other words, the intellectual property protection that New Zealand provides to domestic rights holders must also be provided to nationals of other RCEP Parties.

The national treatment obligation is already included in the TRIPS Agreement, which means that for most of the obligations in the IP chapter, New Zealand is already subject to a national treatment obligation in respect of all WTO Members.

The national treatment obligation in the IP chapter is, however, broader than the TRIPS national treatment obligation because some of the obligations require more protection than the TRIPS Agreement requires. The national treatment obligation applies to matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by the IP chapter.

The TRIPS Agreement and Public Health

Under Article 11.8, each Party reaffirms the Doha Declaration on the TRIPS Agreement and Public Health, which was adopted by WTO Members in 2001. This Declaration clarifies how the TRIPS Agreement should be interpreted to enable RCEP Parties to take measures to protect public health.

The Article clarifies that the RCEP obligations do not prevent a Party from taking measures to protect public health and the promotion of access to medicines for all. For this purpose, the obligation permits each Party to fully utilise the flexibilities recognised in the Doha Declaration on the TRIPS Agreement and Public Health, Article 31*bis* of the TRIPS Agreement, and the annex and Appendix to the annex to the TRIPS Agreement.

Multilateral Agreements

Article 11.9 requires each Party to ratify or accede to the following multilateral treaties if it has not already done so:

- Paris Convention for the Protection of Industrial Property, as revised at Stockholm, July 14, 1967.
- Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971 (Berne Convention).
- Patent Cooperation Treaty, as amended on September 28, 1979, and modified on 3 February 1984 and 3 October 2001.
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, done at Madrid, June 27 1989, as amended on 3 October 2006 and 12 November 2007.
- WIPO Copyright Treaty, done at Geneva, December 20, 1996 (WCT).
- WIPO Performances and Phonograms Treaty, done at Geneva, December 20 1996 (WPPT).
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who are Blind, Visually Impaired or Otherwise Print Disabled, adopted in Marrakesh on 27 June 2013.

New Zealand has previously either ratified or acceded to all of these treaties.

Section B – sets out obligations related to Copyright and Related Rights

Exclusive Rights of Authors, Performers, and Producers of Phonograms

Article 11.10 requires each Party to provide exclusive rights for:

- authors to authorise the reproduction, and any communications to the public, of their works in any manner or form; and
- performers and producers of phonograms to authorise the reproduction, and the making available to the public, of their performances fixed in phonograms and phonograms in any manner or form.

Rights to Remuneration for Broadcasting

Article 11.11 requires each Party to ensure that performers and producers of phonograms have the right to a single equitable remuneration, or receive royalties, for the direct or indirect use of phonograms published for commercial broadcasting purposes.

Protection of Broadcasting Organisations and Encrypted Programme-Carrying Satellite Signals

Article 11.12 requires each Party to ensure that broadcasting organisations have the exclusive right to prohibit the re-broadcasting and fixation of their broadcasts, and the reproduction of fixations of their broadcasts. Fixation means the embodiment of broadcasts, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device. If a Party does not provide such rights to broadcasting organisations, it is required to provide the copyright owners of the subject matter in the broadcasts with the possibility of preventing the unauthorised wilful reception or distribution of the broadcast signal, subject to the provisions of the Berne Convention.

Circumvention of Effective Technological Measures

Article 11.14 requires each Party to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights under a Party's law and that restricts acts in respect of their works, performances and phonograms which are not authorised by them.

Protection for Electronic Rights Management Information (RMI)

Article 11.15 requires each Party to provide adequate and effective legal remedies against any person knowingly and without authority:

- removing or altering any electronic rights management information (RMI) that will induce, enable or conceal any infringement of copyright or related rights; and
- distributing, broadcasting or communicating copies of works or phonograms knowing that the RMI has been removed or altered without authority.

Limitations and Exceptions

Article 11.16 permits a Party to provide appropriate exceptions and limitations to its measures implementing protections against the circumvention of effective technological measures and for electronic RMI.

Article 11.18 provides that each Party may adopt or maintain limitations or exceptions to the exclusive rights that must be provided to a right holder, provided they are limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the copyright owner. However, nothing prevents a Party from taking advantage of any limitations or exceptions available to it as a Party to the TRIPS Agreement, Berne Convention, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (The Rome Convention), the WCT or the WPPT.

Section C of the IP chapter covers trademarks

Article 11.19 requires each Party to ensure that any sign and any combination of signs capable of distinguishing one good or service from another are eligible for registration as a trademark. Signs may include letters, numerals, figurative elements, three-dimensional shapes, a combination of colours, and words including personal names. A Party cannot deny the registration of a sign solely on the grounds that either it is not visually perceptible or it is a sound.

Collective Marks and Certification Marks

Article 11.20 requires each Party to enable collective marks and certification marks to be protected. RCEP Parties must also enable geographical indications to be protected under its trademarks regime.

Trademark Classification System

Article 11.21 requires each Party to adopt or maintain a trademarks classification system that is consistent with the classification system provided under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (the Nice Classification system).

Registration and Application of Trademarks

Article 11.22 imposes administrative requirements on each Party's trademark system. These include providing:

- an electronic system for application, processing, registering and maintenance of trademarks;
- a publicly accessible online electronic database of trademark applications and registrations;
- communication in writing to the applicant of the reasons for a refusal to register a trademark;
- an opportunity for an applicant to respond or contest an initial refusal to register a trademark and make a judicial appeal of a final refusal;
- an opportunity for stakeholders to oppose a trademark application before it has been registered, or oppose, seek revocation, invalidation or cancellation of a trademark after it has been registered;
- information as to why the application does not satisfy the registration requirements before it has been registered; and
- for administrative decisions regarding opposition, revocation, cancellation or invalidation proceedings to be reasoned and in writing.

Rights Conferred

Article 11.23 requires each Party to give the owner of a registered trademark the exclusive right to authorise third parties from using in trade an identical or similar sign as the registered trademark on identical or similar goods or services for which the trademark is registered where the use would result in a likelihood of confusion. Confusion must be presumed to occur if the sign is the same as the sign protected by the trademark registration, and used on identical goods or services.

Article 11.24 permits, however, RCEP Parties to provide limited exceptions to the rights provided such exceptions take account of the legitimate interests of the trademark owner and third parties.

Trademarks that Predate Geographical Indications

Article 11.25 requires each Party to protect trademarks which predate geographical indications in its jurisdiction, in accordance with the TRIPS Agreement.

Well-known Trademarks

Article 11.26 requires each Party to provide appropriate measures to refuse or cancel registration, and prohibit the use, of a trademark that is identical or similar to a prior well-known trademark, for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the well-known trademark.

In addition, no Party may require, as a condition for determining whether a trademark is well-known, that the trademark has been registered in either that Party or any other jurisdiction, including on a list of well-known trademarks or given prior recognition as a well-known trademark.

Bad Faith Trademarks

Article 11.27 requires each Party to provide that its competent authority has the authority to refuse a trademark application, or cancel the registration of a trademark, where the trademark application was made in bad faith.

Several Goods or Services on one Application

Article 11.28 requires each Party to allow a trademark application that relates to several goods or services, or any combination of goods or services, regardless of whether they belong to one or several classes of the Nice Classification system.

Section D of the IP Chapter sets out obligations concerning geographical indications (GIs)

Article 11.29 requires each Party to provide adequate and effective means to protect GIs. This protection can be provided through a trademark system, a *sui generis* system (for example, the registration regime under the Geographical Indications (Wine and Spirits) Registration Act 2006), or other legal means.

Administrative Procedures for the Protection of GIs

If a Party protects GIs through administrative procedures, such as a trademark system or a *sui generis* system, Article 11.30 requires that Party to:

- receive applications for GIs from nationals of another Party without requiring the relevant Party to be intercede on behalf of its nationals.
- process applications for GIs without overly burdensome formalities.
- ensure that its laws, regulations, procedures and related information for the protection of GIs are clear and readily available to the public.
- ensure that applicants and their agents can ascertain the status of applications, including ensuring applications are published for opposition.
- provide procedures for opposing protection, and not require a Party to intercede on behalf of its nationals for them to oppose protection.
- provide procedures for the cancellation of the protection previously given to a GI.

Grounds for Opposition and Cancellation

Article 11.31.1 applies if a Party protects a GI through the administrative procedures referred to in Article 11.30. Under this Article, each Party must ensure that an interested person can oppose a GI on the ground that the GI is a term customary in the common language of the Party as the common name for the relevant good to which the GI application relates (e.g. it is a generic term for the relevant goods). A Party is not required to apply this ground for opposition in respect of wine GIs.

Article 11.31.2 requires each Party to comply with the obligations on the ground of opposition, where it also protects translations or transliterations of GIs. A Party is not required to apply this obligation to applications for GIs for wine and spirits.

Article 11.31.3 requires each Party to ensure that its relevant authorities have the authority to take into account how consumers within their territory understand the term when they are determining whether the term is customary in the common language as the common name for goods to which a GI application relates. Relevant factors concerning consumers' understanding may include:

- whether the term is used to refer to the product in competent sources such as dictionaries, newspapers and relevant websites.
- how the good referenced by the term is marketed and used in trade in the Party's territory.

Article 11.31.4 requires each Party not to preclude the possibility that a GI may be cancelled or otherwise cease in the basis that it has ceased meeting the conditions upon which it was originally protected.

Multi-Component Terms

Article 11.32 requires each Party to not protect an individual component of a multi-component GI if the individual component is a term customary in the common language as the common name for the good to which the GI relates.

Date of Protection

Article 11.33 requires where a Party protects a GI through administrative procedures, such as through a trademark system or a sui generis system, that the protection commence no earlier than the date of application to protect the GI.

Protection or Recognition of GIs Pursuant to International Agreements

Article 11.34 requires that where a Party protects a GI through an international agreement with another a Party or non-Party, and that agreement is concluded after RCEP enters into force for that Party, that Party shall make information available to the public about:

- the procedures for protection of GIs;
 - details of the terms the Party is considering protecting through that agreement; and
 - if applicable, allow interested person to ascertain the status of requests for protection
- provide procedures for at least ‘interested persons’ to oppose the terms being considered for protection; and
- apply Article 11.32 to the protection of those GIs.

Protection or Recognition of GIs under Concluded International Agreements

Article 11.35 specifies that RCEP Parties are not obligated to apply the requirements of Article 11.34 to GIs protected in any international agreement involving a Party or a non-Party, provided that the international agreement concluded before RCEP enters into force for that Party. Where the international agreement includes the ability to protect or recognise new GIs, the Party is required to:

- make details of the terms for which GI protection has been requested publicly available; and
- provide a reasonable period of time for interested persons to comment on the protection of those terms before the terms are protected.

Section E of the IP chapter applies to patents

Patentable Subject Matter

Article 11.36 requires each Party to make patents available for inventions in any field of technology if the invention is new, involves a new inventive step and is capable of industrial application. Consistent with the Transition Periods and Technical Assistance Section of the IP chapter, each Party must make patent rights available without discriminating against the place of invention, the field of technology, and whether the products are imported or locally produced.

A Party may exclude from patentability:

- inventions whose commercial exploitation needs to be prevented to protect:
 - public order,
 - morality,
 - human, animal or plant life or health; and
 - the environment;
- diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- biological processes for the production of plants or animals, other than non-biological and microbiological processes; and
- plants and animals, other than microorganisms.

Article 11.36 also requires each Party to provide for the protection of plant varieties by using patents, a sui generis system, or a combination of both. A review mechanism has been built into this obligation in the event of any amendment being made to corresponding provision under Article 27 of the TRIPS Agreement.

Rights Conferred and Exceptions

Article 11.37 requires each Party to provide patent owners with the exclusive rights to prevent third parties without the owner's consent from:

- in relation to a product: making, using, offering for sale, selling or importing the product and
- in relation to a process: using the process, and from the acts of using, offering for sale, selling or importing products obtained directly by that process, without the owner's consent.

Each Party must also provide patent owners with the right to assign or transmit the patent and to license the patented inventions.

Article 11.38 permits a Party to provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with the normal exploitation of the patent and do not unreasonably prejudice the legitimate interest of the patent owner, taking into account the legitimate interests of third parties.

Article 11.39 clarifies that nothing in this Agreement limits a Party's ability to implement measures to protect public health as provided under Articles 31 and 31*bis* of the TRIPS Agreement, and the relevant annex and Appendix thereto.

Experimental Use of a Patent

Article 11.40 requires each Party to allow any person to do an act related to the subject matter of the patented invention that would otherwise infringe a patent, if that act is done for experimental purposes.

Procedural Aspects of Examination and Registration

Article 11.41 requires each Party to provide a patent system which includes:

- a requirement to provide communication in writing to the applicant explaining the reason for a refusal to grant of a patent;
- an opportunity for an applicant to amend and make observations in connection with their application;
- an opportunity to:
 - file an opposition against an application, or
 - provide information that challenges the novelty or inventive step of an invention claimed in an application;
- an opportunity to oppose the grant, or seek revocation, cancellation or invalidation, of a patent; and
- requiring administrative decisions regarding the opposition, revocation, cancellation or invalidation of a patent are reasoned and in writing.

18-Month Publication

Article 11.44 requires each Party to publish any patent application promptly after eighteen months from its filing date – or from the earliest priority date where priority is claimed. However, this requirement does not apply where the application has been published earlier, or has been withdrawn, abandoned or refused.

If this publication timeframe for an application has not been met, a Party must publish the patent application or the corresponding patent as soon as practicable. RCEP Parties are not, however, required to publish information where it considers the disclosure of the information is contrary to its national security, or to public order or morality.

Each Party must also provide an opportunity for an applicant to request that an application is published earlier than the eighteen month timeframe.

Protection of New Varieties of Plants

Article 11.48 requires each Party to provide for the protection of new varieties of plants through an effective *sui generis* plant variety protection system. This requirement is, however, subject to Article 11.36.3(b) see *patentable subject matter* above.

Section F of the IP Chapter covers industrial designs

Protection

Article 11.49 requires each Party to provide protection for independently created industrial designs that are new or original. However, RCEP Parties may provide that such protection does not apply to designs dictated essentially by technical or functional consideration. RCEP Parties are also to ensure that the requirements to protect textile designs do not unreasonably impair the opportunity to obtain protection. The latter obligation can be met through a Party's industrial design law or copyright law. This Article also requires each Party to provide the owner of a protected industrial design with the right to prevent the unauthorised making, selling and importing articles bearing or embodying the protected design for commercial purposes which are a copy, or substantial copy, of the protected design.

