Protocol to Amend the Agreement between Singapore and New Zealand on a Closer Economic Partnership and associated instruments

National Interest Analysis

October 2018

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Frequently Used Acronyms and Terms

Term	Explanation
AANZFTA	Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area
CEP	Agreement between New Zealand and Singapore on a Closer Economic Partnership
ASEAN	The Association of Southeast Asian Nations.
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
MFAT	Ministry of Foreign Affairs and Trade
MFN	Most Favoured Nation
MRA	Mutual Recognition Agreement on Conformity Assessment between New Zealand and Singapore
NIA	National Interest Analysis
P4	Trans-Pacific Strategic Economic Partnership
Protocol	Protocol to Amend the Agreement between New Zealand and Singapore on a Closer Economic Partnership
PSR	Product Specific Rules of Origin
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
WTO	World Trade Organization

1 Executive summary

New Zealand's relationship with Singapore is one of our closest in South East Asia. Singapore's geostrategic location and standing in the region, and our shared interests as small advanced economies make it a key partner for New Zealand in the pursuit of our national, regional and global interests.

Singapore is our largest trading partner in South East Asia, with NZ$4,980 million of two-way trade in the year ending June 2018. On regional economic and political issues, New Zealand and Singapore often share common interests. We have a strong track record of working together to progress shared goals in the Asia-Pacific Economic Cooperation grouping, the East Asia Summit, the World Trade Organization and the United Nations.

While Singapore and New Zealand already enjoy a close and strong partnership, it was felt that significant further gains could be delivered through a closer, more strategic partnership that focuses on both current and future challenges. With this vision in mind, New Zealand Singapore launched negotiations in 2017 on an "Enhanced Partnership" with the intention of qualitatively lifting cooperation across a wide range of areas including trade, science, innovation, the environment, education, the arts, security and defence.

New Zealand's Closer Economic Partnership or CEP with Singapore is our second oldest FTA. Signed in 2000, it entered into force in 2001. Our FTA policy and practice has evolved considerably since the CEP was negotiated. Upgrading the CEP forms a critical part of the Enhanced Partnership exercise. As two open and liberal economies with considerable experience in FTAs, New Zealand and Singapore wanted to enhance their bilateral agreement so that it could serve as a modern benchmark and template for other negotiations, particularly as both sides look to modernise and upgrade other existing agreements.

Given the high-quality market access outcomes New Zealand has already secured in other trade agreements with Singapore, the primary value-add of the upgrade is strategic. Singapore and New Zealand are both small, like-minded advanced economies which rely on the international rules based system. The upgrade of the CEP will help to reinforce the role both countries play as leaders in trade and economic integration which can serve as a model for the wider Asia-Pacific region in years to come.

While a number of New Zealand's other FTAs have been amended over the years to include improvements in discrete areas, the upgrade of the CEP is the first time New Zealand has completed a wide-ranging FTA upgrade.

This National Interest Analysis examines the *Protocol to Amend the Agreement between New Zealand and Singapore on a Closer Economic Partnership* (the **Protocol**) which amends and upgrades the original CEP signed by New Zealand and Singapore in 2000. Sitting alongside it is the *Mutual Recognition Agreement on Conformity Assessment between the Government of New Zealand and the Government of the Republic of Singapore* (the **MRA**).

There are also a number of non-binding side-letters and arrangements included as part of the upgrade:

- a non-legally binding side-letter on professional qualification recognition;
- a non-legally binding side-letter confirming the relationship between the Protocol and New Zealand's existing free trade agreements with Singapore; and,
- three new non-legally binding implementing arrangements relating to aspects of the Sanitary and Phytosanitary Chapter of the CEP.

Most of the obligations in the Protocol and all of the obligations in the MRA are already met by New Zealand's existing domestic legal and policy regime. A small number of regulatory amendments are needed in order to implement certain obligations under the Protocol, and thereby enable New Zealand to bring the Protocol into force. As no changes to primary legislation are required, the Government does not intend for the Protocol and MRA to be implemented through a Bill.

This National Interest Analysis concludes that it is in New Zealand's national interest for the Protocol and associated instruments to enter into force.

New areas

The key outcome of the upgrade is to modernise the 2001 CEP to align it with our more recent FTA policy and practice. In practice, this means that in a large number of areas it will not create new obligations for New Zealand beyond those that are already present in a number of our other FTAs with Singapore.[1]

The upgrade also includes a number of new features. These are:

[1] Trans-Pacific Strategic Partnership (P4); ASEAN Australia New Zealand Free Trade Area (AANZFTA); and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

- a non-legally binding side letter where New Zealand and Singapore agree to work together to encourage the flow of **accounting professionals** between the two countries;
- a **regulatory cooperation** chapter in the CEP that enables New Zealand and Singapore to deepen regulatory cooperation in order to facilitate trade and further domestic policy objectives. This is the first of its kind in a New Zealand FTA;
- the stand-alone **MRA** on conformity assessment (including a sectoral annex on medicinal products) which provides a framework for recognition of the activities that demonstrate that a product or manufacturing process meets mandatory requirements;
- an **electronic commerce** chapter in the CEP, which will allow businesses and consumers to transact online with confidence, allow businesses to freely transfer data in the course of business, and protect the privacy and rights of consumers; and
- the addition of an **institutional structure** to the CEP to underpin the ongoing implementation of the CEP once it enters into force including a new cross-cutting committee that will be able to consider any issues between New Zealand and Singapore in relation to biosecurity, food, and primary products irrespective of which part of the CEP the issue may fall under.

Market access outcomes

In addition to the new areas and the overall modernisation of the text of the CEP, the upgrade also improves the market access outcomes in three main areas:

- an extension of the period of **visa-free entry** for New Zealand business visitors (i.e. service sellers representing a service supplier of the other Party seeking temporary entry to negotiate for the sale of services where these do not involve direct sales to the general public) visiting Singapore from the existing 1 month to an new period of 3 months;
- an extension for New Zealanders of the total potential term of stay in Singapore for **intra-corporate transferees** from the existing five years to a new period of eight years; and
- two new implementing arrangements on **sanitary and phytosanitary measures**.

Investment

The CEP upgrade includes an updated and modernised investment chapter based on international best practice, while retaining key features of the original agreement. The new investment chapter will support the already high levels of investment flow between New Zealand and Singapore, by providing for the protection of investment.

The Protocol retains the voluntary investor-state dispute settlement (ISDS) that was included in the original 2001 CEP. This means that no dispute can be submitted to conciliation or arbitration unless

New Zealand first agrees. As a further protection, the updated investment chapter includes an exception for tobacco control measures from the voluntary ISDS mechanism.

Treaty of Waitangi

The original 2001 CEP was the first of New Zealand's FTAs to include a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. This provision remains unchanged as a result of the upgrade. Nothing in the original CEP, nor the upgraded CEP, will 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.

2 Nature and timing of proposed treaty action

The Protocol amends and upgrades *the Agreement between New Zealand and Singapore on a Closer Economic Partnership* (the Agreement or CEP) which was signed on 14 November 2000 and entered into force on 1 January 2001. The CEP was our second, and Singapore's first, bilateral free trade agreement. It has helped trade flow freely and our exports have flourished; between 2004 and 2018 the value of our exports to Singapore increased dramatically, from NZ$362m to NZ$4.9b. In June 2018, Singapore was New Zealand's sixth largest trading partner and the base for many New Zealand businesses operating in South East Asia.

Negotiations to upgrade the CEP commenced in June 2017 as a part of the wider Enhanced Partnership negotiations with Singapore. The Enhanced Partnership covers four broad pillars of cooperation: people to people, security and defence, science and innovation, and trade and economic. The upgrade discussions, which occurred from 2017 to 2018, cover a large portion of the trade and economic pillar of the Enhanced Partnership.

Sitting alongside the Protocol as part of the outcomes of the upgrade discussions are a number of related instruments:

- a legally binding Mutual Recognition Agreement on Conformity Assessment between the Government of New Zealand and the Government of the Republic of Singapore (the MRA) (for more details see sections 4.5 and 5.5);
- a non-legally-binding side-letter on professional qualification recognition (see sections 4.7 and 5.7); and,
- a non-legally-binding side-letter confirming the relationship between the Protocol and New Zealand's existing free trade agreements with Singapore (see sections 4.11 and 5.11.4).

Signature of the Protocol and related instruments is expected to take place in the first quarter of 2019 as part of a formal launch of the Enhanced Partnership between New Zealand and Singapore.

The Protocol changes the structure of the existing CEP to align with New Zealand and Singapore's modern treaty practice and to improve the accessibility and readability of the Agreement. 'Parts' under the existing CEP are changed to 'Chapters', the sequential numbering of the articles and annexes in the existing CEP are updated to numbering by Chapter, and attendant changes to cross-references are made. This NIA deals primarily with the new or amended obligations in the

Agreement and does not discuss the rights and obligations that currently apply to New Zealand and Singapore under the existing agreement.

The table below identifies those chapters and annexes of the existing CEP that are unchanged other than numbering, chapters and annexes that have been amended in a minor manner, for example updating definitions or review provisions, those that are substantively amended, and chapters and annexes that are new:

Area	Change	Existing Numbering	New Numbering
Objectives and General Definitions		Part 1	Chapter 1
Trade in Goods	Updated	Part 3 (Article 4, 6-9)	Chapter 2
Rules of Origin	Updated	Part 3 (Article 5)	Chapter 3
Product Specific Rules	Updated	Annex 1	Annex 3.1
Customs Procedure and Trade Facilitation	Updated	Part 4	Chapter 4
Sanitary and Phytosanitary Measures	Updated	Part 7	Chapter 5
Technical Barriers to Trade	Updated	Part 7	Chapter 6
Electrical and Electronic Equipment	Minor	Annex 4.1	Annex 6.1
Wine and Distilled Spirits	New	-	Annex 6.2
Pharmaceuticals	New	-	Annex 6.3
Cosmetics	New	-	Annex 6.4
Medical devices	New	-	Annex 6.5
Investment	Updated	Part 6	Chapter 7
Investment limitations	No change	Annex 3	Annex 7.2
Services	Minor	Part 5	Chapter 8
New Zealand's Services Commitments	No change	Annex 2	Annex 8.1.1
Singapore's Services Commitments	Updated	Annex 2	Annex 8.1.2
E-Commerce	New	-	Chapter 9
Government Procurement	No change	Part 8	Chapter 10
Competition and Consumer Protection	Updated	Part 2	Chapter 11
Intellectual Property	No change	Part 9	Chapter 12
Regulatory Cooperation	New	-	Chapter 13
Dispute Settlement	No change	Part 10	Chapter 14
Institutional Provisions	New	-	Chapter 15
General Provisions	Updated	Part 11	Chapter 16
Mutual Recognition Agreement on Conformity Assessment	New	-	Separate Agreement

The Protocol will enter into force following New Zealand and Singapore's completion of their respective domestic legal procedures on a date agreed by the Parties. For New Zealand the required domestic legal procedures include the parliamentary treaty examination process and the passage of required regulatory instruments necessary to meet New Zealand's obligations under the Protocol.

The MRA will also enter into force following New Zealand and Singapore's completion of their respective domestic legal procedures, on the first day of the second month following the exchange of diplomatic notes confirming these procedures have been completed.

The two non-legally-binding side-letters take effect from signature.

Neither the existing CEP, the Protocol, the MRA nor the two side-letters will apply to Tokelau.

3 Reasons for New Zealand becoming a Party to the Treaty

The reasons for New Zealand to bring the Protocol, MRA and associated instruments into effect are both strategic and economic. New Zealand is an export dependent country so trade is critical to the continued growth and prosperity of the economy. An estimated 620,000 New Zealand jobs are dependent on the exports we sent out to the world. Imports are also important to maintain our standard of living and provide options for New Zealanders, from goods such as cell phones to online streaming services, as well as providing inputs for our exports. Inwards and outwards foreign investment can help New Zealand businesses better integrate into supply chains, improve market access, reduce costs and increase productivity. Our small size and remoteness means we need access to markets in other countries – not just for goods, services and investments, but also for people and ideas.

New Zealand's core objective in trade policy is to generate a better standard of living for New Zealand. It aims to do this by helping businesses succeed internationally and grow jobs and opportunities locally while safeguarding the Government's right to regulate for legitimate public policy purposes and decide what is best for 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 economic linkages can evolve and expand, thereby driving innovation, competition, productivity and economic growth. FTAs with key trading partners are an important means of achieving this.

3.1 Advancement of New Zealand's strategic interests

New Zealand's relationship with Singapore is one of our closest in Asia. Singapore's geostrategic location and standing in the region, and our shared interests as small advanced economies make it a key partner for New Zealand in the pursuit of our national, regional and global interests.

Singapore is our largest trading partner in South East Asia, with NZ$4.9 billion of trade in the year ending June 2018. On regional economic and political issues, New Zealand and Singapore often share common interests. We have a strong track record of working together to progress shared goals in the Asia-Pacific Economic Cooperation grouping, the East Asia Summit, the World Trade Organization and the United Nations.