A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and not unreasonably prejudice the legitimate interests of the owner of the protected designs, taking account of the legitimate interest of third parties.

Registration and Applications of Industrial Designs

Article 11.51 requires each Party to provide a system for the registration or grant of industrial designs, which includes:

- communicating in writing to an applicant the reasons for a refusal to register or grant;
- an opportunity for an applicant to respond to communications from competent authorities responsible for the registration or grant, and to challenge or appeal a refusal to register or grant;
- an opportunity to seek cancellation, invalidation or revocation of a registration or grant, and
- a requirement that administrative decisions to cancel, invalidate or revoke are in writing and reasoned.

Section G covers Genetic Resources, Traditional Knowledge and Folklore (GRTKF)

Article 11.53 provides that subject to its international obligations, each Party may establish appropriate measures to protect GRTKF.

Where a Party has disclosure requirements relating to the source of origin of genetic resources as part of its patent system, Article 11.53 requires each Party to endeavour to make such laws available to all interested persons to become acquainted with them.

According to Article 11.53.3, each Party shall endeavour to pursue quality patent examination, which may include:

- when pursuing determining prior art, take into account relevant publicly available documented information related to GRTKF;
- provide an opportunity for third parties to cite in writing to the competent examining authority prior art disclosures related to GRTKF that have a bearing on patentability; and
- allow for the use of databases and digital libraries which contain relevant information on GRTKF.

Section H of the IP Chapter addresses Unfair Competition

Article 11.54 requires each Party to protect against acts of unfair competition in relation to the supply of goods and service in a manner that is consistent with the Paris Convention.

Domain Names

Article 11.55 requires each Party to provide, in relation to its system for the management of country code top-level domain names, appropriate procedures for dispute settlement procedures either in line with the Uniform Domain-Name Dispute-Resolution Policy or that:

- is designed to resolve disputes quickly and at a reasonable cost;
- is fair and equitable;
- is not overly burdensome; and
- does not preclude resort to judicial proceedings.

Each Party must also provide appropriate remedies against any person who registers or holds, with a bad faith intent to profit, a country code top-level domain name that is identical or confusingly similar to a trademark.

Undisclosed Information

Article 11.56 requires each Party to provide protection for undisclosed information in a manner that is consistent with Article 39.2 of the TRIPS Agreement.

A single Article on Country Names is included in Section I of the IP Chapter.

Article 11.57 requires each Party to provide the legal means to prevent commercial use of a Party's name in relation to a good in a manner which misleads consumers as to the origin of those goods.

Enforcement of Intellectual Property Rights is covered in Section J of the IP Chapter. This Section covered General Obligations (Subsection 1), Civil remedies (subsection 2), Border Measures (subsection 3), Criminal Remedies (subsection 4), and Digital Environment Enforcement (subsection 5).

Subsection 1 – General Obligations

Article 11.58 is a general enforcement obligation that requires each Party to ensure remedies are available under its laws to permit effective action against infringements of the rights in the IP chapter. This includes providing expeditious remedies to prevent infringements and that constitute a deterrent to future remedies.

A Party's enforcement procedures are required to be:

- fair and equitable;
- neither unnecessarily complicated nor costly; and
- not entail unreasonable time-limits or unwarranted delays.

Each Party also must take into account the need for proportionality between the seriousness of the infringement and the remedies or penalties that are applicable when implementing the enforcement provisions of the IP chapter, as well as the interests of third parties.

Furthermore, each Party is, in relation to civil proceedings involving the copyright of authors, to provide for a presumption that, in absence of proof to the contrary, the person whose name is indicated as the author of the work is the author of the work. This presumption shall apply to criminal and administrative proceedings, if applicable in a Party's law.

Subsection 2 – Civil Remedies

Fair and Equitable Procedures

Article 11.59 sets out a range of further obligations in respect of civil intellectual property enforcement procedures. These are that:

- defendants have the right to timely written notice containing sufficient detail including the basis of the claims;
- a party can be represented by independent legal counsel;
- overly burdensome requirements concerning mandatory appearances are not imposed;
- parties are entitled to substantiate their claims and present all relevant evidence; and
- confidential information can be identified and protected.

Damages

Article 11.60 requires each Party to provide that judicial authorities are able to order the infringer to pay the right holder damages that are adequate enough to compensate for the injury the right holder has suffered because of the infringement by an infringer who knowingly, or without reasonable grounds to know, engaged in infringing activity.

The Party's judicial authorities must be able to consider, among other things, any legitimate measure of value the rights owner submits when determining the amount of damages the infringer must pay.

In the cases of copyright or related rights and trademark counterfeiting, the judicial authorities must also be able to order the infringer to pay the right-holder the infringer's profits that are attributable to the infringement.

Court Costs and Fees

Article 11.61 requires each Party to provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial procedures concerning at least the infringement of copyright or related rights and trademarks, the prevailing Party be awarded at least court costs or fees, and appropriate attorney's fees.

Destroying Infringing Goods and Materials

In respect of pirated copyright and counterfeit trademark goods, Article 11.62 requires each Party to provide its judicial authorities can order:

- such goods be, without compensation of any sort, destroyed (except in exceptional circumstances).
- that materials or implements, the predominate use of which has been to produce such goods and without compensation of any sort, be destroyed or disposed outside the channels of commerce.

In regards to counterfeit trademark goods, judicial authorities are not able to permit the removal of the trademark unlawfully affixed to those goods, other than in exceptions circumstances, in order for those goods to be released into the channels of commerce.

Confidential Information in Civil Judicial Proceedings

Article 11.63 requires each Party to ensure its judicial authorities in civil judicial proceedings can impose penalties on any person who is subject to the court's jurisdiction in those proceedings, for violation of an order concerning the protection of confidential information produced or exchanged during the court proceedings.

Provisional Measures

In relation to civil judicial proceedings concerning trademark counterfeiting, Article 11.64 sets out that RCEP Parties must provide their judicial authorities with the authority to adopt provisional measures to order the seizure, or taking into custody, of:

- a) suspected infringing goods;
- b) material and implements predominantly used in the act of alleged infringed; and
- c) documentary evidence relevant to the alleged infringement.

However, in relation to the infringement of copyright and related rights, RCEP Parties must provide their judicial authorities with the authority to order the seizure, or taking into custody, of at least (a) and either (b) or (c) as set out above.

The article also requires each Party must ensure judicial authorities can:

- adopt provisional measures *inaudita altera parte*, where appropriate, in particular where any delay is likely to cause irreparable harm to the right-holders or where this is a demonstrable risk of evidence being destroyed;

- require an applicant to provide any reasonably available evidence that an infringement is occurring or about to happen;
- order the applicant to provide security or equivalent assurances sufficient to protect the defendant and to prevent abuse; and
- act on requests for ex parte hearings expeditiously in accordance with Article 50.4 through Article 50.8 of the TRIPS Agreement.

Subsection 3 – Border Measures

Suspension of the Release of Pirated Copyright Goods or Counterfeit Trademark Goods

In respect of suspect counterfeit trademark or pirated copyright goods that have been imported into the territory, Article 11.65 requires each Party to provide for a rights owner to apply to the Party's competent authority (i.e. New Zealand Customs Service) to have the goods suspended from release.

Security or Equivalent Assurance

Article 11.67 requires each Party to ensure its competent authorities can ensure that a rights-holder initiating customs procedures at the border to detain suspected infringing goods provides reasonable security or equivalent assurance to protect the owner of the goods and competent authorities from abuse of the process.

Suspension of Pirated Copyright or Counterfeit Trademark Goods by Ex-Officio Action

Article 11.69 requires each Party to provide their competent authorities with the power to act upon their own initiative (known as *ex officio* powers), to suspend the release of suspected pirated copyright or counterfeit trademark goods. Where a Party's competent authorities have used *ex officio* powers to suspend the release of such goods, the importer and right-holder must be promptly notified. RCEP Parties may only exempt competent authorities and officials when exercising *ex officio* powers, where actions are taken or intended in good faith.

Information Provided by Right-Holders

Where a competent authority has acted on its own initiative, Article 11.70 requires each Party to provide its authority with the power to request that a right-holder supplies relevant information to assist in the implementation of border measures referred to in this section.

Infringement Determination within Reasonable Period

Article 11.71 requires each Party to adopt or maintain procedures that ensure its competent authorities determine within a reasonable period of time, whether or not the suspected infringing goods are counterfeit.

Destruction Order

Article 11.72 requires each Party to ensure that its competent authorities can order the destruction of goods determined to be counterfeit trademark or pirated copyright goods, and if not destroyed, disposed of outside the channels of commerce in a manner that avoids harm to the rights-owner, in all but exceptional cases. Furthermore, each Party must not allow competent authorities to permit the removal of an unlawfully attached trademark to counterfeit trademark goods, other than exceptional cases, in order for the goods to be released into the channels of commerce.

Fees

Article 11.73 provides that if a Party establishes an application, merchandise storage or destruction fee in relation to the border procedures under this section, the fees must not be set at an amount that unreasonably deters a person from using the procedures.

Subsection 4 – Criminal Remedies

Criminal Procedures and Penalties

Article 11.74 sets out a range of obligations in relation to criminal procedures and penalties for trademark counterfeiting and copyright or related rights piracy. An overarching obligation is that criminal procedures must apply to cases of wilful trademark counterfeiting and copyright or related rights piracy on a commercial scale, including where this concerns infringing goods that have been wilfully imported.

With respect to these offenses, each Party is required to provide for penalties that include sentences of imprisonment, and monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of corresponding gravity.

Each Party's judicial authorities must also have the authority to:

- order the seizure of suspected counterfeit trademark or pirated copyright goods, any material or implements predominantly used in the offence, and any documentary evidence relevant to the alleged offence; and
- without compensation of any kind for the defendant, order the forfeiture or destruction of counterfeit trademark or pirated copyright goods, any material or implements predominantly used in the commissioning of the offence, and any offending labels or packaging to which the counterfeit trademark has been applied that have been used in the commission of the offence.

Each Party must also ensure appropriate criminal procedures and remedies are available for the unauthorised copying, on a commercial scale, of a film shown in a cinema which causes significant harm to right-holder in the market for that work.

Subsection 5 – Digital Environment Enforcement

Infringement in the Digital Environment

Article 11.75 confirms that the enforcement procedures available in Subsection 2 and 4 of the Enforcement section, must also be available for infringement of copyright or related rights and trademark, in the digital environment.

Section K of the IP chapter covers Cooperation and Consultation.

Under Article 11.76 RCEP Parties recognise the importance of protecting intellectual property and enforcing intellectual property rights to promote trade and investment, but also acknowledge the significant differences in capacity between some RCEP Parties in the area of intellectual property. To facilitate the effective implementation of the Intellectual Property chapter RCEP Parties have agreed to cooperate and engage in dialogue and information exchange on intellectual property issues.

The provision includes a list of issues for possible cooperation, including enforcement (especially at the border), providing quality assurance systems and cost effective procedures for the registration and granting of intellectual property rights, combatting online copyright infringement, the protection of new varieties of plants, patent grace periods, the cost of patent grants, geographical indications and GRTKF.

All cooperation must be agreed on mutual terms, and be subject to the relevant laws and regulations, and availability of resources of the RCEP Parties involved.

Section L establishes obligations with respect to Transparency

Article 11.77 requires each Party to provide that any judicial decisions or administrative rulings regarding the protection and enforcement of intellectual property rights are publicly available to enable other RCEP Parties and right-holders to become acquainted with.

RCEP Parties must also take appropriate measures to publish or make available information on applications and registrations of intellectual property rights, and information regarding the legal status thereof, such as registration and expiration dates.

Section M concerns – Transition Periods and Technical Assistance.

For any Party that has a Party-specific transition period, Article 11.80 sets out requirements for that Party to notify the Committee regarding its plans for progress and implementation of each obligation. There are no New Zealand-specific transition periods.

RCEP Parties have also agreed to undertake the necessary technical assistance, on mutually agreed terms, subject to the relevant rules and regulations, and the availability of resources of the RCEP Parties involved.

Finally, Section N of the IP chapter covers Procedural Matters.

Article 11.82 requires each Party to continue reviewing, and where appropriate make improvements to its intellectual property rights administrative systems.

Article 11.83 requires each Party to endeavour to streamline its procedural requirements regarding the certification of translations for patent applications, and the authentication of signatures for patent, industrial design and trademark applications.

5.15 Electronic Commerce

The electronic commerce chapter (Chapter 12) contains obligations that apply to measures adopted or maintained by a Party that affect electronic commerce. The obligations do not apply to government

procurement or to information held or processed by, or on behalf of, a Party (or to measures related to such information) (Article 12.3). The chapter contains provisions concerning cooperation, trade facilitation (Section B), creating a conducive environment for electronic commerce (Section C) and promoting cross-border electronic commerce (Section D).

Cooperation

RCEP Parties must, where appropriate, cooperate to:

- assist SMEs to overcome obstacles to using electronic commerce;
- identify areas for targeted cooperation to help RCEP Parties develop electronic commerce legal frameworks;
- exchange information and experiences;
- encourage business sectors to enhance accountability and consumer confidence; and
- participate actively in regional and multilateral fora to promote the development of electronic commerce (Article 12.4).

Paperless Trading

Under Article 12.5 each Party must work toward implementing paperless trading. RCEP Parties must endeavour to accept electronic trade administration documents as the legal equivalent of paper versions and make trade administration documents available to the public in electronic form. RCEP Parties must also cooperate in international fora to enhance acceptance of electronic trade administration documents.

Electronic Authentication and Electronic Signatures

Article 12.6 aims to increase the ease of electronic transactions. A Party must not deny the legal validity of a signature solely on the basis of it being electronic, except in circumstances where its laws and regulations provide otherwise. Each Party must also permit participants in electronic transactions to determine which electronic authentication they use. RCEP Parties must not limit the recognition of electronic authentication technologies and implementation models, and must allow opportunities for participants to prove their electronic transactions comply with laws and regulations on electronic authentication. This does not prevent RCEP Parties requiring methods of electronic authentication to meet performance standards or be certified by an accredited authority. RCEP Parties must also encourage the use of interoperable electronic authentication.

Online Consumer Protection

Under Article 12.7, each Party is required to have consumer protection laws to protect consumers of electronic commerce against fraudulent and misleading practices that cause harm or potential harm to those consumers. RCEP Parties are also required to publish information on the consumer protection it provides to e-commerce users, including how individuals can pursue remedies and how business can comply with any legal requirements.

Personal Information Protection

Under Article 12.8, each Party is required to have a legal framework to ensure the protection of personal information of electronic commerce users, taking into account international standards. Each Party is required to publish information on the protections it provides, including how individuals can pursue remedies and how business can comply with any legal requirements. RCEP Parties are required

to encourage juridical persons to publish their policies and procedures related to personal information protection. RCEP Parties must cooperate, to the extent possible, to protect personal information transferred from another Party.

Unsolicited Commercial Electronic Messages (SPAM)

Each Party is required, by Article 12.9, to have measures that require suppliers of unsolicited commercial electronic messages to enable recipients to stop receiving those messages, require recipients' consent to receive those messages, or otherwise provide for the minimisation of SPAM. RCEP Parties must provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with the Party's measures. RCEP Parties are also required to endeavour to cooperate regarding regulation of unsolicited commercial electronic messages.

Domestic Regulatory Framework

Each Party is required under Article 12.10 to adopt or maintain legal frameworks governing electronic transactions that take into account the *UNCITRAL Model Law on Electronic Commerce 1996* or other applicable international conventions and model laws. RCEP Parties must also endeavour to avoid any unnecessary regulatory burden on electronic transactions.

Customs duties

RCEP Parties are required to continue their current practice of not imposing customs duties on electronic transmissions (Article 12.11). This does not preclude a Party from adjusting its practice in accordance with future WTO Ministerial Decisions on such customs duties. Should there be such a change in the WTO, RCEP Parties must come together and review Article 12.11. This article does not prevent a Party from imposing internal taxes, fees or other charges on electronic transmissions.

Transparency

Article 12.12 requires RCEP Parties to publish, as promptly as possible, all relevant measures relating to e-commerce. Where that is not practicable, RCEP Parties must otherwise make the information publicly available, such as on the internet. When a Party receives a request for specific information on such measures, it is required to respond as promptly as possible.

Location of Computing Facilities

Under Article 12.14, no Party shall require a 'covered person' to use or locate computing facilities in its territory as a condition for conducting business there (the chapter defines 'covered person'). However, this does not prevent a Party from having measures inconsistent with the requirement in order to achieve a legitimate public policy objective if the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade. A Party can also take any contrary measure it considers necessary for the protection of its essential security interests.

Cross-Border Transfer of Information by Electronic Means

Under Article 12.15, no Party shall prevent cross-border transfer of information by electronic means where such activity is for the conduct of a covered person's business. However, a Party may adopt or maintain measures that affect such transfers to achieve a legitimate public policy objective if the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable

discrimination, or a disguised restriction on trade. A Party can also take any contrary measure it considers necessary for the protection of its essential security interests.

Dialogue on Electronic Commerce

Article 12.16 requires RCEP Parties to consider a range of matters when conducting dialogue, including the matters for cooperation under Article 12.4, current and emerging issues, and other matters relating to the development and use of electronic commerce. RCEP Parties are required to take those matters, and any recommendations arising from the dialogue into account when conducting the general review of the Agreement.

Settlement of Disputes

Under Article 12.16, should a dispute relating to the e-commerce obligations arise, RCEP Parties are required to engage in consultations in good faith and make every effort to reach a mutually satisfactory solution. Should this fail, any Party engaged in the consultation can refer the matter to the Joint Committee for resolution. While the provisions of the Dispute Settlement chapter (Chapter 19) do not apply to the Electronic Commerce chapter, this must be reviewed during the general review of the Agreement.

5.16 Competition

The competition chapter (Chapter 13) aims to promote competition in markets, and enhance economic efficiency and consumer welfare.

Inappropriate Measures against Anticompetitive Activities

Article 13.3 sets out obligations for each Party regarding the implementation and enforcement of competition laws, including:

- adopting or maintaining competition laws that prohibit anti-competitive practices, and enforcing such laws accordingly;
- establishing or maintaining appropriate authorities to implement such laws;
- ensuring the independence of decision-making by the relevant authorities, regarding the enforcement of such laws;
- ensuring that such laws are not applied or enforced in a manner that discriminates on the basis of nationality;
- applying such laws to all entities engaged in commercial activities. Any exclusions or exemptions must be transparent, and based on the grounds of public policy or public interest;
- making publicly available its competition laws and guidelines used to administer such laws. Internal operating procedures do not have to be made publicly available;
- making publicly available the grounds for any final decision or order to impose a sanction or remedy, and any appeal. This must be consistent with each Party's laws, safeguarding confidential information, and safeguarding information on the grounds of public policy or public interest;
- informing the person or entity accused of breaching a Party's competition laws, of the reason for the allegations and provide a fair opportunity for that person to be heard and present evidence; and

- making available to the person or entity subject to a sanction or remedy, the grounds for any final decision or order to impose the sanction or remedy.

Cooperation

Article 13.4 recognises the importance of cooperation between each Party's competition authorities, and provides for the cooperation on issues relating to competition law enforcement. Such cooperation can include notification and dialogue regarding the activities of a Party's law enforcement authority, exchange of information, and the coordination of law enforcement actions between RCEP Parties.

Confidentiality of Information

Article 13.5 requires, when requesting confidential information, each Party to include the purpose of the request, the intended use of the information, and any domestic laws which may affect the confidentiality of such information, or require it to be used for purposes that have not been agreed. Such information shall:

- be shared on mutually agreed terms;
- be kept confidential by the receiving Party;
- be used only for the purpose that the providing Party has agreed to; and
- not be used as evidence in criminal proceedings, unless the information has been provided using diplomatic channels, or another channel established in accordance with each Party's laws.

Technical Cooperation and Capacity Building

Article 13.6 provides for each Party to work together on technical cooperation activities, including the sharing of relevant experience and non-confidential information, exchanging competition experts and authorities, and participating in advocacy programmes.

Consumer Protection

Article 13.7 requires each Party to adopt or maintain domestic laws which prohibit misleading practices, or false or misleading descriptions used in trade. RCEP Parties also recognise that improving the awareness of, and access to, consumer redress mechanisms is important. RCEP Parties can cooperate on consumer protection in a manner that is consistent with each Party's laws, and available resources.

Consultations

Article 13.8 enables consultations to be requested where specific matters arise under this chapter, and each Party is required to enter into consultations with a requesting Party. Requests must articulate how the matter affects a Party's important interests, and the requested Party shall accord full and sympathetic consideration to concerns raised.

Dispute Settlement

Article 13.9 stipulates that the obligations in the Competition chapter are not subject to the dispute settlement mechanism in Chapter 19.

5.17 Small and Medium Enterprises

The Small and Medium Enterprises chapter (Chapter 14) recognises the contribution of SMEs to economic growth, employment and innovation in RCEP Parties.

Information Sharing

Under Article 14.2 of the Small and Medium Enterprises (SME) chapter, RCEP Parties have committed to creating and maintaining a website to share knowledge, experiences and best practices among RCEP Parties. The Article sets out what needs to be available on the websites, including the full text of the RCEP agreement and information relevant for SMEs doing business within, or trading, with a RCEP Party.

Cooperation

Article 14.3 obliges RCEP Parties to strengthen cooperation under the SME Chapter. The Article lists a number of activities that RCEP Parties may undertake in pursuit of strengthening cooperation, for example:

- improving SMEs' access to markets and participation in global value chains, including by promoting and facilitating partnerships among businesses;
- promoting the use of e-commerce by SMEs;
- exploring opportunities for exchanges of experiences among RCEP Parties' entrepreneurial programmes; and
- encouraging innovation and use of technology.

Contact Points

Article 14.4 provides that each Party shall, within 30 days of RCEP entering into force for that Party, designate a contact point to facilitate cooperation and information sharing under the SME chapter and notify the other RCEP Parties of the contact details of that contact point. Each Party shall notify the other RCEP Parties of any change to those contact details.

Non-Application of Dispute Settlement

Article 14.5 provides that the SME chapter is not subject to the dispute settlement mechanism described in Chapter 19.

5.18 Economic and Technical Cooperation

Objectives

Under Article 15.2 of the Economic and Technical Cooperation (ETC) chapter, RCEP Parties are obliged to prioritise initiatives of economic and technical cooperation and where possible minimise duplication of on-going efforts and utilisation of resources, particularly under ASEAN's existing bilateral FTAs with the other RCEP Parties.

Scope

Under Article 15.3, RCEP Parties have agreed that ETC under this chapter shall support the inclusive, effective and efficient implementation and utilisation of RCEP through economic and technical cooperation activities, specified in the Work Programme. The Article sets out a number of economic and technical cooperation activities to focus on, including:

- trade in goods;
- trade in services;
- investment;
- intellectual property;
- competition;
- SMEs;
- e-commerce; and
- others, as mutually agreed upon among the RCEP Parties.

Least Developed ASEAN Member States

Article 15.6 recognises the different levels of development of RCEP Parties. RCEP Parties shall take into consideration specific constraints faced by least developed ASEAN Member States. RCEP Parties may mutually agree to provide assistance to help least developed ASEAN Member States implement their obligations and take advantage of the benefits of the RCEP Agreement.

Resources

Article 15.4 stipulates that any resources required to fulfil the commitments contained in the ETC chapter shall be provided on a voluntary basis.

Work Programme and Committee on Economic and Technical Cooperation

Article 15.5 of the ETC Chapter obliges RCEP Parties to develop a Work Programme. Within the Work Programme, priority will be given to activities that provide capacity building and technical assistance to developing and least developed countries, increase public awareness and enhance access to information for businesses.

Non-Application of Dispute Settlement

Article 15.8 provides that the ETC chapter is not subject to the dispute settlement mechanism contained in the Dispute Settlement chapter.

5.19 Government Procurement

The Government Procurement (Chapter 16) chapter requires RCEP Parties to conduct their government procurement (when open to international competition) in accordance with generally accepted government procurement principles (Article 16.3).

RCEP Parties have specific obligations under Articles 16.4 and 16.5 to:

- make publicly available their laws, regulations and possibly procedures on government procurement; and
- endeavour to cooperate on matters relating to government procurement with a view to achieving a better understanding of other Party's government procurement systems, including

exchanging information on government procurement laws, regulations and best practices (including those in relation to small and medium enterprises).

The obligations in the Government Procurement chapter are not subject to dispute settlement under the FTA (Article 16.8).

5.20 General Provisions and Exceptions

The General Provisions and Exceptions chapter contains a number of cross-cutting provisions that apply across the entire Agreement, as well as a set of exceptions that allow RCEP Parties to justify actions that would otherwise violate the obligations in the Agreement.

General Provisions

Article 17.2 clarifies that the Agreement shall apply to the geographical scope to which each Party assumes its obligations in relation with another Party under the WTO Agreement.

Article 17.3.1 requires RCEP Parties to ensure that laws, regulations, procedures, and administrative rulings of general application, with respect to any matter covered by the Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and RCEP Parties to become acquainted with them. RCEP Parties are required, to the extent possible and practicable, to publish these kinds of measures in advance of their adoption and, where appropriate, to provide interested persons and other RCEP Parties with a reasonable opportunity to comment on them (Article 17.3.2).

On the request of any other Party, Article 17.4 requires each Party to promptly provide information and respond to questions relating to measures of this kind.

Article 17.5 imposes obligations on RCEP Parties with respect to their domestic administrative proceedings applying laws, regulations, procedures and administrative rulings to a particular person, good or service of another Party in specific cases. These obligations are to ensure that, in any such proceeding:

- Wherever possible, a person of another Party that is directly affected by a proceeding is provided with reasonable notice of when a proceeding is initiated, and a general description of any issue in question (Article 17.5(a)).
- A person of another Party that is directly affected by a proceeding is afforded a reasonable opportunity to present facts and arguments in support of that person's position prior to any final administrative action, when time, the nature of the proceeding, and the public interest, permit (Article 17.5(b)).
- The procedures are in accordance with its law (Article 17.5(c)).

Article 17.6.1 requires each Party to establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures in order to review final administrative actions regarding matters covered by the Agreement. Each Party must also ensure that, with respect to such tribunals or procedures, RCEP

Parties to a proceeding have the right to a reasonable opportunity to support or defend their respective positions (Article 17.6.2(a)); and a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the relevant authority (Article 17.6.2(b)). Subject to appeal or further review as provided for in a Party's law, such a decision must be implemented by, and govern the practice of, the office or authority with respect to the administrative action at issue (Article 17.6.3).

Article 17.7 ensures that nothing in the Agreement requires a country to provide confidential information (the disclosure of which would be contrary to its domestic law, or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises).

Article 17.8 provides that, where a Party provides information to another Party in accordance with the Agreement and designates the information as confidential, the other Party shall, subject to its laws and regulations, maintain the confidentiality of the information.

Article 17.9.1 requires each Party, in accordance with its laws and regulations, to take appropriate measures to prevent and combat corruption with respect to any matter covered by the Agreement.

In Article 17.10, each Party affirms its rights and obligations under the Convention on Biological Diversity.

Article 17.11 provides that a decision by a competent authority, including a foreign investment authority, of a Party on whether or not to approve or admit a foreign investment proposal, and the enforcement of any conditions or requirements that an approval or admission is subject to, shall not be subject to the dispute settlement provisions of the Agreement.

General exceptions

Article 17.12 applies the general exceptions that are found in Article XX of GATT and Article XIV of GATS to those chapters to which these exceptions are relevant. The effect of such incorporation is that, provided such measures are not used for trade protectionist purposes, the Agreement will not prevent any Party from taking measures (including environmental measures) necessary to protect human, animal or plant life or health, or public morals. The same applies with respect to measures to prevent deceptive practices, protect national works, items or specific sites of historical or archaeological value, or to conserve living and non-living exhaustible natural resources.