While Singapore and New Zealand already enjoy a close and strong partnership, it was felt that significant further gains could be delivered through a closer, more strategic partnership that focuses

on both current and future challenges. With this vision in mind, New Zealand and Singapore launched negotiations in 2017 on an "Enhanced Partnership" with the intention of qualitatively lifting cooperation across a wide range of areas including trade, science, innovation, the environment, education, the arts, security and defence.

Upgrading the CEP forms a critical part of the Enhanced Partnership exercise. As two open and liberal economies with considerable experience in FTAs, New Zealand and Singapore wanted to enhance their bilateral agreement so that it could serve as a modern benchmark and template for other negotiations, particularly as both sides look to modernise and upgrade other existing agreements.

Given the high-quality market access outcomes New Zealand has already secured in other trade agreements with Singapore, the added value of the upgrade is primarily strategic. Singapore and New Zealand are both small, like-minded advanced economies which rely on the international rules based system. The upgrade of the CEP will help to reinforce the role both countries play as leaders in trade and economic integration and the Protocol can serve as a model for other agreements in the Asia-Pacific region.

3.2 Greater coherence of trade rules

The Protocol contributes to further harmonising the rules that apply to trade and investment between New Zealand and Singapore. In addition to the CEP, Singapore and New Zealand are also a party to the AANZFTA and P4 agreements. Singapore has also recently ratified the CPTPP agreement. Both New Zealand and Singapore's FTA policy and practice have evolved since the existing CEP entered into force in 2001, and the upgrade provides an opportune means to streamline the trade rules applying under our various FTAs and ensure that the CEP is consistent with our more modern agreements.

3.3 New market access opportunities

Both New Zealand and Singapore have relatively open markets. Following the entry into force of the CEP in 2001, all of New Zealand and Singapore goods have been able to enter into each other's market tariff free. In addition, both Singapore and New Zealand made extensive commitments on trade in services as part of the existing CEP. Given the significant openness between the two economies, New Zealand was focused on helping facilitate the entry of our business people into Singapore, so as to enhance their ability to visit and work in Singapore.

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

This section of the NIA outlines the advantages and disadvantages that would accrue from the Protocol and related instruments entering into force for New Zealand. It concludes that it is in New Zealand's national interest for the Protocol and related instruments to enter into force. The counterfactual for comparison is if the Protocol and related instruments did not enter into force and the CEP remains in its current form.

Upgrading the CEP is necessary to achieve the Government's objective of deepening New Zealand's trade and economic relationship with Singapore. As two of the most open economies in the Asia-Pacific region, the upgraded CEP will also serve as a model for bilateral FTAs in the region. At a time when the rules-based trading system is facing unprecedented threats, it is important that countries like New Zealand and Singapore continue to work together to strengthen the architecture that underpins the system.

The net effect of these different elements in the Protocol 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 New Zealand and Singapore will apply to qualifying imports from the other Party. New Zealand and Singapore already provide for tariff free access into each other's market as a result of the existing Agreement which entered into force in 2001.

4.1.1 Advantages

Part 3 of the existing CEP, which covers goods trade matters, is structured differently to the approach that we now consider standard and have agreed in more recent trade agreements. Consequently, this Part has been modernised to include some key disciplines of benefit to New Zealand goods exporters in other FTAs such as national treatment, notification, transparency, subsidies, and non-tariff measures. These are explained in more detail in Section 5.2.

4.1.2 Disadvantages

No disadvantages have been identified for New Zealand as a result of the outcomes in the Trade in Goods Chapter.

4.2 Rules of Origin

The Rules of Origin Chapter establishes the eligibility rules for determining whether goods traded between Singapore and New Zealand are considered to "originate" in Singapore or New Zealand, and therefore qualify for relevant tariff preferences. All FTAs include such rules.

The rules of origin in the existing CEP consisted of a single article and annex. Article 5 set out the originating criteria, documentary requirements and verification procedures, and Annex 1 contained more detailed guidance on these measures. The Protocol modernises these provisions and replaces them with a new Rules of Origin Chapter and a new Annex containing product specific rules.

Under the revised Rules of Origin Chapter, goods are originating if they:

- are wholly obtained in Singapore or New Zealand (such as fruits, plants, animals, etc.);
- are produced entirely from materials that themselves have been produced by either Singapore or New Zealand; or
- use non-originating materials (i.e., materials produced in another country) in the final substantive stage of production but otherwise meet the specific criteria set out for the good in Annex 3.1 (Product Specific Rules of Origin) (PSR Schedule).

Under the third option, a good will qualify as originating if it meets a specified Change in Tariff Classification (CTC). This rule has replaced the regional value content threshold of 40% ex-works price that applied under the existing Agreement. All products under the revised schedule have an applicable CTC rule, and for the majority of tariff lines there is also an optional rule based on the value added by producers within Singapore and New Zealand.

There is no direct consignment rule in the revised chapter, meaning that, provided the goods are not further processed, they can be shipped through or stored in another country (e.g. Australia), without the threat of losing originating status.

4.2.1 Advantages

Rules of origin, in themselves do not confer an advantage or disadvantage to New Zealand. They are an established part of FTAs, used to determine what products are eligible for the preferential tariffs agreed between Parties. Having said that, rules of origin can be a key determinant in how easily exporters are able to access the preferential market access conferred by an FTA.

The modernised Rules of Origin Chapter and PSR Schedule contain the most liberal set of rules of origin in any of our FTAs with Singapore. It has been negotiated with a view to it being used as a precedent for future FTAs or upgrades of existing FTAs.

The method for evidencing origin, i.e. the documentation required of a trader seeking preferential tariff treatment, is self-declaration by the producer, exporter or importer or their authorised representative. There is no prescribed format. This reflects New Zealand's preferred approach.

4.2.2 Disadvantages

There are no disadvantages with the modernised rules of origin and product specific rules. With regard to Singapore, there are only a small number of tariff lines where Singapore does not already provide for tariff-free entry on an MFN or all-country basis. This means that in large part, New Zealand businesses can export to Singapore under the MFN rate (which is zero) and do not need to meet the rules of origin to access the CEP preferential tariff treatment (which is bound at zero for all tariff lines). The modern provisions in the revised chapter however, stand as a good platform for further revisions of FTAs with other trading partners in the Asia-Pacific that include both Singapore and New Zealand.

4.3 Customs Procedures and Trade Facilitation

The Customs Procedures and Trade Facilitation Chapter has been extensively revised to build in the commitments in the recently agreed World Trade Organization Agreement on Trade Facilitation and extends these obligations in some areas. These commitments are aimed at facilitating the flow of goods across borders, including through ensuring customs procedures and practices are transparent and consistent, and expediting certain forms of trade.

4.3.1 Advantages

The enhanced customs commitments include commitments to, under normal circumstances, release all goods within 24 hours, and expedited shipments within four hours. Provisions are also made for prompt release of perishable goods, including outside normal business hours. Both Parties have also committed to provide access to advance rulings on classification, origin and valuation. The commitments contained in the Customs Procedures and Trade Facilitation Chapter all fall within New Zealand's current policy settings.

4.3.2 Disadvantages

There are no disadvantages with the modernised provisions of the Customs Procedures and Trade Facilitation Chapter.

4.4 Sanitary and Phytosanitary (SPS) 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.

The Protocol modernises the provisions related to SPS issues which were previously contained in Part 7 of the existing CEP and replaces it with a new chapter which represents best practice for how to address SPS issues in a bilateral trade agreement. The chapter is based on the SPS Chapter in the earlier P4 agreement between New Zealand, Singapore, Chile and Brunei but has been adapted to a bilateral context.

Under the SPS chapter, New Zealand retains the right to set its own level of protection for health and safety and ability to regulate in this area provided that it does so in a way which is non-discriminatory, transparent and scientifically justified. This is consistent with New Zealand and Singapore's rights and obligations under the WTO SPS Agreement.

4.4.1 Advantages

The SPS chapter provides an additional mechanism to minimise the potential negative trade effects of SPS measures and provides for the practical implementation of the Protocol through the establishment of the Committee on Biosecurity, Food and Primary Products where competent authorities will address implementation issues.

The SPS chapter provides for implementing arrangements, which record agreement on regionalisation (recognising parts of a territory that are free of a certain pest or disease to in order to facilitate trade) and equivalence (recognising another Party's systems as "equivalent" and therefore meeting import requirements). These implementing arrangements provide a useful model for how the concepts of regionalisation and equivalence, which are part of the WTO SPS Agreement, can be applied in other contexts.

In developing SPS measures, Singapore and New Zealand will be obligated to undertake transparent decisions and either conform to agreed international standards or provide a scientific risk assessment. The SPS chapter includes obligations around verification of export procedures and requires any cost of that verification or audit to be borne by the auditing Party (unless otherwise mutually agreed). This provides a good precedent for New Zealand exporters.

Transparency requirements around import checks should enable exporters to clearly understand SPS requirements. Provisions around certification require New Zealand and Singapore to co-operate to facilitate onward certification of goods exported for storage of further processing should, which should support the development of distribution networks for goods.

4.4.2 Disadvantages

There are no disadvantages to New Zealand from the Protocol in the SPS area. Nothing in the SPS chapter would require New Zealand to change our approach to protecting human health, maintaining food safety, and protecting New Zealand's animal and plant health status from pests and diseases.

4.5 Technical Barriers to Trade (TBT)

The TBT Chapter aims to address the trade barriers and costs associated with standards, technical regulations and conformity assessment procedures. The Chapter builds on New Zealand and Singapore's existing rights and obligations under the WTO TBT Agreement and the existing CEP and seeks to eliminate unnecessary technical barriers to trade, enhance transparency and promote regulatory cooperation and good regulatory practice.

The Protocol modernises the obligations that apply to standards, technical regulations and conformity assessment procedures which were previously contained in Part 7 of the exisitng Agreement. Part 7 is replaced by two new Chapters, TBT and SPS, to reflect a more modern structure and to align with the corresponding WTO Agreements. The new TBT Chapter represents best practice for addressing TBT issues in a bilateral trade agreement and adopts a broad set of obligations that apply across all technical regulations, standards and conformity assessment procedures that affect trade in goods and that are not SPS or government procurement measures. The Chapter is based on a combination of the TBT Chapter in the earlier P4 agreement between New Zealand, Singapore, Chile and Brunei, the newer CPTPP and the existing CEP.

The approach taken in the TBT Chapter is aligned with New Zealand's policy settings and the outcomes achieved in the TBT Chapters of New Zealand's previous FTAs. No changes would be required to New Zealand's current practices as a result of the new TBT Chapter.

In addition, the Mutual Recognition Agreement (MRA) on Conformity Assessment and its sectoral annex on good manufacturing practices for medicinal products align with current practice. No changes are required to New Zealand's regulatory system or administrative practices.

4.5.1 Advantages

The diversity of regulatory measures among countries 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 TBT Chapter improves efforts to address these issues and facilitate trade between New Zealand and Singapore, which would ultimately benefit New Zealand exporters. The Protocol includes

provisions to enhance transparency in the development of TBT measures and promote greater regulatory cooperation and good regulatory practice across the full scope of the Chapter. The Chapter also has provisions to minimise the adverse effects regulations can have on trade and provides mechanisms for the Parties to address specific trade issues with the aim of reducing or eliminating unnecessary TBTs.

A feature of the TBT Chapter is the inclusion of four new sectoral annexes (Wine and Distilled Spirits, Pharmaceuticals, Medical Devices and Cosmetics) in addition to the existing annex on Electrical and Electronic Equipment. These new annexes closely follow the text of the annexes to the CPTPP and reaffirm the obligations between New Zealand and Singapore for these product sectors. The annexes include sector-specific obligations aimed at reducing unnecessary barriers to trade in these products. The expected net effect of these annexes in CPTPP is an overall advantage for New Zealand, as they would provide important benefits for New Zealand exporters. These expected advantages are further embedded for trade between New Zealand and Singapore by the inclusion of these annexes in the upgraded CEP. The key outcomes of likely interest for New Zealand exporters as a result of CPTPP, and the replication of the annexes in the upgraded CEP, are:

- The Wine and Distilled Spirits Annex would simplify the sale and export of New Zealand wines in Singapore and reduce costs for New Zealand wine producers, for example reducing unnecessary requirements that have previously required specific labels for different markets. The provisions are largely based on the World Wine Trade Group (WWTG) Agreements, which New Zealand is already a signatory to. The primary disadvantage of this annex in CPTPP, the introduction of a production standard requiring that exports designated 'ice wine' be made from grapes naturally frozen on the vine, has not been included in this annex of the amended CEP further enhancing the overall benefit of the annex to New Zealand exporters.

- The annexes relating to pharmaceuticals, medical devices and cosmetics include provisions aimed at removing unnecessary regulatory requirements for these products. This should reduce unnecessary regulatory divergences and the associated costs to our exporters of complying with a number of different regulatory requirements. The obligations in the annexes are consistent with international good practice and our current regulatory regimes for these products, and provide sufficient flexibility for our regulators to determine their own appropriate level of public health protection.

The TBT chapter also provides a mechanism to consider the negotiation and conclusion of further sector-specific annexes in the future. This helps ensure the upgraded CEP is able to adapt to the changing needs of exporters, particularly in those sectors where products, manufacturing processes or supply chains may become more complex or more regulated over time.

The Mutual Recognition Agreement on Conformity Assessment and its sectoral annex will provide certainty to New Zealand manufacturers of medicines. New Zealand and Singapore already accept

each other's conformity assessment results and certification for medicinal products, but the MRA formalises this and provides certainty for the continuation of this arrangement. The MRA formalises current practice so that any changes must now be made at a government level, rather than at the level of individual regulatory agencies, and changes must also be made at the mutual agreement of both New Zealand and Singapore. This provides further certainty of the continuation of current practice for businesses.

4.5.2 Disadvantages

The new TBT Chapter is consistent with New Zealand's existing regulatory regime and the principles of the Chapter are already fulfilled through our implementation of TBT Chapters in other FTAs with Singapore, such as the existing CEP and P4. The modernised TBT Chapter is not expected to bring any disadvantage to New Zealand's development of technical regulations, standards and conformity assessment procedures. Some provisions in the TBT Chapter go beyond our WTO obligations, e.g. requirements related to conformity assessment and transparency, but these provisions are aligned with New Zealand's regulatory regime due to their consistency with other FTAs or New Zealand's existing regulatory requirements.

The MRA and its sectoral annex are not expected to bring any disadvantage to New Zealand's development of regulations for medicinal products, or for New Zealand manufacturers of medicinal products. Implementation and operation of the MRA is not expected to bring any increased administration costs for New Zealand.

4.6 Investment

New Zealand depends on foreign capital to fund investment for economic growth. New Zealand businesses are also substantial investors off-shore. Singapore is an important financial centre in the region and an ongoing source of increased investment resources for New Zealand. In March 2017, foreign direct investment from Singapore was valued at $4,613 million, and overseas direct investment to Singapore at $1,391 million.

4.6.1 Advantages

Part 6 of the existing CEP provides Singaporean and New Zealand investors increased certainty in terms of their access to each other's markets. The Protocol updates and modernises the Investment Chapter of the CEP based on international best practice. The new Investment Chapter will support the already high levels of investment flow between New Zealand and Singapore by providing for the protection of investment.

Key aspects of the upgrade of the Investment Chapter are:

- Adding new definitions, including of 'covered investment' and 'measure' providing clarity about the new Chapter's scope.

- Amending existing definitions, including of 'investment' by adding the characteristics required to be classified as an investment under the Chapter.
- Updating existing provisions, including the scope article (Article 7.2) using concepts of covered investment and investor and an updated transfers article in place of the repatriation and convertibility provision (Article 7.9).
- Adding new obligations common to modern Investment Chapters, such as New Zealand's existing FTAs like the New Zealand Korea FTA and CPTPP, including minimum standard of treatment, expropriation and compensation, treatment in cases of armed conflict, subrogation and special formalities.
- Adding a new denial of benefits article (Article7.13) that allows New Zealand to deny the benefits of the Investment Chapter in certain circumstances.

4.6.2 Disadvantages

The investment Chapter retains a voluntary ISDS mechanism allowing Singaporean investors to raise a dispute against New Zealand for breach of the Agreement (Article 7.14). However this obligation is reciprocal providing a mechanism to address any disputes between New Zealand investors and Singapore about the application of the Investment Chapter through neutral adjudication while preserving New Zealand's right to regulate. Additionally, no dispute can be submitted to conciliation or arbitration if New Zealand withholds consent to the claim. As a further protection, the updated Investment Chapter includes an exception for tobacco control measures from the voluntary ISDS mechanism. Like other chapters in the Agreement, the Investment Chapter is also subject to state to state dispute settlement procedures referred to in sections 4.11 and 5.11.3

No changes were made to New Zealand or Singapore's investment limitations (Annex 7.2). While this preserves the certainty that New Zealand investors have regarding access to Singapore's market, it means that New Zealand was not able to amend commitments regarding purchases of residential land in New Zealand by overseas buyers. New Zealand has, therefore, exempted Singapore from screening of residential land as sensitive land under the recently passed Overseas Investment Amendment Act 2018.

Through an exchange of letters in September 2018, New Zealand and Singapore have agreed that:

> *[I]n the event New Zealand assesses there is a material increase in the number of residential land transfers in New Zealand by Singaporean buyers, New Zealand will notify Singapore in writing and provide with the notification, relevant statistics and information on the state of the New Zealand property market. The Parties ... will meet within 30 days of the notification for consultation, unless otherwise mutually decided, to consider the underlying causes of the material increase and how to address this development, if required.*

4.7 Services

The Services Chapter facilitates cross-border trade in services between New Zealand and Singapore, including telecommunications, financial, educational, environmental, engineering and architectural services sectors. The Services Chapter (Part 5 of the existing CEP and Chapter 8 of the amended CEP) contains the substantive obligations, while the market access commitments for New Zealand and Singapore are contained in schedules of commitments (Annex 8.1.1 and Annex 8.1.2 respectively). For both Parties, an entry in the initial 'horizontal' portion of their respective schedule of commitments sets out the categories of natural persons that each Party will allow entry for along with associated conditions. Singapore uses a WTO format to schedule its commitments while New Zealand has adopted a more "user friendly" plain language approach.

The Protocol does not make any substantive changes to the Services Chapter text itself with the exception of updates to provisions requiring the Parties to review the commitments in the Chapter. These updates are made to remove references to processes that have already occurred and to update references from the existing CEP's general review provision (Article 68) to the new review provisions set out in Chapter 15 (Institutional Provisions).

The limited changes to the Services Chapter reflect Singapore and New Zealand's agreement to take a targeted approach to services and focus on improvements in the market access area only.

There have been no changes to New Zealand's services market access commitments.

However the Protocol does provide for increased market access and entry for New Zealand business visitors and intra-corporate transferees to Singapore.

In addition, New Zealand and Singapore have agreed a non-binding side letter aiming to encourage cooperation and the flow of professionals between the countries in the field of accounting and other sectors.

4.7.1 Advantages

Services are critical to New Zealand's international competitiveness and a key component of our export and trading profile, comprising around 30 percent of total exports in the year ending June 2018.

The Protocol provides for increased market access and entry for New Zealand service suppliers through the following changes to Singapore's commitments in the new Annex 8.1.2:

- New Zealand Business Visitors (i.e. service sellers representing a service supplier of the other Party seeking temporary entry to negotiate for the sale of services where these do not involve direct sales to the general public) seeking entry into Singapore will be

eligible to be granted a stay of 3 months upon arrival. This is an increase from the 1 month provided for in the existing Agreement.

- New Zealand intra-corporate transferees, will be eligible to be granted a total potential stay of eight years. This consists of an initial entry of two years, with two potential three year extensions. This is an increase from a total potential term of five years provided for in the existing Agreement.

The Parties have also concluded a non-legally binding side letter on Professional Qualifications and Registration. This will support and encourage ongoing cooperation, negotiations and dialogue between the respective professional bodies in the accounting sector. This process will ultimately facilitate and support the flow of professionals in the accounting sector between the two countries. In addition, the side letter establishes a forward process for New Zealand and Singapore to work together to identify future opportunities and priority areas for cooperation and dialogue in relation to the mutual recognition of professional qualifications or registration. This process will ultimately support and assist in increasing access for New Zealand service providers to the Singaporean market in a wider range of sectors and professions.

4.7.2 Disadvantages

There are no identified disadvantages to New Zealand in relation to cross-border trade in services or the movement of natural persons as a result of the Protocol. There have been no changes or increase to New Zealand's services market access commitments, either in relation to the Services Chapter text or in New Zealand's schedule of commitments (Annex 8.1.1).

4.8 Electronic-Commerce

The existing CEP did not include a chapter on electronic commerce (e-commerce). Since that time, the importance of cross-border e-commerce has increased significantly. This has benefitted both New Zealand export firms and New Zealand consumers who order online. New Zealand trade policy has developed to support this trade. We have included a chapter on e-commerce in the Protocol to modernise the trading relationship with Singapore with three broad and inter-related objectives:

i. to ensure businesses and consumers can transact online with confidence;

ii. to allow businesses to freely transfer data in the course of business; and

iii. to protect the privacy and rights of consumers.

New Zealand and Singapore have some e-commerce commitments through AANZFTA. Provisions in that agreement included built-in flexibility in many obligations, commensurate with the level of development of the Parties to that agreement. As a starting point, the Protocol strengthens

AANZFTA provisions between New Zealand and Singapore, to provide greater certainty to our business and consumers.

4.8.1 Advantages

Connectivity is a crucial driver of New Zealand's economic growth. As a small, open economy highly dependent on trade, information and communications technology (ICT) has helped us connect economically and socially to the world. The ICT sector (which is one part of the broader area of electronic commerce) plays a significant role in our economy. More importantly, the ICT sector is an enabler, underpinning the development and profitability of New Zealand's services sector broadly.

New Zealand has consistently advocated the extension of the WTO moratorium covering Customs Duties on Electronic Transactions, and has agreed to make the non-imposition of customs duties on electronic transactions permanent with several of its trading partners to date, including Thailand and Chinese Taipei. Ratifying the Protocol would provide certainty for New Zealand users of e-commerce that Singapore would not move to impose customs duties on electronic transactions. The extension of the WTO moratorium does not prevent New Zealand introducing or amending domestic taxation measures (for example, GST).

The Chapter includes clear acknowledgement of the importance of consumer protection, the protection of personal information of users of electronic commerce, and ensures Parties will have measures in place to deal with SPAM. This benefits New Zealanders. The New Zealand Government already meets these obligations through our broader regulatory framework covering privacy, consumer protection and problems associated with SPAM. These provisions also benefit New Zealand exporters through helping to build public confidence in the use of e-commerce.

There are new provisions in the Chapter on cross-border transfer of information by electronic means and on location of computing facilities that contain important principles recognising the value of information flows and the development of new technologies and services such as cloud computing, for the growth of innovative and cost-effective approaches to the delivery of business services. This is of benefit to New Zealand companies engaged in a wide range of innovative industries that rely on the transfer of information and on computing facilities and services.

At the same time, these provisions uphold the Government's ability to take measures affecting the cross-border transfer of information by electronic means, or the location of computing facilities in the event that public policy issues arise (e.g. from new uses of technology). These enable New Zealand and Singapore to adopt measures needed to achieve a legitimate public policy objective, provided such measures are not applied in an arbitrary or unjustifiably discriminatory way and do not constitute a disguised restriction on trade; for example, New Zealand's information privacy principles implemented through our Privacy Act.

4.8.2 Disadvantages

No significant disadvantages would arise from this Chapter for New Zealand. Some stakeholders have previously raised concerns about New Zealand's support for provisions supporting cross-border data flows, and restricting access to source code and localisation of computing facilities. These provisions have been negotiated to sit within New Zealand's current policy settings and to reflect a balanced approach to addressing the interests of New Zealand business and consumers in taking full advantage of the opportunities available in the digital age, as well as incorporating any safeguards required to protect the interests of users of e-commerce in areas such as privacy, security and confidentiality.

4.9 Competition and Consumer Protection

The modernised Competition and Consumer Protection Chapter replaces an article in the existing CEP that primarily set out broad principles for competition policy. The new Chapter is comprised of high quality and comprehensive due process, transparency, and consumer protection obligations. The Chapter will ensure that competition laws, regulations and processes are fair and transparent for all businesses and will also protect the interests of everyday consumers.

4.9.1 Advantages

The flow of goods and services under an FTA can potentially be compromised by cross-border anti-competitive practices in another country. Competitive distortions, such as anti-competitive conduct, have the potential to restrict trade and investment, and negate the benefits that might otherwise accrue to New Zealand. While these are not issues that are of direct concern for New Zealand with regard to Singapore, we have a strategic interest in having a high quality model chapter covering competition policy and consumer protection that can be used for FTA negotiations with other countries.

The Chapter addresses competition policy and consumer protection issues by mandating the maintenance of high quality and comprehensive competition policy and consumer protection regimes which will provide businesses and consumers with a stable, fair and predictable environment in which they can act with confidence. Provisions which establish cooperation avenues between competition authorities will also assist in the further development of these regimes.

4.9.2 Disadvantages

No significant disadvantages would arise from this Chapter for New Zealand. New Zealand has had 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.

4.10 Regulatory Cooperation

The Regulatory Cooperation Chapter is a new addition to the CEP that builds on existing cooperation arrangements between Singapore and New Zealand. It provides a low-cost, low-effort, responsive mechanism to facilitate regulatory cooperation. Contact points in each country are responsible for bringing the right people, whether regulators or regulatory policy agencies, together to discuss regulatory issues as they arise and consider possible regulatory cooperation solutions.