Security exceptions

The security exception in Article 17.13(a) provides that no RCEP Party will be required to furnish any information if it considers that doing so would be contrary to its essential security interests. In addition, the exception ensures that an RCEP Party may apply any measure that it considers necessary for the protection of its essential security interests:

- relating to fissionable and fusionable materials, or materials from which they are derived (Article 17.13(b)(i));

- relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials, or relating to the supply of services, for the purpose of supplying or provisions a military establishment (Article 17.13(b)(ii));
- taken so as to protect critical public infrastructures including communications, power, and water infrastructures (Article 17.13(b)(iii)); or
- taken in time of national emergency or war or other emergency in international relations (Article 17.13(b)(iv)).

Article 17.13(c) also ensures that the Agreement will not prevent an RCEP Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Taxation measures

The taxation exception in Article 17.14 works on the premise that nothing in the Agreement applies to taxation measures unless it is stated explicitly in this Article. Article 17.14 provides that RCEP will only grant rights or impose obligations with respect to taxation measures:

- to the extent that the WTO Agreement grants rights or imposes obligations with respect to such taxation measures (Article 17.14.3(a)); or
- to the extent that Article 10.9 (Transfers) in the Investment chapter grants rights or imposes obligations with respect to such taxation measures (Article 17.14.3(b)).

Article 17.14.4 clarifies that nothing in the Agreement will affect the rights and obligations of any Party under any tax convention and that, in the event of any inconsistency relating to taxation measures between RCEP and any such tax convention, the tax convention will prevail.

Article 17.14.5 states that nothing in RCEP obliges a Party to extend to any other Party the benefit of any treatment arising from any existing or future tax convention by which that Party is bound.

Measures to safeguard the balance of payments

Article 17.15 permits a Party to impose restrictive measures where a Party is in serious balance of payments and external financial difficulties, or under threat thereof. In such circumstances, a Party may:

- in the case of trade in goods, adopt or maintain certain restrictive import measures (Article 17.15.1(a));
- in the case of trade in services, adopt or maintain restrictions on trade in services on which it has undertaken commitments (Article 17.15.1(b)); or
- in the case of investments, adopt or maintain restrictions on payments or transfers related to covered investments. A Party may also adopt such restrictions on payments or transfers where, in exceptional circumstances, payments or transfers relating to capital movements cause or threaten to cause serious difficulties for macroeconomic management (Article 17.15.2).

The Article sets out a number of conditions that a Party must comply with in adopting or maintaining the types of restrictive measures set out above. Specifically, any such measure must:

- be consistent with the IMF Articles of Agreement (Article 17.15.3(a));

- avoid unnecessary damage to the commercial, economic, and financial interests of any other Party (Article 17.15.3(b));
- not exceed what is necessary to deal with the circumstances (Article 17.15.3(c));
- be temporary and be phased-out progressively as the situation improves (Article 17.15.3(d)); and
- be applied on a non-discriminatory basis (Article 17.15.3(e)).

Treaty of Waitangi

The effect of the Treaty of Waitangi exception in Article 17.16.1 is that, provided measures are not used for trade protectionist purposes, RCEP will not prevent New Zealand from taking measures that it deems necessary to accord more favourable treatment to Māori in respect of matters covered by RCEP, including in fulfilment of its obligations under the Treaty of Waitangi. Article 17.16.2 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.

5.21 Institutional Provisions

The Institutional Provisions chapter (Chapter 18) establishes a ‘RCEP Joint Committee’ to consider the implementation and operation of the Agreement and consider any proposals to amend it (Articles 18.2 and 18.3). The RCEP Joint Committee will meet within one year of the RCEP Agreement entering into force and every year thereafter, or as RCEP Parties agree (Article 18.5). Article 18.4.1 requires the RCEP Joint Committee (and subsidiary bodies established under the Agreement) to take all decisions by consensus. The RCEP Joint Committee shall be deemed to have taken a decision by consensus if no Party present at the meeting, when the decision is taken, objects to the proposed decision.

In addition to the RCEP Joint Committee, a number of thematic subsidiary bodies will be established by the RCEP Joint Committee at its first meeting, including a Committee on Trade in Goods, a Committee on Services and Investment, a Committee Sustainable Growth and a Committee on the Business Environment (Article 18.6.1). The RCEP Joint Committee may establish additional subsidiary bodies including other committees, as it deems necessary (Article 18.6.3).

Each of the committees will consider issues arising out of a cluster of chapters as per annex 18A. The functions of the subsidiary bodies are also contained in annex 18A. Some examples of the functions are: to review and monitor the operation of their respective specialist areas and to provide a forum to discuss any problems that might arise in the implementation of the Agreement. The subsidiary bodies shall meet as directed by the RCEP Joint Committee, or as otherwise agreed by RCEP Parties (Article 18.7).

5.22 Dispute Settlement

The Dispute Settlement chapter (Chapter 19) sets out effective, efficient, and transparent rules and procedures for the settlement of state-to-state disputes arising under the Agreement.

The first step in bringing a state-to-state dispute under RCEP is to request formal consultations (Article 19.6). If the disputing Parties are unable to resolve the matter through those consultations, the Party that requested consultations may request the establishment of a panel to examine the matter (Article 19.8). Unless otherwise agreed by the disputing Parties, the panel's terms of reference will be to examine, in light of the relevant provisions of this Agreement, the matter referred to in the request for the establishment of a panel, and to make findings and determinations as provided for in the Agreement (Article 19.12). Article 19.9 states that, where more than one Party requests the establishment or reconvening of a panel relating to the same matter, a single panel should be established or reconvened to examine the complaints relating to that matter whenever feasible.

At any time during the dispute settlement process, the disputing Parties may agree to utilise an alternative method of dispute resolution such as good offices, conciliation, or mediation to try and find a solution to their dispute (Article 19.7). Procedures for such alternative methods of dispute resolution may begin at any time, and may be terminated by any Party to the dispute at any time. The disputing Parties may agree to conduct such alternative methods of dispute resolution while the formal dispute settlement process continues under the Agreement. The availability of alternative methods of dispute settlement provides the broadest range of possibilities for resolving a dispute.

Article 19.11.3 provides that, where a request for the establishment of a panel is made, RCEP Parties to the dispute shall enter into consultations with a view to reaching agreement on the procedures for composing the panel, taking into account the factual, technical, and legal aspects of the dispute.

Article 19.11.10 sets out qualification and independence requirement for all panellists. If RCEP Parties to the dispute are unable to reach agreement on the procedures for composing the panel, each of the disputing Parties has the opportunity to appoint one panellist, with the third panellist (the Chair) chosen by agreement of the disputing Parties where possible (Article 19.11.6).

Unless the disputing Parties agree otherwise, the Chair cannot be a national of the disputing Parties (Article 19.11.13). If the disputing Parties cannot agree on appointment of the Chair, there are a series of backup options in place to ensure that no disputing Party can block composition of the panel. These options include the appointment of a Chair by the Director-General of the WTO, or the Secretary-General of the Permanent Court of Arbitration (Article 19.11.7 and Article 19.11.8).

Article 19.13 set out rules around the panels proceedings, and requires a panel to abide by the rules of procedure, which will be agreed by the RCEP Joint Committee.

Article 19.14 enables the disputing parties to agree that the panel suspend or terminate its proceedings.

When a panel makes findings and determinations that a measure is inconsistent with a Party's obligations under the Agreement, or that a Party has otherwise failed to carry out its obligations under the Agreement, the responding Party is required to bring the measure into conformity or carry out the relevant obligations as applicable (Article 19.15.1).

The responding Party must do so within a reasonable period of time, if it is not practicable for it to comply immediately (Article 19.15.3). The disputing Parties must endeavour to agree on a reasonable period of time, but if they are unable to do so, the matter may be referred to the panel Chair to determine a reasonable period of time (Article 19.15.5).

If there is disagreement as to whether the relevant Party has complied with the findings and determinations within a reasonable period of time, such disagreement shall be settled through recourse to a panel reconvened for this purpose (Article 19.16).

Compensation and the suspension of concessions or other obligations are temporary measures that are available in the event that the responding Party does not bring its measure into conformity or carry out relevant obligations as required by the panel's final report, within the reasonable period of time (Article 19.17). In such cases, the disputing Parties shall enter into negotiations with a view to developing mutually acceptable compensation. If the disputing Parties cannot agree on such compensation, or if the responding Party fails to observe the terms of such agreement, then steps are set out that allow a complaining Party to suspend benefits of equivalent effect (Article 19.17.3).

There is provision for a panel to be reconvened if; the responding Party objects to the level of suspension proposed; considers that it has observed the terms and conditions of any applicable compensation agreement; or considers that the principles for suspending concessions (as set out in Article 19.17.6) have not been followed by the complaining Party (Article 19.17.8).

Article 19.18 provides that at all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Party, particular consideration shall be given to the special situation of least-developed country RCEP Parties. In this regard, RCEP Parties shall exercise due restraint in raising matters under these procedures involving a least-developed country Party.

5.23 Final Provisions

The Final Provisions chapter (Chapter 20) sets out how RCEP will interact with other international agreements.

Article 20.2.1 recognises that RCEP Parties intend the RCEP Agreement to co-exist with their existing international agreements and records RCEP Parties' affirmation of their rights and obligations to each other under existing international agreements to which all RCEP Parties, or more than one of them, are Party. As per Article 20.2.2, in situations where a provision of RCEP is inconsistent with a provision of another agreement to which at least two RCEP countries are Party, then, on request, the RCEP Parties in question are required to consult with a view to reaching a mutually satisfactory solution (without prejudice to their rights under Chapter 19 on dispute settlement).

Footnote 1 in Article 20.2.2 clarifies that there will not be an inconsistency simply because one Agreement provides more favourable treatment for goods, services, investments, or persons than another agreement. This means, for example, that if an earlier bilateral or regional FTA provided for

lower preferential tariff rates than RCEP, then a trader could choose to access the lower rates under the other agreement rather than having to use the RCEP rates.

The RCEP agreement will enter into force 60 days after the date on which at least six ASEAN Member States and three non-ASEAN Member States have notified the Depository that they have deposited an instrument of ratification, acceptance, or approval (Article 20.6.2). A Party can withdraw from RCEP by providing six months' notice to the Depository, unless RCEP Parties agree on a different period (Article 20.7).

RCEP Parties will undertake a general review of RCEP every five years from the date of entry into force, unless RCEP Parties agree otherwise (Article 20.8.1). In conducting the review, RCEP Parties will consider ways to further enhance trade and investment among RCEP Parties and take into account the work of the RCEP Committees and relevant development in international fora (Article 20.8.2).

Other States or customs territories can accede to RCEP from 18 months after the date of entry into force (Article 20.9.1). Accession is subject to the consent of RCEP Parties and any agreed terms or conditions (Article 20.9.1). Accession will be carried out in accordance with the procedures for accession adopted by the RCEP Joint Committee (Article 20.9.5); a State or customs territory will become a Party to RCEP either 60 days after it deposits an instrument of accession or when all RCEP Parties notify the Depository that they have completed their applicable legal procedures, whichever is later (Article 20.9.4).

The Final Provisions chapter also:

- Under Article 20.1, clarifies that annexes, appendices, and footnotes constitute integral parts of the Agreement;
- Under Article 20.3, provides for RCEP Parties to consult on whether to amend RCEP if any international agreement referred to or incorporated into RCEP is amended or succeeded (unless otherwise provided in the Agreement);
- Under Article 20.4, makes provision for the amendment of RCEP by agreement of the parties in writing; and
- Under Article 20.5, establishes the Secretary-General of ASEAN as the Depository for the Agreement and sets out the functions of that role.

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

Most of the obligations in RCEP are already met by New Zealand's existing domestic legal and policy regime. In summary, this is because New Zealand already has an open economy that places few barriers in the way of trade and investment.

6.1 Changes Required

There are a small number of minor legislative and regulatory amendments that would be required to implement certain obligations under RCEP and thereby enable New Zealand to ratify RCEP. These are set out below:

- 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. Those Orders in Council would then be made. This is the same process used for New Zealand's previous plurilateral FTAs.
- An amendment to the Tariff Act 1988 to provide for the transitional RCEP safeguard mechanism under the Trade Remedies chapter.
- 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.

6.2 RCEP Bill

It is proposed that a Regional Comprehensive Economic Partnership (RCEP) Bill be included in the 2021 legislative programme. The Bill would be drafted in compliance with the Cabinet Manual and go through normal Parliamentary procedures before it is passed, including debate in Parliament, Select Committee scrutiny, public submissions, and a series of votes by Parliament. Any changes to, or new, regulations would also be made in compliance with the Cabinet Manual. All legislative instruments will be printed, published, and notified in the New Zealand Gazette.

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

Evidence shows that trade and other forms of international engagement often provide aggregate economic and other benefits, particularly so for smaller economies.⁴⁸ However, this international engagement can also have associated environmental, social and other costs.⁴⁹ This section of the NIA assesses the overall economic, social, cultural and environmental costs and effects of joining RCEP for New Zealand. It draws on the advantages and disadvantages outlined in Section 4 above, as well as economic modelling of the impact of RCEP. The fiscal costs to New Zealand of entering RCEP are outlined in Section 8.

7.1 Trade for All

The Trade for All Advisory Board (TFAAB) was established by Cabinet in November 2018 to produce specific directives for future trade policies and negotiations to advance the Government's objective of making trade policy work for all New Zealanders. Its membership was selected to cover many perspectives and reflect, as much as possible, the diversity of contemporary Aotearoa New Zealand. The Trade for All Advisory Board's report was released in November 2019. The report made 53 specific recommendations, drawing on eleven key findings. It is available on the Trade for All Advisory Board website: www.tradeforalladvisoryboard.org.nz.

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 in November 2019. Nevertheless, some Trade for All priorities are advanced by RCEP, such as a specific chapter on Small and Medium Enterprises which aims to facilitate the engagement of SME's in international trade and the inclusion of an Economic and Technical Cooperation chapter to help implement and enhance the benefits of RCEP among RCEP Parties.

There are, however, some elements of Trade for All that are not reflected in RCEP, for example substantive provisions on the 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 amongst RCEP Parties for their inclusion in the Agreement.

⁴⁸ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

⁴⁹ *Ibid*

Mitigating this 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) including Cambodia, Laos and Myanmar. Consistent with the Government's response to the Trade for All Advisory Board's report, New Zealand will continue to seek outcomes in these areas in ongoing trade policy work with the RCEP region, including through reviews of RCEP and accession negotiations with new Parties.

7.2 Linkages between trade and productivity, sustainability and inclusiveness

Alongside international work done on assessing the costs and effects of trade, MFAT has a significant programme of work under way to better understand the impacts of trade on productive, inclusive and sustainable outcomes. While the former (trade and productivity) is relatively well understood, the latter two aspects of trade have not been as closely examined. MFAT recently published a working paper "Understanding the linkages between trade and productivity, sustainability and inclusiveness"⁵⁰ that attempts to bridge some of that gap in the New Zealand context. These insights into the benefits and costs of trade have been included in this section. The working paper also proposes a suite of metrics that could be used to understand and track trends in the linkages between trade and productivity, sustainability and inclusiveness over time. These metrics will likely require ongoing refinement and improvement over time due to data constraints. A future work programme includes the development of a detailed framework to better understand these linkages. The intention is to apply this framework to future NIAs to assess trade policy outcomes to meet social, environmental and economic objectives.⁵¹

7.3 Summary of Impacts

The Government commissioned independent economic modelling of RCEP's impact,⁵² estimates that RCEP will accelerate the rate of New Zealand's GDP growth for about 20 years. New Zealand's GDP is estimated to be larger than if we were not in RCEP for each year that the Agreement is in force. Once RCEP is fully in effect, New Zealand's annual GDP will be between 0.3 percent and 0.6 percent larger than if the RCEP had not existed, equal to between NZ\$1.5 billion and NZ\$3.2 billion.⁵³

The net economic benefit of RCEP for New Zealand would be expected to translate into a corresponding net benefit to New Zealand society, for example, through higher real wages, with greater resources available to spend on health, welfare, cultural and environmental outcomes.

⁵⁰ *Ibid*

⁵¹ This work also has links to Treasury's Living Standards Framework which considers policy impacts and indicators for measuring sustainable intergenerational wellbeing in New Zealand.

⁵² ImpactEcon LLC: Impacts of a Regional Comprehensive Economic Partnership (RCEP) on New Zealand, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: October 2019

⁵³ The upper bound of \$3.2 billion assumes India re-joins RCEP. Should India remain outside of RCEP, the economic benefits will be towards the lower end of the range.

At the same time, RCEP preserves the New Zealand Government's right to regulate for legitimate public policy purposes. RCEP explicitly recognises each government retains the right to regulate in the public interest and to implement that policy.

In the uncommon event that a policy would otherwise breach an obligation, there are a range of general protections in the Agreement that will provide further flexibility for the Government. This includes exceptions for health, environment, national treasures of artistic, historic or archaeological value, national security, taxation and situations involving serious balance of payments difficulties (i.e. when a country cannot pay its debts). There are also further protections that apply to particular parts of RCEP. Some of these are specific to New Zealand and ensure policy areas that are important to New Zealanders are safeguarded. Examples of this in the investment area include specific protections for social services (including health, public education, public housing, public transport and social security), screening of foreign investments, management of our exclusive economic zone, conservation areas and our biosecurity and food safety regimes.

As with all of New Zealand's contemporary trade agreements, RCEP also includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. This is in addition to other areas of policy flexibility preserved across RCEP.

Table 7.1: Summary of Impacts

Area	Increase in NZ GDP when fully in effect in 2045, relative to baseline	
	Percent of real GDP ⁵⁴	Constant 2014 NZ\$
Reductions in tariffs on goods trade. (Economic benefit).	-0.12 to 0.05	-\$630 million to \$260 million
Reductions in non-tariff measures (NTMs) on goods trade. (Economic benefit).	0.19 to 0.39	\$940 million to \$2,020 million
Reductions in NTMs on services trade. (Economic benefit).	0.03 to 0.06	\$150 million to \$310 million
Improved trade facilitation measures. (Economic benefit).	0.08 to 0.12	\$410 million to \$620 million
Total economic benefit.	0.29 to 0.62	\$1,490 million to \$3,190 million
Reductions in barriers to foreign direct investment.	0.04	\$180 million

⁵⁴ Source: ImpactEcon Report: Note: Ranges are based on the upper and lower estimates from the scenarios including New Zealand. Estimates are based on judgements on market access outcomes achieved, 5-10% reduction in the cost of goods and services Non-Tariff Measures (NTMs) for non-CPTPP countries, and 10% reduction in customs processing times for non-CPTPP countries. (NTMs and customs time reductions from CPTPP are built into the baseline and are therefore not counted again for RCEP).

Impact on New Zealand		
Employment	Net positive	Aggregate employment is unchanged with a modest increase in real wages.
Social Regulation	No negative impact expected	Does not inhibit the right to regulate for legitimate public policy purposes.
Health	No negative impact expected	Does not inhibit the right to regulate for legitimate public health purposes.
Immigration	No negative impact expected	Commitments do not apply to persons seeking access to the employment market of New Zealand, or to nationality, citizenship, or residence.
Human Rights	No negative impact expected	No effect on human rights in New Zealand.
Treaty of Waitangi	No negative impact expected	Nothing in RCEP prevents the Crown from meeting its obligations to Māori.
Māori	Net positive	Outcomes expected to modestly benefit Māori business owners and workers.
Women	No negative impact expected	May improve trade engagement for women business owners and workers.
Culture including the digital economy	No negative impact expected	The importance of genetic resources, traditional knowledge and folklore is acknowledged.
Environment	No negative impact expected	Does not inhibit the right to regulate for legitimate public policy purposes including the environment.

7.4 Economic effects

7.4.1 General impact of trade on economic performance

Trade makes a significant contribution to New Zealand's economic performance. Exports of goods and services account for around 28 percent of New Zealand's GDP. Exporting allows New Zealand businesses to access larger markets, benefit from economies of scale, and to specialise in areas they have an advantage in. Connections to international markets, including importing goods and services, also allow New Zealand to access resources, knowledge and ideas that can boost our productivity, competitiveness and stimulate innovation.

Economic research has demonstrated that trade and growth are positively related. The long-term evidence from a wide range of OECD countries suggests that a 10 percent increase in trade openness - the share of exports plus imports to GDP - was associated with a 4 percent increase in output per

working-age person.⁵⁵ In New Zealand's case, this is particularly true; - as a smaller economy, trade openness allows a focus on areas of comparative advantage.

Improved market access for goods, services and investment under an FTA, such as the lowering of tariffs and non-tariff measures and removal of barriers to services exports and investment, can enable existing New Zealand exporters to achieve net increases in the value of their exports. Lower costs and new opportunities can also result in new businesses entering export markets. It would be extremely unusual for these increases not to translate directly into higher GDP and income. Moreover, the opportunity for local companies to increase market size through greater exports can increase productivity and efficiency through economies of scale. This may be achieved, for example, by the introduction of new processing technologies to service the larger market. These effects – particularly for trade in goods following the removal of tariff and non-tariff measures – are often described as 'static gains' or 'first-order effects'.

A second source of economic benefit from FTAs is 'dynamic productivity gains' or 'second-order effects'. These effects are harder to quantify as they accumulate over time and may be attributable to the downstream effects of trade agreements, rather than the immediate impacts driven by tariff removal and improvements in market access alone. Trade and investment may be stimulated through improvements in the regulatory framework brought about by the FTAs, which increase transparency, fairness and predictability for businesses. As a result of the facilitation of increased trade and investment flows, companies are more exposed to competition, innovation, international benchmarking and develop stronger links with international business partners. Such exposure helps drive production and maintain New Zealand companies at the 'leading-edge' in terms of best-practice across a range of issues (innovation, technology, knowledge, research and product/service development, etc.). Spill-overs from this process into the domestic economy can include the generation of ongoing productivity improvements (dynamic productivity gains) across the wider economy.

Removing tariffs and other trade barriers generally creates adjustment costs as resources are diverted from previously protected sectors to other areas of the economy. This can be accentuated in sectors where a country has maintained particularly high barriers. New Zealand faced high transition costs when the economy was exposed to international competition from the reforms started in the 1980s. Given the historical evolution, trade-related transition costs tend to be minimal for New Zealand, given our already largely open economy. Over the longer term and on the whole, domestic liberalisation of tariffs and other trade and investment barriers generally leads to economic gains, - for example as lower domestic prices benefit consumers and producers. An increase in openness to trade helps spur productivity increases and growth within a country through more efficient allocation of resources, the stimulation of innovation, and the transfer of knowledge and technology between countries.

Productivity in New Zealand's tradables sector is materially higher than in the non-tradables sector, suggesting that part of New Zealand's poor aggregate productivity performance may stem from a

⁵⁵ OECD. 2003. The Sources of Growth in OECD Countries, Paris.

relatively small tradables sector.⁵⁶ Weak productivity in the non-tradables sectors also hampers productivity in the tradables sectors. Distance to markets, relatively low engagement with global value chains, and an overvalued real exchange rate are some potential factors contributing to low trade intensity. Some of these factors (i.e. distance) cannot be changed, although digital technology or other innovations may help to mitigate them.

Trade can also contribute to economic sustainability if it maintains or improves New Zealand's resilience to economic shocks.⁵⁷ Too much dependence on a narrow set of markets or products increases the risk associated with an adverse outcome in a particular market, although this is mitigated by having market opportunities elsewhere. New Zealand's import diversity has increased somewhat in recent years, particularly in terms of the concentration by origin. In contrast, export diversity has declined (become more concentrated), from both a market and product perspective. Linked to the increase in export product concentration, New Zealand's Economic Complexity Index, a measure of how diversified and complex a country's export basket is, has declined over time. This decline may also be linked to New Zealand's relatively weak productivity performance discussed above.

7.4.2 Estimated gains from trade and investment

Economists seek to capture the effects of changing trade barriers on GDP, trade flows, national welfare and other variables with sophisticated Computable General Equilibrium (CGE) models. CGE models link different sectors in different countries together using, in this case, the Global Trade Analysis Project (GTAP) trade data and input output tables. CGE modelling estimates changes to variables within the RCEP group of countries, and for almost all countries outside of RCEP.

CGE models rely on assumptions and are restricted by data limitations, and hence are better suited to indicating the size and direction of effects rather than providing precise estimates. We are confident that the CGE modelling reported on here is of the highest standard possible. This modelling is not a full cost benefit appraisal of RCEP. Costs external to the model are considered separately below.

MFAT commissioned a comprehensive study into the impact of RCEP, focussed on New Zealand.⁵⁸ 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.

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'.

⁵⁶ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

⁵⁷ Ibid

⁵⁸ ImpactEcon LLC: Impacts of a Regional Comprehensive Economic Partnership (RCEP) on New Zealand, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: October 2019

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).

MFAT’s assessment is that, if RCEP countries are impacted economically in roughly the same magnitude, then the modelling results of the different scenarios, which are presented as deviations from the baseline, will remain broadly correct. If, however, 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. Similarly, the relative impacts between the RCEP countries and the rest of the world will also affect the accuracy of these modelling scenarios. 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.

Based on the model, the New Zealand Government assesses that the overall impact of RCEP on New Zealand’s economy would be an increase of between 0.3 percent and 0.6 percent in New Zealand’s GDP (between NZ\$1.5 billion and NZ\$3.2 billion). The upper bound of \$3.2 billion assumes India re-joins RCEP. Should India remain outside of RCEP, the economic benefits will be towards the lower end of the range. In addition, reducing barriers to FDI is estimated to produce a modest benefit of 0.04 percent of GDP (NZ\$180 million).

These predicted gains to New Zealand’s GDP compare the impact of RCEP against the scenario where there is no Agreement. It could be more appropriate to compare the difference between RCEP with, and RCEP without, New Zealand. Should New Zealand remain outside RCEP, the preferential access relative to competitors gained in previous FTAs will be gradually eroded. Based on the modelling, New Zealand’s GDP would be about 0.2 percent lower (NZ\$0.9 billion) if RCEP proceeded without New Zealand.

ImpactEcon modelled the economic impact of RCEP by first estimating how New Zealand’s economy would be expected to develop as part of the global economy in the absence of RCEP, and comparing this to the case where RCEP liberalised trade in goods and services in four areas. The result of the CGE model takes account of the complicated adjustments that might take place in an economy following new trade flows and resource allocation. The four ways in which RCEP was assumed to liberalise trade were:

- Reductions in tariffs on goods trade.
- Reductions in non-tariff measures⁵⁹ on goods trade.
- Reductions in non-tariff measures on services trade.
- Improved trade facilitation measures.

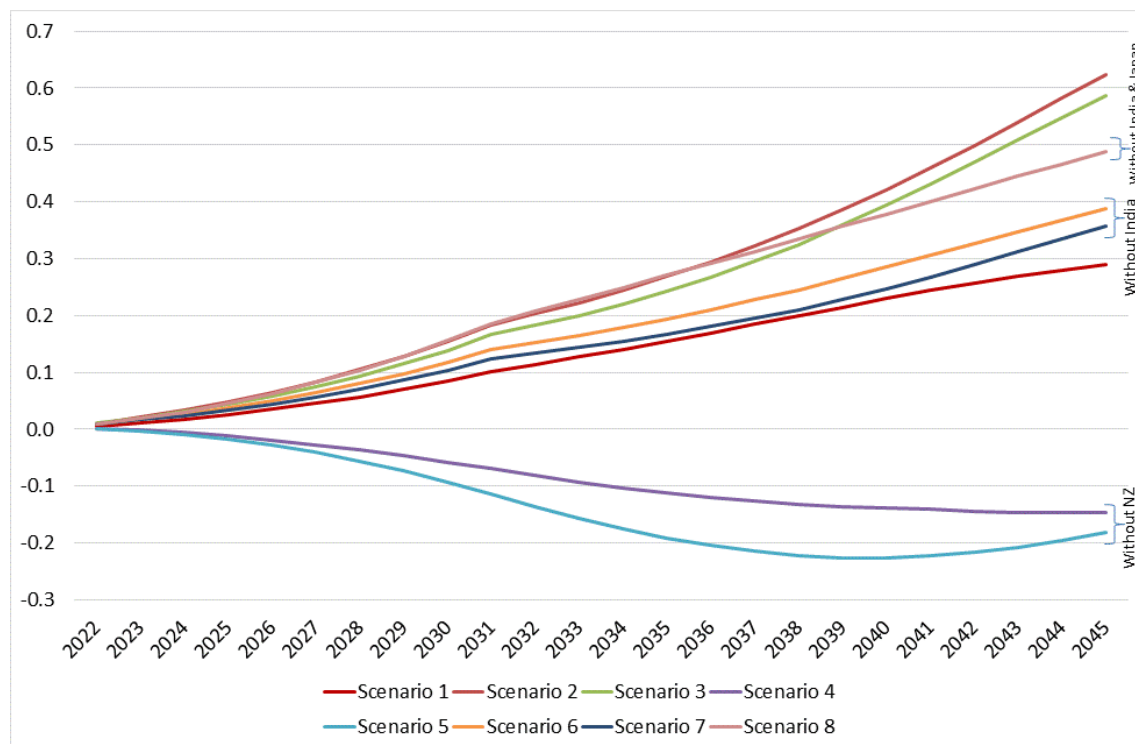
ImpactEcon modelled three main scenarios which varied the degree to which trade was liberalised across the four areas above and the timeframe over which liberalisation occurred. Modelling was undertaken in 2019, in parallel with negotiations. The range of liberalisation scenarios reflected

⁵⁹ A non-tariff measure (NTM) is a policy measure, other than a tariff, which may restrict trade. Many NTMs are legitimate measures to achieve particular objectives, such as biosecurity or protecting consumer health and safety, and some measures apply equally to domestic and imported products.

uncertainty over what might be achieved. MFAT considers that the final negotiated outcomes were close to those modelled in scenarios 2 and 6.