This is a cross-cutting chapter that enables cooperation on any regulatory measure or potential measure. It recognises that regulatory issues of concern for business or for regulators do not always fall neatly within the chapter structure of an FTA.

The Chapter encourages consideration of both informal and formal forms of regulatory cooperation. It also acknowledges the important role of regulators in undertaking regulatory cooperation. Regulatory cooperation activities are voluntary and the contact points will ensure that activities under the Chapter do not undermine or duplicate efforts happening elsewhere under this Agreement or in other fora.

4.10.1 Advantages

There is growing acknowledgement internationally of the importance of regulatory cooperation, in its many forms, to create an environment that supports trade and investment, while ensuring that domestic regulatory objectives are met. Regulatory cooperation is also crucial to improving the effectiveness of domestic regulation in a digital world. In 2012, the OECD Council on Regulatory Policy and Governance recommended making international regulatory cooperation a key ingredient of regulatory quality.

The enabling framework of the Chapter ensures that New Zealand and Singapore can be responsive to issues as and when they arise. Contact points are a low-cost way to identify the relevant people in each country to discuss whether a particular issue might require a regulatory cooperation response. The Chapter offers New Zealand a direct route to find the right people to talk to in the Singaporean Government and vice versa. This should help speed up the resolution of any issues that arise.

Regulatory cooperation activities that can be undertaken are deliberately broad and include soft or informal cooperation such as information sharing and dialogues. This ensures that any response is proportionate to the issue raised. It does not automatically assume that the only effective way to cooperate is harmonisation or mutual recognition. The voluntary nature of the regulatory cooperation activities means that New Zealand can decide, in each case, whether there is value in cooperating.

4.10.2 Disadvantages

This Chapter requires no changes to New Zealand's domestic arrangements. It simply provides a mechanism for working more easily on regulatory cooperation activities with Singapore, without committing New Zealand to undertaking particular activities. It also does not commit New Zealand to cooperating in a particular way. Accordingly, there are no disadvantages to New Zealand in including this Chapter in the upgrade.

4.11 Legal and Institutional Issues

All of New Zealand's FTAs include provisions dealing with matters such as how and when the agreement will enter into force, how it will relate to other international agreements already in place, how the Parties should coordinate to implement the agreement, how they may resolve issues in the case of a dispute, and exceptions that apply across the different chapters in the agreement.

The existing CEP already contains a Dispute Resolution Chapter and a General Provisions Chapter dealing with many of the matters addressed above.

The Protocol introduces a new Chapter 15 (Institutional Provisions) which provides a structure for the Parties to review and otherwise consult on the operation of the agreement.

The Protocol also amends two of the exceptions in the General Provisions Chapter: the taxation exception and the general exceptions provisions. Exceptions are by their nature a careful balance between ensuring the effective operation of the substantive obligations in an FTA and ensuring that governments' ability to regulate on important public policy matters is preserved. This balance is maintained by the amendments to the taxation exception and general exception provision in the FTA which are both updated to reflect New Zealand's modern approach to these exceptions.

4.11.1 Advantages

As noted above, other than numbering changes, the new Chapter 14 (Dispute Resolution) is identical to Part 10 in the existing CEP. The Chapter provides a robust and binding state to state[2] dispute settlement procedure to resolve disputes arising between the Parties and thereby helps to ensure that New Zealand can take advantage of the new commitments entered into by the Parties to the Protocol.

[2] Investor state dispute settlement is also available under the existing and amended Investment Chapter but only where the state consents to arbitration.

The Protocol introduces a new Chapter 15 (Institutional Provisions) which replaces the existing review article (Article 68). The new Chapter expands on Article 68 by establishing and setting out the functions and powers of a New Zealand Singapore Closer Economic Partnership Joint Commission and a Committee on Biosecurity, Food and Primary Products. These provisions will ensure the Parties are able to efficiently and effectively consult and cooperate with each other on issues and opportunities related to the implementation of the Agreement.

The existing CEP contains a set of exceptions which provide a backstop to ensure that the Agreement does not impair a government's ability to regulate for legitimate public policy reasons.

The Protocol modernises the existing taxation exception in the CEP. The existing taxation exception provided that the Agreement would not apply to *any* taxation measure. Under the new taxation exception a specific set of obligations *will* apply to taxation measures. This allows two new obligations agreed in the upgrade to apply to taxation measures and for other obligations to apply to taxation measures in the same way as under the WTO Agreements. Additionally, the new taxation exception provides helpful guidance on what taxation measures are, what process should be followed should a dispute arise in respect of a taxation measure and what the relationship is between the CEP and tax conventions which New Zealand and Singapore are both a party to.

The Protocol also modernises the existing general exceptions provision in the CEP. This provision originally set out a list of specific exceptions to apply across the Agreement which are based on the general exceptions in the GATT and GATS Agreements. For example specific exceptions in the GATT relate to public morals, human, animal or plant life or health, and the conservation of exhaustible natural resources. The revised provision directly incorporates these exceptions from the GATT and GATS, applying them specifically to relevant Chapters in the Agreement,[3] as well as providing some clarifications on how these exceptions should be interpreted. The general exceptions provide additional protection to the existing (unchanged) Government Procurement Chapter applying the exceptions contained in the Revised Agreement on Government Procurement in Annex 4 of the WTO Agreement. The revised provision also expands on the creative arts exception contained in the existing CEP.

[3] Article XX of the General Agreement on Tariffs and Trade (GATT) provides for exceptions to what is broadly characterised as trade in goods, and would apply to Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Technical Barriers to Trade), Chapter 7 (Investment), and Chapter 13 (Regulatory Cooperation). The exceptions in Article XIV of the General Agreement on Trade in Services (GATS) would similarly apply to Chapter 7 (Investment), Chapter 8 (Services), Chapter 9 (E-Commerce), Chapter 13 (Regulatory Cooperation).

The existing exceptions, including the security exception and the Treaty of Waitangi exception, together with the new exceptions allow New Zealand to benefit from the negotiated outcomes of the Agreement, while ensuring that the Government can continue to implement policies in a wide variety of critical policy areas, including health, environment, security, taxation and to meet obligations to Maori, including pursuant to the Treaty of Waitangi.

The existing CEP contains a provision clarifying that the Agreement does not exempt a Party from its obligation under other agreements. A side-letter to the Protocol also clarifies that exporters, service suppliers, and investors are entitled to take advantage of the more favourable treatment provided under Singapore and New Zealand's other FTAs. These provisions mean that neither the Protocol itself, nor the amended CEP, will undermine New Zealand's rights under these FTAs or the WTO Agreement.

4.11.2 Disadvantages

The new and amended 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, reflecting a balancing of New Zealand and Singapore's mutual interests in ensuring the effective implementation of obligations and the preservation of their 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 by subject area the legal obligations that would be imposed on New Zealand under the Protocol and MRA.

5.1 Trade in Goods

Article 2.2 states that except as otherwise provided in the Agreement, this Chapter applies to trade in all goods between the Parties.

5.2.1 National Treatment and Market Access for Goods

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

Each Party is required to eliminate all its customs duties on originating goods of the other Party at the date of entry into force of the Agreement and they will remain free thereafter (Article 2.4).

Waivers of customs duties

Article 2.5 applies to waivers of customs duties and prohibits either Party from adopting any new waiver, expanding a waiver already granted or extending an existing waiver to a new recipient if the waiver or the continuation of the waiver is conditioned on the fulfilment of a performance requirement. While New Zealand has many of these waivers in practice already including for goods used for social, humanitarian or industry assistance purposes or where suitable alternative goods are not locally produced or manufactured, none of these waivers are conditioned on the fulfilment of a performance requirement.

Customs value

Each Party is required to determine the customs value of the goods traded between them in accordance with Article VII of the GATT 1994 and the Customs Valuation Agreement (Article 2.6).

Application of customs duties

Articles 2.7 and 2.8 set out prohibitions on the application of customs duties in situations where:

- A good re-enters a Party's territory after the good has been temporarily exported to another territory for repair or alteration (Article 2.7.1);
- A good is admitted temporarily into a Party's territory for repair or alteration (Article 2.7.2); and
- The import is of commercial samples of negligible value or printed advertising material (Article 2.8).

Each Party is required to give duty-free temporary admission for the following types of goods (regardless of their origin):

- Professional equipment necessary for carrying out the business activity, trade or profession of a person who qualifies for temporary entry under the laws of the importing Party;
- Goods intended for display or demonstration;
- Commercial samples and advertising films and recordings;
- Goods admitted for sports purposes; and
- Containers and pallets in use or to be used in the shipment of merchandise or goods in international traffic (Article 2.9.1 and 2.9.4).

Each Party is required to, on request and for reasons its customs authority considers valid, extend the limit for temporary admission beyond the period that was initially fixed (Article 2.9.2). Parties may only impose certain conditions (as set out in Article 2.9.3) on the duty-free temporary admission of goods.

Article 2.9.7 requires each Party to adopt and maintain procedures providing for the expeditious release of goods admitted under Article 2.9.

Where a good is temporarily admitted under Article 2.9, the importing Party must permit the good to be exported through a customs port other than that through which it was admitted (Article 2.9.7). In addition, under Article 2.9.8, each Party is required to provide that the importer or person responsible for a good that is temporarily admitted will not be liable for failure to export the good in a situation where they are able to present satisfactory proof that the good has been destroyed within the original period fixed for temporary admission, or any extension of that period.

5.2.2 Import and export restrictions

Article 2.10.1 states that Parties are not allowed to prohibit or restrict the importation of any good of the other Party nor prohibit or restrict the exportation or sale for export of any good of the other

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 the Agreement.

Article 2.10.7 prohibits a Party from requiring a person of the other Party to establish or maintain a contractual or other relationship with a distributor in its territory as a condition for importing a good.

Article 2.11 clarifies that the restrictions on prohibiting or restricting imports in Article 2.10 also extend to remanufactured goods. If a Party adopts or maintains measures prohibiting or restricting the importation of used goods, it cannot apply those measures to remanufactured goods.

Article 2.12 contains a number of obligations relating to import licensing including a prohibition on measures that are inconsistent with the Import Licensing Agreement, and an obligation on Parties to notify the other Party of any existing import licensing procedures that it has in place, as well as any new or modified import licensing procedures. Parties may enquire about the other Party's licencing rules and procedures, 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 a written explanation of the reasons for the denial.

In Article 2.13, each Party is required to ensure that all fees and charges (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charge 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. Parties are also prohibited from requiring consular transactions in connection with the importation of any good of the other Parties, and are required to make available online a list of the fees and charges it imposes in connection with importation or exportation. These fees and charges must be periodically reviewed with a view to reducing their number and diversity, where practicable. Finally, Parties are prohibited from levying fees and charges on an *ad valorem* basis on or in connection with importation or exportation.

Article 2.14 prohibits Parties from having a duty, tax or other charge on the export of any good to the territory of another Party, unless the duty, tax or other charge is adopted or maintained on any such good when destined for domestic consumption. This obligation already applies between New Zealand and Singapore under the P4 Agreement.

5.2.3 Existing provisions

The revised Trade in Goods Chapter incorporates a number of provisions from the existing CEP agreement. These provisions have not substantially changed as a result of the negotiations.

- Non-tariff measures: Article 2.15.1 means any of the Parties' non-tariff measures on goods traded will be consistent with WTO rights and obligations. Those non-tariff

measures that are applied will be transparent and not create unnecessary obstacles to trade between the Parties (Article 2.15.2).

- Subsidies and Countervailing Measures: Article 2.16.1 prohibits Parties from using export subsidies on goods, including agricultural goods. The Parties shall abide by the SCM Agreement in respect of actionable subsidies and avoid causing adverse effects to the interests of the other Party (Article 2.16.3 and 2.16.4). In any case in which it is determined that serious prejudice to the interests of the other Party is caused or threatened by any subsidisation, the Party granting the subsidy shall, upon request, discuss with the other Party the possibility of limiting the subsidisation (Article 2.16.2).

- Anti-Dumping Measures: Both Parties have agreed to implement the AD Agreement in order to bring greater discipline to anti-dumping investigations and to minimise the opportunities to use anti-dumping in an arbitrary or protectionist manner. These additional measures outlined in Article 2.17 include new *de minimis* thresholds, stipulation of a reasonable period, and notification requirements.

- Safeguard Measures: Article 2.18 prevents Parties from taking any safeguard measure within the meaning of the Safeguards Agreement against the goods of the other Party from the date of entry into force of this Agreement.

5.2 Rules of Origin

The Rules of Origin (ROO) Chapter establishes the rules for determining whether goods traded between Singapore and New Zealand are considered to be a “Singapore” or “New Zealand” product in order to qualify for tariff preferences under the Agreement.