Scenario 1 is the least liberalised and scenario 3 the most liberalised. Further variants of these scenarios modelled RCEP without New Zealand (scenarios 4 and 5), RCEP without India (scenarios 6 and 7) and RCEP without India and Japan (scenario 8). Based on the RCEP outcomes achieved and excluding India, scenario 6 is the most relevant. Should India join at a later date, scenario 2 is the most relevant. Figure 7.1 illustrates the total economic impact of the range of scenarios modelled.

Figure 7.1: Simulated change in New Zealand's real GDP relative to the baseline over time (percent)



Source: ImpactEcon

Modelled gains: Reductions in tariffs

ImpactEcon estimated that lowering tariffs provides a relatively small contribution to the estimated GDP gain for New Zealand once RCEP is fully implemented. The model captures gains from allocative efficiency as relative prices adjust following tariff reductions. The change in relative prices encourages New Zealand production to shift towards areas where we have the greatest competitive advantages.

The modelling illustrates a key dynamic in trade: the importance of relative tariffs. In scenario 2, tariff reductions increase GDP by 0.05 percent once fully implemented (NZ\$260 million). The contribution from tariff reductions is relatively small because New Zealand already has trade agreements with all RCEP countries except India, meaning that further tariff reductions are relatively small. New Zealand's high share of agriculture in our exports is another factor; agricultural products tend to face the highest tariffs and are often on 'exclusion lists'.

By contrast, in scenario 6 – which is closest to the final outcome for RCEP with India outside the Agreement – New Zealand is estimated to experience a small reduction in GDP from tariff reductions

(-0.08 percent of GDP or NZ\$410 million). This stems from two factors. Firstly, while the tariffs New Zealand exporters face are reduced, the tariffs faced by other countries' exports reduce by a greater amount. This erodes some of the relative competitive advantage New Zealand holds and causes some diversion away from New Zealand exports. Secondly, as noted above, India is the only RCEP member that New Zealand has no existing trade agreement with. If India remains outside of RCEP then New Zealand misses out on the potential to access the Indian market at lower tariffs. Usually the gains for New Zealand exporters from lower tariffs outweigh the diversion effects, but this does not occur if India remains outside of RCEP.

Modelled gains: Non-tariff measures on goods and services trade

Lowering tariffs is the simplest mechanism by which countries agree under an FTA to improve market access for trade in goods. RCEP also includes comprehensive coverage of other areas of trade, for example, through the obligations to address the simplification of rules, sector-specific annexes, disciplines on import licensing systems, etc. Collectively these are known as 'non-tariff measures' (NTMs). The removal or lessening of NTMs can represent the most significant outcomes of an FTA, and the impact of NTMs on global trade is well-documented. Numerous attempts have been made in institutions such as the WTO, World Bank, EU, OECD, United Nations Conference on Trade and Development (UNCTAD) and ASEAN to mitigate their effects. In general, the use of NTMs to achieve legitimate policy objectives is recognised, but they should not be implemented in such a way to pose unnecessary obstacles to trade.

RCEP's NTM provisions are largely contained in the SPS, STRACAP, Rules of Origin, Goods and Services chapters (see details in section 4 above). Examples include:

- a 6-hour expectation for the release of perishable goods;
- enhanced transparency on import licensing procedures;
- a consultation mechanism to address non-tariff barriers maintained by a RCEP Party with clear and predictable processes and timeframes;
- several provisions in the SPS chapter requiring RCEP Parties to provide documents in English;
- the possibility of FTA dispute settlement applying to the STRACAP chapter; and
- a requirement that the importer be notified of the reason for detention of imported consignments at point of entry as early as possible.

Available estimates of the impact of NTMs on trade costs, while improving, remain much less developed than data on tariffs.⁶⁰ ImpactEcon use the best available estimates of the ad valorem tariff equivalent (AVE) in order to model the impact of reducing NTMs on goods. Similarly, the best available source for services NTMs is used. There is also considerable uncertainty in terms of what RCEP may achieve in terms of reductions. This means estimates of the economic gain from NTM reduction need to be treated with caution.

Two further key assumptions apply to the NTM estimates. Firstly, NTM reductions from CPTPP have been factored into the 'baseline' and no further reductions in NTMS within this group of countries is

⁶⁰ ImpactEcon LLC: Impacts of a Regional Comprehensive Economic Partnership (RCEP) on New Zealand, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: October 2019

assumed. This reflects the extensive nature of CPTPP, which is greater than other existing bilateral and regional agreements. Secondly, the NTM estimates do not distinguish between those NTMs that are actionable in trade negotiations and those that have legitimate policy objectives. Therefore, the modelling limits the size of the potential reduction in NTM costs to account for the portion of NTMs that are not actionable. In the least ambitious scenarios (1 and 4), a 5 percent reduction in NTMs was assumed while in the more ambitious scenarios a 10 percent reduction was assumed.

As would be expected given their significant impact on goods trade, ImpactEcon found that the reduction of goods-related NTMs under RCEP would have a significant impact on trade flows, and hence significant economic gains for New Zealand. By improving harmonisation and reducing the quantity of goods NTMs, RCEP was estimated to increase New Zealand's GDP by 0.34 to 0.39 percent in the most relevant scenarios (between NZ\$1,730 million and NZ\$2,000 million, without and with India, respectively). (In the less ambitious scenario 1 (with India), the NTM impact was estimated to be 0.19 percent or NZ\$940 million). Just under two thirds of the overall economic benefit from RCEP is estimated to come from reducing goods NTMs.

ImpactEcon find similar impacts from reducing NTMs related to services trade, albeit at a smaller scale. By harmonising and reducing services NTMs, RCEP is estimated to increase New Zealand's GDP by 0.05 to 0.06 percent (NZ\$260 million to NZ\$310 million) in the most relevant scenario. (In the less ambitious scenario, the estimate was 0.03 percent of GDP (NZ\$150 million). About 10 percent of the estimated overall economic benefit is from reducing service NTMs.

Modelled gains: Improved trade facilitation

ImpactEcon further considered the additional impact of RCEP on trade facilitation, namely commitments aimed at facilitating the flow of goods across borders, including through ensuring customs procedures and practices are transparent and consistent. As with other aspects of the modelling, care was taken to reflect existing expected improvements in trade facilitation, notably through the WTO trade facilitation agreement and CPTPP, in the baseline. This means the gains from RCEP are relatively small and are estimated on the basis of a modest (10 percent) reduction in customs processing times. Trade facilitation is estimated to increase New Zealand's GDP by 0.08 to 0.12 percent (NZ\$410 million to NZ\$620 million).

Modelled gains: Foreign direct investment

RCEP is expected to result in some reduction in barriers to FDI. ImpactEcon modelled this outside of the CGE framework, based on a 25 percent reduction in barriers between countries, other than those between CPTPP countries (where reductions have already been factored into the baseline). The very small stock of FDI with non-CPTPP RCEP countries means that the resulting impact on New Zealand GDP is very modest at 0.04 percent (NZ\$180 million).

Alternative modelling estimates

The size of the impact on New Zealand estimated by ImpactEcon is broadly similar to other estimates using CGE modelling techniques. Petri, Plummer, Urata & Zhai (2017) and Gilbert, Furusawa & Scollay (2016) both estimate an increase in GDP of 0.6 percent. Itakura and Lee (2015) put the estimate slightly higher at 0.8 – 0.9 percent of GDP. However, it is worth noting these three studies were conducted earlier in the negotiation process when the final outcome was less clear (including India's

participation). They are more comparable to the upper end of ImpactEcon's estimate range. Petri and Plummer (2020) estimate the gain to New Zealand in 2030 to be 0.2 percent of GDP without India, rising to 0.3 percent with India (comparable to ImpactEcon's estimates of 0.12 and 0.15 percent respectively for 2030 – see figure 7.1 above).

7.5 Social effects

The net economic benefit of RCEP for New Zealand would be expected to translate into a corresponding net benefit to New Zealand society, for example, through improved employment and higher real wages, with greater resources to spend on health, welfare and cultural outcomes.

RCEP would have few implications for New Zealand's ability to develop social policy. The RCEP preamble reaffirms the right of each Party to regulate in pursuit of legitimate public welfare objectives.

7.2.1 Social Regulation

New Zealand's social regulation frameworks will not be affected by RCEP. In the Trade in Services chapter, RCEP follows the structure of the GATS and excludes services supplied in the exercise of government authority. Moreover, New Zealand has not made any commitments in respect of the following social services established for a public purpose: child-care; health; income security and insurance; public education; public housing; public training; public transport; public utilities; social security and insurance; or social welfare. New Zealand takes no commitments on health services.

In the unusual situation where government action (or inaction) would breach an obligation, then the Exceptions chapter provides a further safety net of exceptions to ensure legitimate public policy would be allowed. If a country is shown to have violated an obligation, then that government may seek to demonstrate that a relevant exception applies. The exceptions cover a range of areas including national security, health, environment, national treasures of artistic, historic, or archaeological value, and situations involving serious balance of payments difficulties'.

7.5.2 Employment

The economic effect of an FTA like RCEP is expected to change overall wage levels, as well as changes in relative levels of employment between sectors that experience expansion or contraction due to the FTA. Around one in four jobs in New Zealand are in the export sector and just under half of jobs in the more broadly defined tradables sector (which includes the export sector).

Export employment is estimated to be relatively higher in regions outside of Auckland, Wellington, and Christchurch; relatively higher for Māori and Pacific peoples than Europeans; and relatively lower for women than men.⁶¹ The composition of export employment across regions, ethnicity and gender reflects the large share of primary and tourism exports in New Zealand's overall export profile.

⁶¹ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

Gender pay gaps tend to be higher in tradables sector than non-tradables sectors and Māori tend to earn less in export sector jobs than non-Māori.⁶²

The CGE modelling undertaken by ImpactEcon illustrates where some of the relative changes are expected to occur. Real wages are expected to lift by 0.9 to 1.3 percent, relative to the baseline, once RCEP is fully implemented. The lift in wages is likely slightly smaller if India remains outside of RCEP. The estimated increase in real wages is broad, based across different job groupings, with agricultural and low skilled workers expected to benefit the most.

The modelling also points to a modest change in relative levels of employment across sectors, with employment in the processed food sector (which includes dairy and meat) and services sector expanding in response to increased demand overseas, while employment in other manufacturing contracts slightly. Aggregate employment is unchanged.

7.5.3 Health impacts

RCEP would not change the Government's existing ability to regulate for legitimate public policy purposes, including public health objectives. RCEP would not impose any additional costs of restrictions on affordability or accessibility of medicines.

There are no quantifiable direct economic benefits to the health portfolio from RCEP. The Agreement would, however, be expected to deliver economic benefits and support economic growth, enabling New Zealand to continue to invest in the health system.

7.5.4 Immigration

RCEP would not require any changes in New Zealand's immigration policy or legislation. The only specific commitments related to the movement of people are the short-term commitments for business visitors in the Temporary Movement of Natural Persons chapter. This chapter would result in no substantial change to people flows within New Zealand, as it falls within commitments New Zealand has already made to other FTA partners, and because the chapter does not apply to categories of visitors related to immigrations (for example people seeking employment in New Zealand or to immigration policy settings determined by the Government), would not be affected by RCEP.

The promotion of trade and investment opportunities under RCEP and subsequent rise in New Zealand's profile in the region may, however, encourage interest in immigration to New Zealand (including by skilled migrants) and vice versa. This would take place within the immigration policy settings determined by the Government, which would not be affected by RCEP.

7.5.5 Human Rights

RCEP includes no inconsistencies with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Its implementation would have no effect on human rights in New Zealand.

⁶² Ibid

7.6 Effects on Māori

7.6.1 Treaty of Waitangi

As the founding document of New Zealand, the Treaty of Waitangi is fundamental to the on-going relationship between the Government and Māori. All New Zealand's FTAs have ensured this unique relationship between Crown and Māori is provided for. This outcome has been achieved by ensuring that the obligations in New Zealand's FTAs do not impede the Crown's ability to fulfil its obligations under the Treaty of Waitangi by including a Treaty of Waitangi exception in all FTAs. RCEP reaffirms this outcome.

7.6.1.1 Treaty of Waitangi exception

The Treaty of Waitangi exception in RCEP, as well as in New Zealand's other FTAs, provides clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi. The General Provisions and Exceptions chapter contains New Zealand's Treaty of Waitangi exception. It is designed to ensure that successive governments retain flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities. This applies to the entire RCEP Agreement. The exception is unique to FTAs, and reflects the constitutional significance of the Treaty of Waitangi to New Zealand.

To reassure other RCEP Parties that New Zealand will not use the Treaty of Waitangi exception for trade protectionist purposes, Article 17.16 provides that New Zealand will only seek to invoke this exception for legitimate purposes related to Māori. The exception will not, therefore, excuse measures which arbitrarily or unjustifiably discriminate against persons of other RCEP Parties or amount to a disguised restriction on trade in goods, trade in services and investment. To date, none of our FTA partners have questioned New Zealand on such grounds, i.e. no country has felt that any of the measures that the Government has taken to uphold Treaty of Waitangi obligations, including in relation to Treaty settlements, amounted to arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

In addition, RCEP provides that the 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 this Agreement.

7.6.2 Economic impacts on Māori

Much of Māori business exposure to trade stems from a relatively high share of land and other primary sector assets within the overall Māori asset base.⁶³ Altogether, Māori enterprises account for 40 percent of New Zealand's forestry, 50 percent of the country's fishing quota, 30 percent of sheep and beef production and 10 percent of dairy production.⁶⁴ RCEP will improve goods market access into Indonesia for some sectors of most relevance to Māori export businesses, including through tariff

⁶³ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

⁶⁴ Chapman Tripp Te Ao Māori Trends and Insights Pipiri 2017

elimination on sheepmeat, beef, fish and fish products, liquid milk, grated or powdered cheese, honey, avocados, tomatoes and persimmons.

Māori stakeholders have expressed a particular interest in relation to the protection of Māori rights and interests in te reo Māori, traditional knowledge and cultural expressions, mātauranga Māori, indigenous flora and fauna, taonga species and data. RCEP's Intellectual Property chapter goes further than any of New Zealand's other FTAs in recognising the importance of prior and informed consent, access and benefit sharing for accessing and using GRTKF. This is an important step forward at the international level to reaffirm the region's commitment to the rights and interests of indigenous peoples in GRTKF. RCEP also retains the policy flexibility required for RCEP Parties to implement the most appropriate GRTKF measures domestically.

RCEP's Small and Medium Enterprises chapter is also relevant to Māori exporters. The provisions in this chapter help SMEs become aware of the opportunities created by RCEP and enable them to access information on a Party's domestic laws and regulations. Entering RCEP would allow New Zealand to influence RCEP's Committee on Sustainable Growth⁶⁵ sharing of knowledge and best practices in-line with New Zealand's interests. This will assist with the design and implementation of cooperation activities in RCEP economies which support the internationalisation of New Zealand's SMEs, including through equipping them to effectively participate in global value chains likely to be established once RCEP comes into force.

Other key RCEP outcomes which are expected to benefit Māori include:

- A single rulebook covering all fifteen markets, which has the potential to significantly reduce complexity, and therefore compliance costs, for Māori exporters;
- Improvement 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;
- 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;
- The outcomes on geographical indications (GIs) which extend advantages previously secured in CPTPP to a wider group of trading partners. In particular, RCEP requires RCEP Parties to adopt or maintain due process and transparency obligations in respect of any regime they provide for the protection of GIs;
- RCEP preserves the right of the Government to regulate for legitimate public policy purposes, in areas including public health, education, social welfare, the environment and taxation policy; and
- RCEP does not contain an Investor State Dispute Settlement mechanism.

⁶⁵ The RCEP Committee on Sustainable Growth will cover work relating to small and medium enterprises; economic and technical cooperation; and emerging issues.

The share of Māori employed in export sectors has remained relatively stable around 14 percent, a little higher than the Māori share of overall employment (around 13 percent) from 2009 to 2019.⁶⁶ There is some evidence that the wage gap for Māori export sector workers is smaller, though still large, than the aggregate wage gap experienced by Māori workers. RCEP is expected to increase real wages across all job groupings, with the largest gains expected for agricultural and low skilled workers.

7.7 Effects on Women

In New Zealand, female employment in the tradable sector is low relative to men.⁶⁷ About 40 percent of employed women work in the tradables sector, compared to 55 percent of employed men, reflecting the high representation of women in largely non-tradable service sectors like health and education (women make up just under 50 percent of the total workforce). A similar imbalance occurs in the more tightly defined export sector. As a result, women have historically been less likely to receive the benefits of higher productivity and wages associated with stronger international connections.

While there is no New Zealand specific data for female-owned businesses and trade, statistics on female entrepreneurship suggest that female-owned businesses are less likely to be engaged in trade than male-owned counterparts. This is for several reasons.⁶⁸ Firstly, female-owned businesses tend to be smaller which can make it harder to engage internationally due to the fixed costs involved. Secondly, female-owned businesses are more likely to be involved in the production or delivery of services which tend to be less tradable than goods.

While RCEP does not contain specific provisions on trade and gender, RCEP may nonetheless modestly help improve engagement with women workers and women business owners with trade through its provisions aimed at increasing trade in services, SMEs and electronic commerce. These provisions may help alleviate some of the barriers to trade that are particularly challenging to women-owned businesses. For example, the SME chapter requires RCEP Parties to share complete information about the RCEP online and include links to other information of relevance to SMEs doing business within RCEP Parties. RCEP's e-commerce provisions may also assist women-owned businesses in harnessing the efficiencies of e-commerce as RCEP prohibits RCEP Parties from preventing cross-border transfer of information or requiring computing facilities to be located in their territory.

7.8 Cultural effects

7.8.1 Culture

RCEP incorporates the relevant WTO general exceptions (from GATT and GATS). For clarity, RCEP also incorporates the WTO General Agreement on Tariffs and Trade Article XX exception (GATT Article XX

⁶⁶ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

⁶⁷ Ibid

⁶⁸ Ibid

(f)) that RCEP Parties may take measures necessary to protect national treasures of artistic, historic or archaeological value, providing that such measures are not used for trade protectionist purposes. RCEP is not expected to have any effect on the Government's ability to pursue cultural policy objectives, such as supporting the creative arts, and in relation to cultural activities.

Another feature of the Agreement is recognition that, where disclosure requirements exist as part of an RCEP Parties' patent systems, such as prior and informed consent, and access and benefit sharing for accessing for genetic resources and associated traditional knowledge, that Party should make its laws, regulations and procedure publically available. This 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 RCEP Parties when considering genetic resources, traditional knowledge and folklore.

In addition, there are several reservations in New Zealand's investment non-conforming measures that ensure space for cultural policy. These include specific protections for the promotion of local New Zealand content in film and television, and protections for cultural heritage of national value, national treasures, and creative arts of national value.

7.8.2 Digital economy

New Zealand is an increasingly digital nation, with technology used for innovation, productivity improvements and to enhance well-being. The digital economy increasingly affects the way New Zealanders connect economically and socially to the world; connectivity is also a crucial driver of New Zealand's economic growth, and can have significant cultural affects. The importance of this connectivity has been highlighted during the COVID-19 crisis, with people, businesses and governments turning to digital solutions to sell and purchase goods and services online.

RCEP is expected to foster the digital economy in a way that will deliver economic and social benefits for New Zealand businesses and consumers. Digital technologies are particularly important to help SMEs overcome the challenges of scale and distance to enter global markets. Digital technologies can also promote regional development and enable more inclusive participation in international trade, including by women and Māori. The RCEP Telecommunications Service annex contains disciplines on telecommunications – which underpin the digital economy – to ensure accessibility to telecommunications services and infrastructure, enabling both trade across borders and connectivity more generally.

The Electronic Commerce chapter will promote the use of cross-border e-commerce within RCEP markets. Many New Zealand businesses are already on international goods e-commerce platforms, including platforms operating in RCEP markets, and New Zealand consumers are purchasing goods from those platforms. The rules in the e-commerce chapter will help build trust and confidence in the use of those platforms, while creating an environment capable of making it easier to sell and purchase goods and services online, and facilitating the growth of new products. This will be achieved through rules relating to the regulatory environment relevant to the way New Zealanders interact with particular online or electronic products. These include consumer protection, privacy, SPAM and other measures to promote e-commerce.

RCEP also creates obligations that seek to facilitate the digitalisation of trade more generally, such as provisions on cross-border information transfers, paperless trading and electronic authentication. These rules help ensure New Zealand businesses can operate digitally in RCEP markets.

While supporting the inclusion of obligations to promote the digital economy, New Zealand has also ensured that RCEP would enable New Zealand to continue current policy settings designed to support the growth of New Zealand's digital culture and connectivity. Importantly, New Zealand ensured the obligations in the e-commerce chapter would not cut across New Zealand's current policy settings to encourage creativity and cultural expression or regulate on emerging issues, such as those relating to data.

7.9 Environmental effects

New Zealand has long recognised the links between trade and the environment. Trade can generate a mixture of potential positive and negative effects on a country's environment and natural resources.⁶⁹ The effects of trade on the environment are often broken into scale, composition and technique/income effects. The magnitude and direction of these effects will be highly dependent on domestic regulatory and policy settings, as well as producer and consumer preferences. Domestic environmental regulations play a critical role in setting limits (or not) around scaling production and the subsequent environmental effects this might have.

Some environmental impacts are not constrained by national boundaries. For example, greenhouse gas (GHG) emissions or water pollution may originate from production within a specific country but contribute to global emissions levels and ocean pollution respectively. Depending on relative environmental efficiencies, increased negative impacts in one country from trade may lead to net global positive impacts if it displaces less efficient activity elsewhere. Of course, the opposite can also hold, if trade, or barriers to trade see activity shift to less environmentally efficient producers.

RCEP would not inhibit the New Zealand Government's ability to regulate for greater environmental protection in the future. Its general exceptions are consistent with those provided for in existing international agreements (GATT and GATS) that are designed to provide policy space for governments for public interest purposes, such as protection of natural resources. RCEP incorporates the relevant WTO general exceptions (from GATT and GATS).

New Zealand's environmental laws, policies, regulations and practices constitute an environmental management system that is designed to deal with any adverse effects of economic activity (including activity resulting from trade agreements) in a manner consistent with the Government's sustainable development and environmental objectives.

RCEP would not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in

⁶⁹ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

a manner which would constitute a disguised restriction on trade. New Zealand has a suite of relevant existing legislation that is designed to address potential adverse environmental outcomes of economic activity, 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 Aquaculture Reform (Repeals and transitional Provisions) Act 2004, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1949 (amended 1993), the Forests Act 1949 (amended 1993), and the Wildlife Act 1953. New Zealand also encourages multinational firms to promote environmental management systems through its support of the OECD's Guidelines on Multinational Enterprises.

7.9.1 Scale effects

As economies expand as a result of trade liberalisation, there may be a risk of increasing pollution levels and other environmental impacts as overall economic activity increases. 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. Historical evidence shows that New Zealand experienced negative scale effects, largely owing to increased agricultural production allowed within the regulatory settings at the time.⁷⁰

Given New Zealand's current environmental and resource management policy frameworks, and current economic returns on farms, it is unlikely that scale effects resulting from RCEP would result in a net increase in environmental degradation. RCEP is therefore not expected to have any negative effects on the environment. RCEP provisions may instead encourage improved productivity in the use of natural resources.

7.9.2 Composition effects

Composition effects relate to the ways in which trade liberalisation can affect the composition of production of goods and services within an economy. If trade liberalisation leads to a shift in resources away from environmentally-damaging production processes or techniques (such as over-production or land degradation associated with primary production), these composition effects are likely to be a net positive for the environment. Negative composition effects can occur if domestic policy settings are not sufficiently robust to deal with a potential increase in the production of goods and services resulting from trade liberalisation that may damage the environment. There is some evidence of this occurring in New Zealand through the 1990s to early 2010s, largely from the shift from sheep and beef to dairy farming in the agricultural sector.⁷¹ Composition changes are less evident since the mid-2010s when the size of the dairy herd peaked.

⁷⁰ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020

⁷¹ Ibid

RCEP is unlikely to have any discernible negative composition 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 systems already in place. ImpactEcon's CGE modelling suggests a small increase in processed food manufacturing and services, and a small decline in other manufacturing (with little change to overall agricultural production, though some compositional changes within agriculture). On balance, this shift would likely be slightly positive in terms of environmental effects. Recent and ongoing reform of domestic environmental regulations, such as the Zero Carbon Act and water quality regulations, are likely to have a more substantial impact on environmental outcomes than through RCEP.

At the same time, changes in the composition of New Zealand's imports that arise from RCEP's trade liberalisation 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.

7.9.3 Technique/income effects

Trade liberalisation under RCEP is likely to lead to some changes in the mix of products that New Zealand exports and imports. More generally, trade liberalisation results in a more efficient use of resources, and the additional income that is generated by trade liberalisation can also be used – at least in part – to invest in new technology and production processes that can have positive environmental outcomes.

The liberalisation of trade in environmental goods and services under RCEP – a rapidly growing export sector for New Zealand – will deliver both economic and sustainable development benefits.

8 The costs to New Zealand of compliance with the treaty

There would be some costs associated with joining RCEP that could be seen as operational costs for the Government. Many of these would enable New Zealand to derive expected further benefit from the Agreement. For example, funding New Zealand's participation in the institutional arrangements (such as Committees) that will oversee the trade and economic framework envisaged under RCEP.

Table 8.1: Fiscal costs of RCEP, New Zealand dollars

Area	Annual cost	Description
Foregone tariff revenue	N/A	See section 8.1 below
RCEP Institutional arrangements	\$200,000	See section 8.2.1 below
RCEP Secretariat	\$310,000	See section 8.2.1 below
Total	\$510,000	

8.1 Tariff revenue

New Zealand has existing FTAs with all fourteen other RCEP Parties. Under each existing FTA, New Zealand has committed to comprehensive tariff elimination which will mean the elimination of tariffs under RCEP will have no additional impact on tariff revenue. New Zealand's tariff commitments under all existing FTAs will be entirely duty-free by 2024 at the latest.

8.2 Costs to government agencies of implementing and complying with RCEP

8.2.1 RCEP Institutional arrangements

RCEP establishes a framework for on-going consultations between RCEP Parties, comprised of a Joint Committee to oversee the implementation of the Agreement, under which four committees would be responsible for specific thematic 'clusters' of chapters. These include a Committee on Goods, Services and Investment, Sustainable Growth and Business Environment.

Such institutional arrangements are common practice for a large FTA, and are seen by New Zealand as an effective mechanism for delivering benefits of the Agreement and ensuring that RCEP is fit for purpose in the future. For example, the institutional arrangements will facilitate the on-going work envisaged outlined in FTA (such as the respective committee work programmes), address any emerging issues, and manage future developments (including new members). This is particularly important for smaller countries like New Zealand as it provides a forum for advancing trade facilitation and market access priorities under the framework of the Agreement – particularly in areas such as SPS, TBT, and Customs. However, undertaking these activities has fiscal implications for the government departments involved.