5.2.1 Origin provisions

Three avenues are provided through which goods can qualify as being ‘originating’ and, thereby, qualify for preferential tariff treatment (Article 3.2). A good will qualify as originating if it:

- Is wholly obtained or produced entirely in the territory of one or more of the CPTPP Parties (such as, fruits, plants or animals);
- Is produced entirely in the territory of Singapore or New Zealand, exclusively from originating materials; or
- Is produced entirely in the territory of Singapore or New Zealand using non-originating materials, provided that the good meets the criteria set out in Annex 3.1 (Product Specific Rules of Origin) (PSR Schedule).

The two main methods set out in the PSR Schedule for determining whether goods qualify as originating under the third option are:

- Change in tariff classification (CTC): under this approach, a good will qualify as originating if all third country materials used in its production have undergone a specified change of tariff classification. All products have an applicable CTC rule.

- Regional value content (RVC): this approach, which is also provided as an alternative option for the majority of products, is based on the value added by producers within Singapore or New Zealand. The value threshold is 30 per cent if calculated under a build-up method,[4] or 40 percent if calculated under a build-down method.[5]

When a recovered material that is derived in the territory of one or more of the Parties is used in the production of, and incorporated into, a remanufactured good, then that recovered material is required to be treated as originating (Article 3.4). A 'recovered material' is one that results from the disassembly of a used good into individual parts; and the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition.

Article 3.5 sets out the formulas that a Party must use in situations where origin is to be determined by a regional value content requirement.

Articles 3.6 to 3.8 set out how materials that are further worked by Singapore or New Zealand are to be treated when calculating what value can be assigned as regional value content. These include the value of processing of the materials, the costs of freight, insurance, and packing incurred to transport the material to the location of a producer of a good; and the cost of duties, taxes, and customs brokerage fees on the material and the value of any originating material used in the production of the non-originating material. The processing or production must take place in either Singapore or New Zealand.

Article 3.9 requires each Party to provide for full accumulation between Singapore and New Zealand. This means that all materials produced in either Singapore or New Zealand or any processing undertaken in their territory can count towards achieving the rule established for that product. The Article also makes provision for extending these accumulation principles towards a third party, if that third party also has a free trade agreement with both Singapore and New Zealand, and the provisions in those agreements have the same effect.

[4] 'Build-up method' means that the RVC must be calculated based on the value of originating materials

[5] 'Build-down Method' means that the RVC must be calculated based on the value of non-originating goods

Under Article 3.10, each Party is required to allow a small tolerance for a good (10 percent of the value of the good) even if it does not meet the applicable change in tariff classification requirement provided the good meets all the other applicable requirements of the Chapter. This *de minimis* rule only applies under a CTC rule. An optional weight based *de minimis* (10 percent) is provided for textiles and textiles articles.

Under Article 3.11, each Party is required to provide that a fungible good or material is treated as originating based on either its physical segregation or the use of any inventory management method recognised in the Generally Accepted Accounting Principles, provided that the inventory management method selected is used throughout the fiscal year of the person that selected the inventory management method.

Under Article 3.12, each Party is required to provide that in determining whether a good:

- Is wholly obtained, or satisfies a process or change in tariff classification requirement as set out in the PSR Schedule, accessories and other materials normally presented with the goods are disregarded; or
- Meets a regional value content requirement, 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 regional value content of the good.

Article 3.13 requires that a Party must treat packaging materials and containers for retail sale, if classified with the good, in the following ways:

- If a good is subject to a change in tariff classification requirement set out in the PSR Schedule, then they must be disregarded in determining whether all the non-originating materials used in the production of the good have satisfied the applicable process or change in the tariff classification requirement;
- If determining whether the good is wholly obtained or produced, then they must also be disregarded; or
- If a good is subject to a regional value content requirement, then they must be taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good.

The situation is different for packing materials and containers for shipment. These must be disregarded in determining whether a good is originating (Article 3.14).

Each Party is required to provide that an indirect material is considered to be originating without regard to where it is produced (Article 3.15).

Article 3.16 sets out what is to happen if goods are classified as a set because of Rule 3 of the General Rules of Interpretation of the Harmonised System. In such a case, a Party must provide that the set is originating if each good in the set is originating. The set is also originating provided the value of originating materials within the set is not less than 40 percent of the set's value.

Under Article 3.17 a good must either be transported directly from the exporting Party to the importing Party, or if the good has been transported through (or stored in) the territory of a non-Party, it does not undergo further processing.

5.2.2 Origin procedures

Section B of the Chapter sets out certain procedures which each Party must apply. These are summarised below.

Each Party must allow an importer to make a claim for preferential tariff treatment based on a 'certification of origin' which may be completed by the exporter, producer or importer or their authorised representative. (Article 3.18). There are rules that set out the information on which certification may be based (Article 3.19). Each Party must allow an importer to submit a certification of origin in English. A certification of origin need not follow a prescribed format. The overall effect of the rules in Article 3.19 is that there is no requirement for certificates of origin, or third-party certification of origin. Instead, exporters simply need to self-certify or self–declare that the exported product meets the rules of origin in order to qualify for tariff preference. In addition, Annex 3.1 provides an optional template for making a claim for preference.

A Party is not permitted to reject a certification of origin due to minor errors or discrepancies in the certification (Article 3.20).

In certain situations, a Party is not permitted to require certification of origin. These are when:

- The customs value of the imported goods does not exceed US$1,000 or the equivalent amount in the importing Party's currency, or any higher amount established by the importing Party; or

- It is a good for which the importing Party has waived the requirement or does not require the importer to present a certification of origin.

This is provided that the importation does not form part of a series of importations carried out or planned for the purpose of evading compliance with the importing Party's laws governing claims for preferential tariff treatment under the Agreement (Article 3.21).

Article 3.22 sets out things that each Party has to provide for the importer to do when claiming preferential treatment. These include making a declaration that the good qualifies as an originating

good, having a valid certification of origin in its possession when it makes the declaration, and providing a copy of the certification to the importing Party if required by that Party.

Each Party must provide no penalties will be imposed on an importer if the importer, on becoming aware of incorrect importation documentation, voluntarily corrects the documentation prior to discovery of the error by the importing Party, and pays any applicable penalties owed.

Each Party is required to ensure that an importer claiming preferential treatment for a good, and an exporter or producer in its territory who provides a certification of origin, maintains records as set out in Article 3.24. These must be maintained for a period of no less than five years from the date of importation of the good or the date that the certification was issued.

The Chapter gives Parties flexibility in how they choose to verify any claims for preferential treatment. However, it imposes a number of process obligations on an importing Party that conducts a verification, whether this is done through a request for information or an actual verification visit to the premises of the exporter or producer of the good (Articles 3.25 and 3.26).

Unless it denies a claim for one of the reasons set out in Article 3.27.2, a Party must grant a claim for preferential tariff treatment made in accordance with the Chapter for a good that arrives in its territory on or after the date of entry into force of the Protocol.

An importer does not have to miss out on preferential tariff treatment because they did not make a claim for such treatment at the time of importation. Article 3.28 requires each Party to allow an importer in such a situation to apply for preferential tariff treatment and a refund of any excess duties paid. This is provided that the good would have qualified for preferential tariff treatment at the time when it was imported into the territory of the Party, and may also be subject to the importer taking certain steps no later than one year after the date of importation (or other time period specified in the importing Party's domestic law).

Under Article 3.30, each Party must maintain the confidentiality of the information collected in accordance with the Chapter and must protect that information from disclosure that could prejudice the competitive position of the person providing the information.

5.3 Customs Procedure and Trade Facilitation

This Chapter includes a range of obligations in respect of customs administration and trade facilitation, including customs co-operation. Some of the commitments in the Chapter are retained from the existing CEP, however the provisions around release times for express shipments and perishable goods are new obligations for New Zealand and Singapore which will ensure smooth access by New Zealand exporters to the Singaporean market.

All commitments in the Protocol fall within current New Zealand policy settings and practice, and include:

- Ensuring customs procedures and practices are predictable, consistent, and transparent (e.g. providing customs valuations, using internationally accepted tariff classifications, and providing advanced rulings) to ensure efficient administration and the expeditious clearance of goods (Articles 4.1, 4.2, 4.5).

- Encouraging cooperation between customs agencies of the Parties and providing for contact points and consultations to discuss any issues which might arise (Article 4.4).

- Encouraging the use of international best practice on customs and facilitating the use of automated systems, express consignments and providing for the electronic submission of import requirements in advance of the arrival of the goods, to expedite the procedures for the release of goods (Articles 4.6, 4.7, 4.8 and 4.9). In the normal course of events, customs administrations are required to release originating products within 24 hours of arrival (Article 4.7) and in the case of express consignments within four hours of arrival (Article 4.8). Article 4.9 requires Parties to provide for the release of perishable goods, in exceptional circumstances, outside of business hours.

- Adopting or maintaining a risk management system for assessment and targeting that enables its customs administration to focus its inspection activities on high-risk consignments and expedite the release of low-risk consignments, and which avoids arbitrary or unjustifiable discrimination (Article 4.10).

- Adopting or maintaining access to review and appeal (Article 4.11)

5.4 Sanitary and Phytosanitary Measures

The SPS chapter applies to all sanitary or phytosanitary measures of Singapore and New Zealand that directly or indirectly affects trade. It builds on New Zealand's existing rights and obligations under the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).

Matters related to implementation will be addressed through the newly established Committee on Biosecurity, Food and Primary Products (Article 15.4).

Adaptation to Regional Conditions

Regional conditions (Article 5.6) sets out understandings and obligations in respect of adaptation to regional conditions (including pest- or disease-free areas and areas of low pest or disease prevalence).

When an exporting Party makes a request to an importing Party for a determination of regional conditions, the importing Party must start the relevant assessment within a reasonable period of time, so long as it determines that the information provided by the exporting Party is sufficient.

When an importing Party undertakes a determination of regional conditions, it must promptly, on request of the exporting Party, explain its process for making the determination. It must also provide, on request, the status of the assessment. If the outcome of the determination is positive (i.e. regional conditions are recognised) and the importing Party adopts a measure recognising this, it must communicate that measure to the exporting Party and implement the measure within a reasonable period of time. In a case where there is a determination not to recognise regional conditions, the importing Party must provide the exporting Party with the rationale for its determination.

If the pest or disease status changes, an importing Party may modify or revoke a positive determination of regional conditions. In such a case, if the exporting Party requests it, the Parties involved must cooperate to assess whether the positive determination can be reinstated.

An Implementing Arrangement is established where Parties will list those areas or parts of each Party's territory that are free of certain pests and diseases. In the event of an incursion of a disease or pest specified in the Implementing Arrangement the importing party will recognise the exporting party's measures as also specified in the Implementing Arrangement.

Equivalence

Under Article 5.7, Singapore and New Zealand must apply equivalence to a group of measures or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measure, group of measures or on a systems-wide basis, each Party is required to take into account the relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

As with regional conditions, when an exporting Party makes a request to an importing Party for an assessment of equivalence, the importing Party must start the relevant assessment within a reasonable period of time, so long as it determines that the information provided by the exporting Party is sufficient.

When an importing Party undertakes an assessment of equivalence, it must promptly, on request of the exporting Party, explain its process for making the determination and its plan for enabling trade. The importing Party shall accept the SPS measure of the exporting Party as equivalent if it is objectively demonstrated that the measure achieves the appropriate level of protection. If the outcome of the assessment is positive (i.e. equivalence is recognised) and the importing Party adopts a measure that recognises the equivalence, then it must communicate that measure to the exporting Party and implement the measure within a reasonable period of time. In a case where equivalence is not recognised, the importing Party must provide the exporting Party with the rationale for its assessment and must also, on request of the exporting Party, explain the objective and rationale of its measure and clearly identify the risks that the measure is intended to address.

An Implementing Arrangement is provided for that sets out: groups of measures and/or systems for which respective SPS measures are recognised as equivalent for trade purposes; actions to enable the assessment of equivalence; specific guarantees related to recognition of special status provided for by the regionalisation Implementing Arrangement; and those sectors or parts of sectors for which Parties apply different SPS measures.

Science and risk analysis

Under Article 5.8, Singapore and New Zealand are required to ensure that its sanitary and phytosanitary measures either conform to relevant international standards, guidelines or recommendations or, if they do not so conform, that they are based a risk assessment that takes into account reasonably available and relevant scientific data.

Each Party must ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate against the other Party where identical or similar conditions prevail (including between its own territory the other Party). Each Party must conduct its risk analysis in a manner that is documented and that provides interested persons and other Parties an opportunity to comment.

The Article sets out certain requirements that each Party must adhere to when conducting a risk analysis, which includes requirements to:

- Take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations
- Consider risk management options that are not more trade restrictive than required to achieve the level of protection that the Party has determined to be appropriate.
- Select a risk management option that is not more trade restrictive than required to achieve the sanitary or phytosanitary objective, taking into account technical and economic feasibility.

Verification

Article 5.9 provides that any verification or 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 relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations.

Prior to commencing an audit, there is a requirement for the importing and exporting Party to discuss the rationale and decide on the objectives and scope of the audit, the criteria or requirements against which the exporting Party will be assessed, and the itinerary and procedures for conducting the audit.

There are also various process requirements that an importing Party must follow when conducting an audit, including to give the audited Party an opportunity to comment on the findings of the audit and take any comments into account, and to ensure that any decisions or actions taken as a result of the audit are supported by objective and verifiable evidence and data. Both Parties must ensure that procedures are in place to prevent the disclosure of confidential information acquired during the auditing process.

Import checks

Under Article 5.10 each Party must ensure that its import programmes are based on the risks associated with importations, and that its import checks are carried out without undue delay and a minimum effect on trade. It also imposes further obligations, including to:

- Make available, on request, information regarding its import procedures and its basis for determining the nature and frequency of import checks, as well as the analytical methods, quality controls, sampling procedures and facilities that it uses to test a good;

- Ensure that any testing is conducted using appropriate and validated methods in a facility that operates under a quality assurance programme that is consistent with international laboratory standards;

- Maintain physical or electronic documentation regarding the identification, collection, sampling, transportation and storage of the test sample, and the analytical methods used on the test sample;

- Ensure the action in the event of non-conformance is based on an assessment of risks; and

- Ensure that its final decision in response to a finding of non-conformity with the importing Party's sanitary or phytosanitary measure is limited to what is reasonable and necessary, and is rationally related to the available science.

If an importing Party prohibits or restricts the importation of a good of another Party on the basis of an adverse result of an import check, then it must provide a notification (that meets the requirements set out in the Article) about the adverse result to at least one of the importer or its agent, the exporter, the manufacturer or the exporting Party. In this situation, an importing Party must also provide an opportunity for review of the decision and consider any relevant information submitted to assist in the review. An importing Party must provide available information on goods of an exporting Party that were found not to conform to an importing Party's SPS measure, if the exporting Party so requests.

The importing Party must notify the exporting Party if it determines that there is a significant, sustained or recurring pattern of non-conformity with a sanitary or phytosanitary measure.

Certification

If an importing Party requires certification for trade in a good it must: ensure that the requirement is applied only to the extent necessary to protect human, animal or plant life or health; take into account relevant guidance of the WTO SPS Committee and international standards, guidelines and recommendations; and limit attestations and information it requires on certificates to essential information that is related to its sanitary or phytosanitary objectives (Article 5.11).

Parties must work together to facilitate the implementation of electronic certification and other technologies to facilitate trade. Parties will also co-operate to facilitate onward certification of good export for storage or further processing in each other's territory prior to re-export.

Transparency

Article 5.12 requires Parties to notify each other in writing through contact points of: significant changes in animal or plant health status; scientific findings of importance related to food safety, diseases or pests; and additional measure beyond basic requirements or respective SPS measures taken to control or eradicate diseases or pests. This includes any measure that conforms to international standards, guidelines or recommendations.

Notifications must also be made available to the public, along with the legal basis for the measure, and the written comments (or a summary of those comments) that have been received from the public on the measure. Except in cases of urgency, notification is to be followed by a period for interested persons and other Parties to provide written comments on the proposed measure (usually 60 days).

A Party is required to discuss with another Party, on request, any scientific or trade concerns that the other Party may have regarding a proposed measure, and the availability of alternative, less trade-restrictive approaches for achieving the objective of the measure.

Provisional Measures

Provisional measures may be adopted on the basis of serious human animal or plant life or health grounds (Article 5.13). Such measures must be notified within 24 hours to the other Party. The Party adopting the measure must review the scientific basis of the measure within six months and make the results of the review available to any Party on request. If the measure is maintained after the review the Party should review it periodically.

Exchange of Information

Parties will exchange information on a uniform and systematic basis, to provide assurance, develop confidence and demonstrate the efficacy of the programmes controlled (Article 5.14).

5.5 Technical Barriers to Trade

The TBT Chapter builds on New Zealand's existing rights and obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement), and the existing CEP.

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

International Standards, Guides and Recommendations

When a Party determines 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 apply the 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 TBT Agreement (Article 6.7.2).

Equivalency of Technical Regulations

If requested, both Parties must explain the reasons why it has not accepted a technical regulation of the other Party as equivalent, provided it will produce the same outcomes (Article 6.8.2).

Conformity Assessment Procedures

The TBT Chapter contains requirements relating to conformity assessment, including:

- If either Party does not accept the results of a conformity assessment procedure that has been conducted in the other Party, then it must, on request, explain the reasons for its decision (Article 6.10.5).
- If a Party accredits, approves, licenses or otherwise recognises bodies that assess conformity to a technical regulation or standard in its territory, and then it refuses to accredit, license, or otherwise recognise such a body in the other Party's territory, then it must, on request, explain the reasons for its refusal (Article 6.10.6).
- A Party must explain the reasons for a decision to decline to enter into negotiations on facilitating recognition of the results of conformity assessment procedures conducted by bodies in the territory of the other Party (Article 6.10.7).
- A Party must consider adopting measures to approve conformity assessment bodies that are accredited by a body that is a signatory to an international or regional mutual recognition arrangement (Article 6.10.8).

- Any conformity assessment fees imposed by a Party must be limited to the approximate cost of services rendered (Article 6.10.9).

Transparency

Notifications of proposed technical regulations or conformity assessment procedures filed in accordance with the TBT Agreement must include an explanation of the objectives and rationale of the proposal, and be transmitted electronically to the other Party through their enquiry point established under the TBT Chapter. A Party should allow at least 60 days from the date of notification for written comments from the other Party or interested persons from that Party (Article 6.11).

Contact points

Contact points are established under the Chapter and have responsibilities such as facilitating discussions, requests and exchange of information, coordinating the involvement of domestic regulatory authorities and coordinating with interested persons in its territory on matters pertaining to the TBT Chapter. The Parties are also required to notify the other Party of any change of its contact point (Article 6.13).

Co-operation, trade facilitation and technical discussions

The Chapter includes provisions relating to cooperation, trade facilitation and technical discussions, including:

- The Parties must cooperate in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating access to each other's market and preventing unnecessary obstacles to trade (Articles 6.6.1, 6.7.3 and 6.10.2).

- Either Party may request technical consultations with the other Party to resolve any matter that arises under the TBT Chapter. The matter must be discussed within a reasonable period of time (Article 6.14.1 and 6.14.2).

- Where either Party takes a measure to manage an immediate risk related to goods covered by an Annex or implementing arrangement to the upgraded CEP, the Party must notify the measure and reasons for imposing the measure to the other Party (Article 6.14.4).

5.5.1 Sectoral Annexes

A feature of the TBT Chapter is the inclusion of four new sectoral annexes to the Chapter: Wine and Distilled Spirits, Pharmaceuticals, Cosmetics, and Medical Devices. Each annex includes sector-specific obligations aimed at reducing unnecessary barriers to trade in these products and mostly replicate the annexes New Zealand and Singapore negotiated in TPP (and now in CPTPP).

Wine and Distilled Spirits Annex

Under this Annex, Parties are required to make publicly available information about their law and regulations concerning wine and distilled spirits. Mutual recognition of oenological practices is encouraged, and Parties must endeavour to assess other Parties' laws, regulations and requirements in respect of oenological practices, with the aim of reaching agreements that provide for the Parties acceptance of each other's mechanisms for regulating oenological practices, if appropriate.

This Annex contains various requirements relating to labelling, which include requirements for Parties to permit suppliers of wine or distilled spirits to:

- Indicate any required information on distilled spirits, or information on wine other than product name, country of origin, net contents and alcohol contents, on a supplementary label that is affixed to the distilled spirits or wine container, and affix the label after importation but prior to offering the product for sale.

- Use "wine" as a product name.

- Indicate the alcoholic content by volume on a wine or distilled spirits label by alc/vol and in percentage terms.

- Place a lot identification code on wine and distilled spirits containers, if the code is clear, specific, truthful, accurate and not misleading.

Parties must not require suppliers to indicate the date of production, manufacture, expiration, minimum durability or the sell by date on wine or distilled spirits containers, labels or packaging, unless, due to their packaging or the addition of perishable ingredients, the products could have a shorter date of minimum durability than would normally be expected by the consumer. Further, Parties must not require a supplier to place a translation of a trade mark or trade name on wine or distilled spirits containers, labels or packaging, or disclose an oenological (wine-making) practice on a wine label except to meet a legitimate human health or safety objective.

Unless a Party has entered into a pre-2003 agreement with another country or group of countries that requires that Party to restrict the use of such terms on labels of wine sold in its territory, a Party must not prevent imports of wine from other Parties only on the basis that the wine label includes certain descriptors or adjectives describing the wine or relating to wine-making, such as chateau, classic, clos, cream, ruby, special reserve, solera, or superior.

A Party must endeavour to base quality and identity requirements for any specific type, category, class, or classification of distilled spirits solely on minimum ethyl alcohol content and raw materials, added ingredients, and production procedures used to produce the distilled spirits.

Imported wine or distilled spirits must not be required by Parties to be certified by an official certification body regarding vintage, varietal, and regional claims (for wine or raw materials), and production processes (for distilled spirits), except for if a Party has a reasonable and legitimate concern about these characteristics and certification is necessary to verify claims such as age, origin or standards of identity.

Regarding certification, a Party must consider the Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates (CAC/GL 38-2001) if it deems that certification of wine is necessary to protect human health and safety or to achieve other legitimate objectives. A Party must normally permit a wine or distilled spirits supplier to submit any required certification, test result or sample only with the initial shipment of the product. However, if a Party requires a supplier to submit a sample of the product in order to assess conformity with a technical regulation or standard, it must not require a sample quantity larger than is necessary to complete the relevant conformity assessment procedure.

A Party must not apply any final technical regulation, standard or conformity assessment procedure to wine or distilled spirits that have already been placed on the market when the measure enters into force (if the products are sold within their stipulated time period), unless problems of health and safety arise or threaten to arise.

Pharmaceuticals, Cosmetics and Medical Devices Annexes

The Pharmaceuticals, Cosmetics and Medical Devices Annexes apply to the preparation, adoption and application of technical regulations, standards, conformity assessment procedures, marketing authorisation, and notification procedures of central government bodies that may affect trade in those products between the Parties. These three annexes replicate the annexes negotiated in TPP (and now CPTPP), reiterating these obligations for trade between New Zealand and Singapore.

Both Parties are required to define the scope of the products subject to its laws and regulations for pharmaceutical and cosmetic products and medical devices, identify the agencies authorised to regulate those products in its territory, and make that information publicly available.

If more than one agency is authorised to regulate pharmaceutical products, cosmetic products or medical devices (respectively) within the territory of a Party, that Party shall examine whether there is overlap or duplication in the scope of those authorities and take reasonable measures to eliminate unnecessary duplication of any resulting regulatory requirements.

The annexes encourage collaborative efforts, through requirements that:

- The Parties must endeavour to collaborate through relevant international and regional initiatives to improve the alignment of their respective regulations and regulatory activities for pharmaceutical and cosmetic products and medical devices.

- When developing or implementing regulations for cosmetic products or for the marketing authorisation of pharmaceutical products or medical devices, both Parties must consider relevant scientific or technical guidance documents developed through international collaborative efforts.

- The Parties must endeavour to apply scientific guidance documents that are developed through international collaborative efforts with respect to inspection of pharmaceuticals.

- The Parties must endeavour to share, subject to their laws and regulations, information from post-market surveillance of cosmetic products, and on their findings regarding cosmetic ingredients.

The Parties must comply with the obligations set out in Articles 2.1 and 5.1.1 of the TBT Agreement with respect to any marketing authorisation or notification procedure that they prepare, adopt or apply for cosmetic products, pharmaceutical products and medical devices that do not fall within the definition of a technical regulation or conformity assessment procedure.

- The Parties must administer any marketing authorisation process in a timely, reasonable, objective, transparent, and impartial manner, and identify and manage any conflicts of interest in order to mitigate any associated risks. To that end, the Parties must adhere to the following procedural rules with respect to the marketing authorisation of pharmaceutical products, medical devices, and cosmetics:
    - Provide an applicant who requests a marketing authorisation with its determination within a reasonable period of time.
    - In the event that a marketing authorisation application is declined, inform the applicant of the reasons for the decision.
    - Ensure that any marketing authorisation determination is subject to an appeal or review process that may be invoked at the request of the applicant.
    - When developing regulatory requirements for pharmaceutical and cosmetic products and medical devices, a Party is required to consider its available resources and technical capacity in order to minimise the implementation of requirements that could inhibit the effectiveness of the procedure for ensuring the safety, efficacy or manufacturing quality of such products; or lead to substantial delays in marketing authorisation for the products.