RCEP's Institutional Provisions envisage that the four committees meet 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 take place virtually in the years to come, even as RCEP countries recover from 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 country per year.

New Zealand is likely to seek to engage substantially in RCEP institutional arrangements to maximise economic opportunities under the Agreement. Based on previous FTAs and other international meetings, it is almost certain that RCEP Parties would seek to hold many of these committees simultaneously, which can allow for reduced costs particularly for smaller countries like New Zealand (for example, where one official is able to cover more than one committee). On this basis, the likely annual cost of physically attending RCEP implementation committees to the New Zealand Government is estimated to be \$200,000 per annum. The cost of attending committees virtually will be much less.

New Zealand will, on occasion, need to host implementation meetings following RCEP's entry into force. According to the Agreement, the RCEP Joint Committee shall convene alternately, and on a rotational basis, in an ASEAN Member State Party and a non-ASEAN Member State Party, unless RCEP 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). The source of funding for such hosting would be considered on a case-by-case base.

Fulfilling RCEP's institutional arrangements may in some cases require increased resource for agencies, such as time commitments for participation in committees, as well as time for preparation. Based on New Zealand's experience in other FTAs, many RCEP committees would provide a useful forum for progressing New Zealand's core objectives, for example, a regular RCEP committee meeting between technical experts could allow New Zealand to bolster efforts to engage trade partners on outstanding market access or regulatory issues. In these situations, RCEP's institutional arrangements would provide a leveraging opportunity, or multiplier, for existing work by agencies. In other areas, however, attending RCEP's committees could introduce an additional requirement beyond an agency's core business. This would represent an additional cost for that agency.

Future negotiations relating to the expansion or amendment of RCEP are not considered as part of this NIA, for example, with respect to a new member joining RCEP. Such future negotiations would be considered by the Government of the day, and the cost of undertaking negotiations most likely met from the Government's interagency Trade Negotiations Fund.

8.2.2 RCEP outreach costs

In the lead up to, and following, the entry into force of RCEP, government agencies would work with Māori, public and wider stakeholders to implement strategies to best leverage the opportunities arising from the FTA. This would include ensuring businesses are positioned to utilise opportunities presented by RCEP, meeting the public interest in further information about particular areas of the Agreement and its likely impact on New Zealand, and engaging with Māori and Māori businesses. All such costs associated with outreach events will be met through existing resources and agency baseline funding.

8.2.3 Administrative costs

A number of the obligations in RCEP would require additional resource to implement. Many of these obligations come with reciprocal benefit for New Zealand, for example, many obligations that will also be implemented by other RCEP countries will benefit New Zealand exporters. In negotiating RCEP, New Zealand sought outcomes that could be implemented in the most appropriate way in the domestic context.

Administrative Requirement	Annual cost	Net cost/benefit to New Zealand
<i>Customs Chapter: Advance Rulings</i>	Ongoing costs to be met from baseline funding or cost recovered.	Advance Customs Rulings in other RCEP markets are expected to be of significant benefit to New Zealand exporters.
<i>Chapters on Goods, SPS, IP, E-commerce, General Provisions, SMEs, Services and associated annexes: Notification and publication requirements</i>	Where additional requirements exist, these are unlikely to be burdensome and would be met within agency baseline funding.	As a whole, the reciprocal practice in other RCEP markets will be of benefit to New Zealand exporters

8.2.4 Costs to businesses of complying with RCEP

The expected effect of RCEP would be to reduce compliance and at the border costs for New Zealand businesses through trade facilitating outcomes in areas such as customs procedures. These outcomes will help reduce transaction costs from the outset of the FTA. Other outcomes are expected to develop and increase over time from the platform the FTA provides in areas such as TBT and SPS for enhanced regulatory cooperation to facilitate trade.

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

9.1 Engagement overview

Since launching RCEP negotiations in 2012, the government has engaged widely with New Zealanders on RCEP, including engagement focused on Māori, Aotearoa whānui (general public), business and civil society. The focus of the government's engagement has been to:

- Provide information about the Agreement including an explanation of what RCEP means for New Zealand;
- Outline the process, timeframes and update on current progress for the negotiations;
- Provide Māori, the wider public and other interested stakeholders the opportunity to seek additional information, ask questions and share their interests and concerns to help shape the government's approach to the Agreement. These views are recorded and reported to ministers.

MFAT hosts an RCEP webpage that provides detailed information and documents relating to the negotiations and provides contact details for the public to share their views on RCEP at any time. For more information go to website: www.mfat.govt.nz/rcep

Email: FTA_Outreach@mfat.govt.nz

Post: FTA Implementation Unit, Ministry of Foreign Affairs and Trade, Private Bag 18901, Wellington

9.2 Engagement with Māori

In the last two years, MFAT has sought to intensify and improve its public consultation and engagement efforts across all areas of the Ministry's agenda. In relation to trade policy and trade negotiations, there has been a strong and particular focus on increasing meaningful engagement with Māori. The establishment of the Te Taumata⁷² to work with MFAT on trade policy is a significant step forward. Most of the RCEP negotiation predated the establishment of Te Taumata, although the closing stages of New Zealand's engagement benefitted from effective collaboration between MFAT and Te Taumata. This engagement identified a range of Māori interests and enhanced consideration

⁷² Te Taumata is a unique engagement model with Māori that will provide a dedicated platform for deeper discussion with Māori/iwi stakeholders on priority trade policy issues. Te Taumata draws on the extensive skills, experiences and connectivity of its members, who are involved in a diverse range of Māori business, international trade, academia, treaty claims and community development. Te Taumata is chaired by Chris Karamea Insley (Te Whānau-ā-Apanui, Ngāti Porou).

of RCEP's potential impact on such interests. The RCEP Lead Negotiator regularly discussed issues and outcomes arising from the RCEP negotiations with Te Taumata senior representatives.

Engagement with Māori was also guided by MFAT's Strategy for Engagement with Māori on International Treaties. The government's approach to engagement has also been influenced by commitments made during the Waitangi Tribunal proceedings relating to the original Trans-Pacific Partnership (TPP), to improve the way government consults and engages with Māori. The result is an approach to engagement with Māori which aims to ensure that issues of relevance to Māori in international treaties are identified early, that engagement with Māori on a particular treaty is appropriately tailored according to the nature, extent and relative strength of the Māori interest, and that Māori have the ability to influence government decisions.

MFAT officials attended a Federation of Māori Authorities (FOMA)-hosted workshop on trade negotiations, (including RCEP) in November 2017. The workshop provided for an open discussion allowing participants the opportunity to ask questions and share their views, however there was little engagement on RCEP specifically. MFAT also held trade policy consultation hui with claimants in Auckland and Wellington in December 2017 and February 2018 respectively. No concerns relating to RCEP were raised.

MFAT also maintains and regularly updates a list of international treaties that New Zealand has entered into or is in the process of negotiating (including RCEP). The international treaties list is sent on a six monthly basis to stakeholders, including almost 150 groups representing Māori interests, including iwi and their rohe, hapu, marae, organisations whose mandates to represent these iwi/hapu have been recognised by the New Zealand Government, as well as to Waitangi Tribunal claimants. Māori who received this list were advised they could contact MFAT at any time to discuss any interests or concerns. No communication was received regarding RCEP.

9.3 Public engagement

The government has been active in engaging with the public, Māori, and a wide spectrum of stakeholders over the course of the RCEP negotiations, including:

- The government sought public submissions regarding New Zealand's intention to join the RCEP negotiations during February and March 2013. A total of fifteen submissions were received (including a submission from New Zealand Manufacturers and Exporters association which included brief comments from its members). While this was not a substantial number of submissions, fewer than those received for other FTA negotiations, this may have reflected the less controversial nature of the RCEP negotiations compared to other FTAs. The New Zealand Council of Trade Unions' submission noted "that [RCEP] appears to be less intrusive into domestic policy than [other on-going negotiations]".
- Civil Society and industry groups provided the majority of the RCEP submissions, with industry associations and businesses broadly supportive of New Zealand joining the negotiations, highlighting market access benefits, particularly potential market access outcomes should India be part of any RCEP agreement.

- Additionally MFAT, in conjunction with other government agencies, consulted widely with other stakeholders throughout the negotiations. Most recently, RCEP was discussed at public engagement sessions in a number of regional centres around New Zealand between December 2017 and August 2019, including: Dunedin, Auckland, Tauranga, Hamilton, Wellington, Christchurch, New Plymouth, Nelson, Napier, Whāngarei, Palmerston North, Invercargill, Timaru, Rotorua and Gisborne. The Auckland and Wellington events were streamed live on MFAT's social media platforms. At these events, officials provided updates on the progress of the RCEP negotiations, and answered questions from participants sharing their views with government officials.
- New Zealand's RCEP negotiating team also held regular briefings with a wide range of interested stakeholders, including civil society, businesses and industry groups, to update them on progress. These briefings included stakeholder engagement sessions held as part of the RCEP negotiating rounds. Outreach to civil society included meetings with leaders from the New Zealand Council of Trade Unions.
- A range of communications methods were used to support consultations with stakeholders and seek feedback. These included:
 - MFAT's website, social media and Facebook page: updates on the RCEP negotiations were regularly published. There was also a "Have your say" section on MFAT's website, an ongoing call for feedback throughout the negotiation period;
 - Industry association newsletters;
 - Biannual updates on New Zealand's current treaties in progress circulated to around 170 individuals and groups which included updates on the RCEP negotiations. The MFAT New Zealand Treaties Online website is also regularly updated to reflect these updates;
 - Stakeholder emails: regular updates on the negotiation process were emailed to stakeholders who had registered an interest in the negotiations; and
 - New Zealand Trade and Enterprise channels: regular updates and calls for feedback were distributed through New Zealand Trade and Enterprise channels, both in New Zealand and across the network of offices in the RCEP region.
- Stakeholder engagement will continue after signature and entry into force to raise awareness of RCEP.
- MFAT will integrate RCEP into its existing international trade agreement information and advocacy programme. MFAT will continue to publish RCEP information, outcomes and summary factsheets on its website upon New Zealand's signature, as well as following the accession of any new members.

9.4 Summary of issues raised

These engagement sessions provided a valuable opportunity for the government to hear from Māori, the public, businesses and interest groups about their interests and concerns relating to RCEP. Among the range of issues raised were:

- Overall there was general support for the RCEP negotiations.
- RCEP would be less intrusive regarding domestic policy compared to other FTAs.
- Given that New Zealand does not currently have a FTA with India, exporters and industry groups were very engaged on the status of India within RCEP.

- Throughout RCEP negotiations, exporters and industry groups expressed support for greater tariff reductions in key export markets. During the RCEP negotiations and related consultation, exporters and industry groups emphasised the importance of ensuring New Zealand obtained market access outcomes that were at least equal to those obtained by their competitors particularly in Australia.
- Clarity was sought to understand how the government would bring India back into RCEP, should it not sign the Agreement with the other fifteen countries.
- Concern about the impact Investor State Dispute Settlement (ISDS) might have on the ability for the government to regulate, especially in the public health space.
- A number of individuals sought clarity on how the Treaty of Waitangi would be treated in RCEP.

9.5 Addressing concerns

ISDS

In August 2019, ISDS provisions were removed from RCEP. Under RCEP, provisions relating to ISDS were moved to a 'work programme' to be considered by RCEP Parties after entry into force.

Treaty of Waitangi

RCEP contains a Treaty of Waitangi exception that explicitly allows the government to adopt any policy it considers necessary to fulfil its obligations to Māori. This unique provision allows the government to implement policies that benefit Māori without being obliged to offer equivalent treatment to persons from other CPTPP countries.

Market access

As New Zealand has FTAs with all other RCEP Parties, additional goods market access through tariff cuts is modest under RCEP. Additional services and investment market access was secured particularly in some ASEAN nations. RCEP will facilitate New Zealand exports of goods and services in the RCEP region due to improvements in and consolidation of the rules governing trade, effectively bringing a suite of separate FTAs into one rulebook. We expect more countries will want to join RCEP in the future giving New Zealand the chance to negotiate improved access to new markets in those economies.

9.6 Inter-departmental consultation

RCEP was negotiated by an inter-agency team led by MFAT. The inter-agency team was composed primarily of officials from MFAT, the Ministry of Business, Innovation and Employment (MBIE), the Ministry for Primary Industries (MPI) and New Zealand Customs Service. A wide range of other ministries were consulted throughout the negotiations, including the Reserve Bank of New Zealand, Ministry for the Environment, Te Puni Kōkiri, Ministry of Education and the Treasury.

The Department of the Prime Minister and Cabinet was regularly notified of developments on the negotiations and New Zealand's position.

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

The Final Provisions chapter makes provision for RCEP Parties to amend the Agreement (Article 20.4). An amendment can only be made if RCEP Parties agree in writing. An amendment shall enter into force 60 days after the date on which all RCEP Parties have notified the Depositary in writing of the completion of their applicable legal procedures, or on such other date as RCEP Parties may agree.

A number of chapters, for example the Investment chapter, contain future work programmes that may result in particular amendments to RCEP in the medium-term.

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

11 Withdrawal or denunciation provision in the treaty

Any Party may withdraw from RCEP by providing written notice of withdrawal to the Depository (Article 20.7). The withdrawal from this Agreement would take effect six months after a Party provides written notice, unless the RCEP Parties agree on a different period. In the event that a Party withdraws, RCEP shall remain in force for the remaining RCEP Parties.

12 Agency Disclosure Statement

This NIA has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. The NIA identifies all the substantive legal obligations in RCEP, some of which will require legislative implementation, and analyses the advantages and disadvantages to New Zealand in becoming a Party to RCEP. The economic modelling underpinning the some aspects of the analysis was completed prior to the emergence of COVID-19; therefore there is greater-than-normal uncertainty around the modelling results.⁷³

Implementation of the obligations arising under RCEP would not be expected to impose additional costs on businesses; impair private property rights, market competition, or the incentives on businesses to innovate and invest; or override fundamental common law principles.

⁷³ The modelling was completed prior to the emergence of COVID-19 and the significant economic shock that has resulted from the pandemic. 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. If RCEP countries are impacted economically in roughly the same magnitude, then the modelling results of the different scenarios will remain broadly correct. If, however, the economic impacts of COVID-19 vary significantly across the different RCEP countries then the modelling results will become less accurate.