- With respect to the marketing authorisation of both pharmaceutical products and medical devices, the Parties must:
    - Make their determination whether to grant marketing authorisation for a specific product/device on the basis of information on the safety and efficacy and the

manufacturing quality of the product/device, labeling information related to the safety, efficacy and use of the product, and any other matters that may directly affect the health or safety of the user of the product/device.

- Not require sale data or related financial data concerning the marketing of the product/device as part of the determination.
- In the event that periodic reauthorisation for a pharmaceutical product or medical device is required, allow the product or device to remain on its market under the conditions of the previous marketing authorisation pending a decision on the periodic reauthorisation, except where a Party identifies a significant health or safety concern.
- Not require that a pharmaceutical product or medical device receive marketing authorisation from the country of manufacture as a condition for the product to receive marketing authorisation.

Pharmaceuticals Annex-Specific obligations

With respect to the marketing authorisation of pharmaceutical products, the Parties must review the safety, efficacy and manufacturing quality information submitted by the person who seeks marketing authorisation in a format that is consistent with the principles found in the *International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use* Common Technical Document (para 16).

The Parties shall, with respect to the inspection of a pharmaceutical product within the territory of the Party:

- Notify the other Party prior to conducting an inspection, unless there are reasonable grounds to believe that doing so could prejudice the effectiveness of the inspection (para 17(a)).
- If practicable, permit representatives of the other Party's competent authority to observe that inspection (para 17(b)).
- Notify the other Party of its findings as soon as possible following the inspection and, if the findings will be publicly released, no later than a reasonable time before that public release. The inspecting Party is not required to notify the other Party of its findings if it considers that those findings are confidential and should not be disclosed (para 17(c)).

Cosmetics Annex-specific obligations

The Parties must apply a risk-based approach to the regulation of cosmetic products, and take into account that cosmetic products are generally expected to pose less potential risk to human health or safety than medical devices or pharmaceuticals (para's 10-11).

With respect to the marketing authorisation of cosmetic products, the Parties must:

- Not conduct a separate marketing authorisation process for cosmetic products that differ only with respect to shade extensions or fragrance variants, unless a Party identifies a significant health or safety concern (para 12).

- Not subject a product that has been granted marketing authorisation to periodic re-assessment procedures as a condition of retaining its marketing authorisation (para 13(d)).

- Consider replacing any marketing authorisation process with other mechanisms such as voluntary or mandatory notification and post-market surveillance (para 14).

- Not require the submission of marketing information, including with respect to prices or cost, as a condition for the product receiving marketing authorisation (para 16).

- Not require a cosmetic product to be labelled with a marketing authorisation or notification number (para 17).

- Not require that a cosmetic product receive marketing authorisation from the country of manufacture as a condition for the product to receive marketing authorisation (para 18).

- The Parties must not require that a cosmetic product be accompanied by a certificate of free sale as a condition of marketing, distribution or sale in the Party's territory (para 19).

- The Parties must permit a manufacturer or supplier to indicate any required information by relabelling the product or by using supplementary labelling of the product in accordance with the Party's domestic requirements after importation but prior to offering the product for sale or supply in the Party's territory (para 20).

- The Parties must not require that a cosmetic product be tested on animals to determine the safety of that cosmetic product, unless there is no validated alternative method available to assess safety (para 21).

If a Party prepares or adopts good manufacturing practice guidelines for cosmetic products, it shall use international standards for cosmetic products, or the relevant parts of them, as a basis for its guidelines except when these would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued (para 22).

Medical Devices Annex-specific obligations

The Medical Devices Annex recognises that different medical devices pose different levels of risk, and requires that each Party classify medical devices based on risk, taking into account scientifically relevant factors. A Party must ensure that, if it regulates a medical device, it regulates the device consistently with the classification the Party has assigned to that device (para 10).

With respect to the marketing authorisation of medical devices, Parties must permit a manufacturer or supplier to indicate any required information by relabelling the product or by using supplementary labelling of the product in accordance with the Party's domestic requirements after importation but prior to offering the product for sale or supply in the Party's territory (para 17).

5.5.2 Mutual Recognition Agreement on Conformity Assessment with Sectoral Annex on Medicinal Products

The Mutual Recognition Agreement on Conformity Assessment (the MRA) applies to the territories of New Zealand and the Republic of Singapore and does not require the Parties to accept the results of conformity assessment undertaken by a third party, unless the Parties expressly agree to do so (Articles 2.1 and 2.2).

The Parties are required to give consideration to increasing the degree of harmonisation or equivalence of their respective regulatory requirements, where appropriate and where consistent with good regulatory practice. Where both Parties agree that harmonisation or equivalence is established, a Party can assess compliance with its own regulatory requirements and this shall be deemed acceptable by the other Party (Article 2.3).

Under the MRA, New Zealand and Singapore have committed to exchanging information about their product regulatory requirements and conformity assessment procedures, and the procedures used to ensure the technical competence of conformity assessment bodies. In addition, each Party must inform the other Party of any proposed changes to its relevant regulatory requirements within at least 60 calendar days before the change enters into force, or unless otherwise prescribed in an annex (Article 3).

Part II of the MRA applies to conformity assessment of products specified in a Sectoral Annex. No specific sectoral annexes apply under this Part, but the Parties can agree the addition of such annexes in the future. Where Part II is applied to an annex, the Parties must:

- Recognise that conformity assessment bodies designated by the other Party under the MRA are competent to undertake conformity assessment activities necessary to demonstrate compliance with the MRA (Article 5.1).

- Accept the results of conformity assessment activities undertaken by bodies designated by the other Party under the MRA (Article 5.2 – 5.3).

- Ensure their relevant authorities have the necessary authority to designate, monitor, suspend, remove suspension and withdraw designation of the conformity assessment bodies within their respective jurisdictions in accordance with the MRA (Article 6.1).

- Consult each other, as necessary, to ensure maintenance of confidence in conformity assessment processes and procedures (Article 6.2).

- Designate conformity assessment bodies according to the relevant procedures in the annex and by specifying the scope of activities, ensuring the body maintains the necessary competence and participates in appropriate proficiency testing programs and comparative reviews. In addition, the Parties must also give the other Party advance notice of at least seven days of changes to the list of designated bodies and inform the other Party, expeditiously of changes to the level of technical competence of the bodies (Article 7).

- Ensure designated bodies are available for verification of their technical competence and compliance with the requirements of the MRA (Article 8.1).

- Only exercise rights to challenge a designated body's technical competence or compliance in exceptional circumstances and only in writing with supporting evidence (Article 8.2).

- Compare methods used to verify that designated bodies comply with the requirements of the MRA (Article 8.8).

Part III of the MRA applies to assessments of manufacturers of products specified in a Sectoral Annex. One sectoral annex applies under this Part, covering Good Manufacturing Practices for Medicinal Products.

Where Part III is applied to an annex, the Parties must accept the results of conformity assessment activities when they are undertaken by Inspection Services appointed by the other Party in accordance with the MRA (Article 10).

With respect to all sectoral annexes:

- The Parties must disclose information to the other Party where that information is necessary to demonstrate the competence of designated conformity assessment bodies and conformance with the requirements of the MRA (Article 11.1).
- In accordance with its applicable laws, the Parties must protect the confidentiality of any proprietary information disclosed to it in connection with conformity assessment activities or designation procedures (Article 11.2).

- Each party retains all authority under its laws to interpret and implement its regulatory requirements and to determine the level of protection it considers necessary with regard to health, safety and the environment (Articles 12.1 and 12.2).
- The Parties retain authority to take all appropriate measures whenever a Party ascertains that products may not conform with its regulatory requirements (Article 12.3).

Sectoral Annex on Medicinal Products – specific obligations

The sectoral annex applies to the Good Manufacturing Practice (GMP) inspection of manufacturers of medicinal products where the manufacturing is carried out in Singapore or New Zealand (para 1.1).

In addition to Part II of the MRA applying, the following obligations apply to GMP inspection of manufacturers of medicinal products carried out in the territories of the Parties:

- The Parties shall accept the conclusions of GMP inspections of manufacturers carried out by the other Party's Inspection Service and manufacturing certificates issued by the other Party's Inspection Service (para's 2.1 – 2.2).
- The Parties shall recognise the other Party's manufacturer's certification of conformity of each batch without re-testing and certification at import (para 2.4).
- The Inspection Services, which in the case of New Zealand is the New Zealand Medicines and Medical Devices Safety Authority (Medsafe), shall issue certificates in accordance with the MRA within 30 days but may extend to 60 days in exceptional cases (para 4.3).
- The Inspection Services shall routinely assess the compliance of the manufacturer with the mandatory GMP requirements, and on the request of the other Party, undertake product specific assessments (para 5.4).
- The Parties shall exchange any information necessary for the mutual recognition of inspections, keep each other informed of new guidance or procedures and consult with the other Party before their adoption (para 5.6).
- Contact points are established to operate a detailed alert procedure related to product quality defects, batch recalls, counterfeiting and other problems concerning quality, and to communicate suspensions and withdrawal of manufacturing authorisations based on non-compliance which could affect protection of public health (para 5.9).

5.6 Investment

The updated investment rules in the amended CEP are designed to facilitate and protect investments. Subject to specific limitations in the investment schedules (see Annex 7.2), the following rules that will support investment flows have been retained from the existing CEP:

- National treatment: Investors and investments are entitled to non-discriminatory treatment compared to domestic investors and investments in a Party in like situations'. (Article7.4)

- Most favoured nation treatment (MFN): Investors and investments are entitled to non-discriminatory treatment compared to other foreign investors and investments 'in like situations. This means for instance that New Zealand investors receive the benefits of any better treatment which Singapore provides to other foreign investors, subject to certain reservations and exceptions. (Article7.3)

5.6.1 Limitations

Article 7.3, 7.4 and 7.5 shall not apply to any limitation listed by a Party in Annex 7.2. The substance of these limitations was not updated by the Protocol. The reservations set out in New Zealand's annex relate to:

- Ongoing operation of the overseas investment screening regime, including a non-legally binding description of the criteria applied to overseas investment that requires approval;

- Ownership of Producer and Marketing Board assets;

- Operation and commercial fishing or fish carrying activities;

- Ownership of enterprises currently in State ownership;

- Overseas company reporting requirements;

- Incentives or other programmes to help develop local entrepreneurs and companies;

- Services sectors not scheduled under Chapter 8 (Services).

5.6.2 Other rules

These are supplemented by new and amended rules designed to protect investors and investments:

- Transfers: Limitations on the circumstances in which restrictions can be imposed on the transfer of capital. (Article7.9) There are, however exceptions to this obligation that

allow a Party to prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its law relating to matters including bankruptcy, insolvency, or the protection of the rights of creditors; issuing, trading, or dealing in securities, futures, options, or derivatives; criminal or penal offences; financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities; and ensuring compliance with orders or judgements in judicial or administrative proceedings.

- Expropriation and compensation: A Party can only expropriate or nationalise an investor's property for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process. Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety and the environment, due to constitute indirect expropriation (Article7.8 and Annex 7.1). Annex 7.1 provides that the expropriation obligation addresses two situations. The first is direct expropriation, where an investment is nationalised or otherwise directly expropriated through formal transfer of title or outright seizure. The second is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure. The Annex provides guidance as to what does and does not constitute indirect expropriation. The Annex also includes the important clarification that non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations.

- Minimum standard of treatment: Investments must be treated in accordance with the customary international law minimum standard of treatment which requires fair and equitable treatment and the provision of full protection and security. (Article7.6) "Fair and equitable" treatment includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; while "full protection and security" requires each Party to provide the level of police protection required under customary international law. To establish that there has been a breach of this obligation, it is not sufficient to show only that:
    - A Party breaches another obligation in the TPP or another international agreement;
    - A Party takes or fails to take an action that may be inconsistent with an investor's expectations (even if there is loss or damage to a covered investment as a result); or
    - A subsidy or grant has been issued, renewed, maintained, modified or reduced by a Party (even if there is loss or damage to a covered investment as a result).

Denial of Benefits: Article 7.13 allows a New Zealand to deny the benefits of the Investment Chapter to an investor of Singapore that is an enterprise (and to its investments) if the enterprise is owned or controlled either by persons of a non-Party or of New Zealand and the enterprise has no substantial business activities in the territory of any Party other than the denying Party. Singapore has a corresponding ability to deny benefits to New Zealand investors.

5.6.3 Investor State Dispute Settlement (ISDS)

The Investment Chapter retains a voluntary investor state dispute settlement mechanism (Article 7.14). This provides a mechanism to address any investment disputes through adjudication while preserving New Zealand's right to regulate. As a first step, any legal dispute between an investor of Singapore and New Zealand arising directly out of an investment in New Zealand shall, as far as possible, be settled amicably through negotiations between the investor and New Zealand (Article 7.14(1)). If the dispute cannot be resolved amicably within 6 months, the investor may submit the dispute to conciliation or arbitration by the International Centre for Settlement of Investment Disputes (ICSID, provided that New Zealand does not withhold its consent under Article 25 of the ICSID Convention (Article 7.14(2)). As with other chapters, the Investment Chapter is also subject to existing binding state to state dispute settlement obligations which are covered in section 5.11.3.

No claim may be brought under Article 7.14 in respect of a tobacco control measure of New Zealand.

5.7 Services

The Protocol does not impose any new legal commitments for New Zealand in respect of cross border trade in services. New Zealand's services obligations under the amended CEP are contained in the new Chapter 8 (Services) and the associated country-specific market access schedules (Annex 8.1.1 for New Zealand and Annex 8.1.2 for Singapore).

With the exception of numbering changes the only substantive amendments to the existing Services Chapter are to update Articles 8.2.2, 8.7.4, 8.7.5, 8.9 and 8.10.2 to refer to the new review provisions provided for in the new Article 15 (Institutional Provisions) instead of the existing review provision in Article 68 (Review) of the existing Agreement.

No substantive changes are made to New Zealand's market access schedule (Annex 8.1.1). As noted in section 4.7, the Protocol does provide for changes to Singapore's market access commitments to provide for increased access for New Zealand business visitors and intra corporate transferees.

In addition, and in connection with the Protocol, New Zealand and Singapore have concluded a non-legally binding side letter that progresses the requirements of Article 8.9 (Professional Qualifications and Registration) of the amended CEP. Article 8.9 notes the importance of ensuring that measures relating to professional qualification and registration do not form unnecessary barriers to trade, and provides for the identification of 'priority areas' for further work and dialogue. The side-letter commits New Zealand and Singapore to working together to encourage cooperation and the flow of

professionals in the field of accounting between the two countries. Existing cooperation and negotiations on mutual recognition between the relevant professional accounting bodies are referenced and the value of mutual recognition of qualification programmes in promoting the mobility of professionals is noted. The letter also establishes that New Zealand and Singapore will continue to work together to identify future opportunities and priority areas for increased cooperation and dialogue in relation to arrangements for recognition of professional qualifications or registration.

5.8 Electronic Commerce

The obligations in the Electronic Commerce Chapter apply to measures that affect trade by electronic means. They 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 9.2).

Customs duties

Customs duties cannot be imposed on electronic transmissions between a person of one Party and a person of another Party (Article 9.3). This does not preclude a Party from imposing internal taxes, fees or other charges on content transmitted electronically.

Domestic Electronic Transactions Framework

Each Party is required under Article 9.4 to maintain a domestic legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce 1996* or the *United Nations Convention on the use of Electronic Communications in International Contracts 2005*. Parties are also required to avoid any unnecessary regulatory burden on electronic transactions and facilitate input from interested persons in the development of regulatory frameworks for electronic transactions.

Electronic Authentication and Electronic Signatures

The Chapter provides for the ease of transactions by electronic form (Article 9.5). A Party may not deny the legal validity of a signature solely on the basis of it being electronic, except in circumstances where its law provides otherwise. In addition, a Party must not adopt or maintain specified measures that would hinder electronic authentication.

Online Consumer Protection

Each Party is required to have consumer protection laws against fraudulent and deceptive commercial activities that cause harm or potential harm to consumers engaged in online commercial activities (Article 9.6).

Personal Information Protection

Each Party is required under Article 9.7 to have a legal framework to protect the personal information of users of electronic commerce. Each Party must not discriminate on the basis of nationality when protecting users of electronic commerce of each Party from personal information protection violations that occur in the Party's jurisdiction. Each Party is required to publish information on the protections it provides, including how individuals can pursue remedies and how business can comply with any legal requirements. Each Party must endeavour to exchange information to promote compatibility of protection mechanisms.

Paperless Trading

Each Party shall make trade administration documents publicly available and accept electronic submission of such documents as the legal equivalent of paper documents (Article 9.8). Some exceptions to this are permitted.

Cross-Border Transfer of Information by Electronic Means

Article 9.10 requires each Party to allow cross-border transfer of information by electronic means, including personal information, where the activity is for the conduct of a covered person's business. (The Chapter defines 'covered person'.) However, a Party may adopt or maintain measures that affect the cross-border transfer of information by electronic means to achieve a legitimate public policy objective as long as the measures are not a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

Location of Computing Facilities

No Party may require a "covered person" to use or locate computing facilities in that Party's territory as a condition for conducting business there. 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 (Article 9.11).

Unsolicited Commercial Electronic Messages

Each Party is required by Article 9.12 to have measures in place that require suppliers of unsolicited commercial electronic messages to enable recipients to prevent ongoing receipt of those messages, require recipients' consent to receive those messages, or otherwise provide for the minimisation of unsolicited commercial electronic messages. Parties must provide recourse against suppliers of unsolicited commercial electronic messages who do not comply with these measures. Parties are also required to endeavour to cooperate regarding regulation of unsolicited commercial electronic messages.

Source Code

Article 9.15 prohibits Parties from imposing a condition on the import, distribution, sale or use of mass-market software (or of products containing that software) that requires the transfer of, or access to, source code of software owned by a person of another Party. Software used for critical infrastructure is excepted, as are certain commercial arrangements and specific requirements a Party may have in place with respect to modification of source code necessary to comply with its laws and regulations.

Cooperation

Under Articles 9.14-9.16, the Parties shall endeavour to share best practice on efficient logistics practices, electronic-invoicing, and work together to assist SMEs to overcome obstacles encountered in the use of electronic commerce, exchange information and experiences, participate actively in regional and multilateral fora to promote the development of electronic commerce, and encourage private sector self-regulation.

5.9 Competition and Consumer Protection

In order to ensure that procedures around competition policy are fair and transparent, the Chapter obligates Parties to apply its competition laws and regulations to all businesses in a non-discriminatory manner.

Basic principles

Article 11.2 obligates Parties to apply its competition laws and regulations in a non-discriminatory manner which does not discriminate on the basis of nationality and to all entities engaged in commercial activities. Any exemptions should be transparent, proportional and based on the grounds of achieving public interest objectives.

Transparency obligations also ensure that competition laws, regulations, guidelines, and grounds for any sanction or remedies are publically available so that businesses and consumers can easily access their obligations and their rights under law.

Appropriate Measures against Anticompetitive Activities

Article 11.3 obligates the Parties to maintain competition laws and regulations to proscribe anti-competitive activities. Parties are obligated to ensure that those laws are enforced effectively by an independent authority that is not influenced by external political factors.

Procedural Rights

Under Article 11.4, procedural fairness provisions ensure that persons or entities subject to competition investigations shall have rights such as the opportunity to be heard and present

evidence before a sanction is imposed and the right to an independent review after such sanction has been imposed.

Consumer Protection

The Chapter also introduces comprehensive consumer protection obligations to improve consumer welfare in our markets (Article 11.9). In addition to ensuring that each Party maintains laws and regulations against misleading and deceptive conduct that causes harm or is likely to cause harm to consumers, Article 11.9 also requires each Party to maintain laws to ensure that goods and services delivered to consumers are of a reasonable and satisfactory quality which is consistent with the supplier's claims; and to provide consumers with appropriate redress when they are not.

Under Article 11.10, nothing in the Competition and Consumer Protection Chapter is subject to dispute settlement.

5.10 Regulatory Cooperation

Under the Regulatory Cooperation Chapter, each Party must establish a contact point to be responsible for consulting or coordinating its respective regulatory agencies on matters arising under the Regulatory Cooperation Chapter. (Article 13.3). The Parties must provide each other with the contact details for their contact point and promptly notify any changes in those details.

The Parties must cooperate to facilitate implementation of the Chapter and maximise the benefits from it. (Article 13.4).The Parties must, through their contact point, encourage their regulators to consider cooperating with their counterparts to reduce barriers to investment and trade (Article 13..4.3).

The Chapter is not subject to the dispute settlement mechanism in Chapter 14 (Article 13.6).

5.11 Legal and institutional issues

The Protocol itself contains only two operative provisions. Article 1 amends the existing CEP by replacing the text of the chapters and annexes with the new, renumbered provisions set out in the Appendix to the Protocol. Article 2 deals with when this amended text will enter into force.

The Protocol also makes changes to the legal and institutional provisions of the CEP. The existing CEP already contains legal and institutional provisions dealing with matters such as how and when the Agreement would enter into force, how it relates to other international agreements already in place, how the Parties should coordinate to implement the agreement, how they may resolve issues in the case of a dispute, and exceptions that apply across the different chapters in the Agreement.

The new or amended provisions are as follows:

- amended Chapter 1 (Objectives and General Definitions Chapter);

- new Chapter 15 (Institutional Provisions);
- amended Chapter 16 (General Provisions) - amended taxation exception, general exceptions and relationship to other agreements provisions.

5.11.1 Objectives and General Definitions

The objectives provision from the existing CEP (now Article 1.1 (Objectives)) is largely unchanged, as the objectives agreed by the Parties in 2000 continue to apply to the Agreement. However the Parties agreed to amend the final objective in subparagraph (g) which relates to investment in order to more accurately reflect the general purpose of the revised Investment Chapter.

Article 1.2 (General Definitions) defines those terms that are used in more than one chapter and applies across the whole agreement unless a different definition is used for the purposes of a specific chapter.

5.11.2 Institutional Provisions

The Protocol introduces a new Chapter 15 (Institutional Provisions) which replaces the existing review article (Article 68). The new Chapter will ensure the Parties are able to efficiently and effectively consult and cooperate with each other on issues and opportunities related to the implementation of the Agreement.

Article 68 provided for Ministers to meet on a biennial basis to review the operation of the Agreement as well as for a general review in 2005.

The new Chapter 15 expands on this article by establishing a New Zealand Singapore Closer Economic Partnership Joint Commission composed of senior officials appointed by each Party (Article 15.1). The Joint Commission's mandatory functions include:

- reviewing the functioning of the Agreement and its implementation;
- considering any proposal to amend the Agreement; and
- supervising the work of committees established under the Agreement.

The Joint Commission may also, at its discretion:

- establish additional committees and working groups, refer matters to these committees and working groups or consider matters referred to them;
- consider the adoption of non-legally-binding implementing arrangements;
- explore measures to further the expansion of trade and investment between the Parties;
- seek to resolve differences or disputes; and

- seek expert advice on any matter.

Article 15.2 requires the Joint Commission to meet within one year of entry into force of the Protocol and thereafter as the Parties agree. These meetings may take place within 30 days of the request of either Party. The Joint Committee may only take decisions on matters within its functions and only y agreement of both New Zealand and Singapore.

Article 15.4 requires the Parties to undertake a general review of the Agreement within five years of entry into force of the Protocol and thereafter every three years.

The new Chapter 15 also establishes a new Committee on Biosecurity, Food and Primary Products (Article 15.3), which will report regularly to the Joint Commission. The Committee will be made up of representatives of the competent authorities of the Parties as set out in an Implementing arrangement to the chapter. The committee will meet within one year of the entry into force of the Protocol and annually after that (unless otherwise decided).

The Committee may also establish technical working groups to address technical and scientific issues arising from the SPS Chapter, and the membership of those working groups may be wider than representatives of the Parties.The Committee on Biosecurity, Food and Primary products will consider any issues in relation to those areas, including matters related to the implementation of the SPS chapter and its Implementing Arrangements.

The objectives of the Committee are to:

- facilitate trade, including through seeking to resolve trade access issues
- provide a forum for improved communication and consultation to avoid unnecessary barriers to trade; and
- explore areas for further cooperation.

To give effect to these objectives the Committee may:

- establish, monitor and review work plans; and
- initiate, develop, adopt, review and modify implementing arrangements which further clarify the provisions of this Agreement,

Any Implementing arrangements developed or modified by the Committee shall commence within three months of the date on which those arrangements or modifications are agreed by the committee unless otherwise mutually determined.

Article 15.4 requires the Parties to undertake a general review of the Agreement within five years of entry into force of the Protocol and thereafter every three years.

5.11.3 Dispute Settlement

The existing dispute settlement provisions in the Agreement provide a robust and binding state to state[6] dispute settlement procedure to resolve disputes arising between the Parties. These obligations are now reflected in the new Chapter 14 (Dispute Settlement) of the Agreement however, other than numbering, these provisions are unchanged. Many of the new obligations in the other Chapters of the Protocol would become subject to these existing dispute settlement procedures.

The Dispute Settlement Chapter provides for the resolution of disputes initially through a period of consultations between the Parties (Article 14.2). If consultations do not resolve the dispute the Party that commenced consultations may appoint an arbitral tribunal to resolve the dispute (article 14.3). In order to ensure the fairness and independence of the arbitral tribunal, both Parties are entitled to appoint an arbitrator to the three person panel, with the third, who may not be a national of either Party, being decided by agreement or failing that, by the Director-General of the WTO. Article 14.3 also specifies the qualifications and expertise members of the tribunal must have.

The arbitral tribunal's role is to make an objective assessment of the dispute and any findings and rulings are binding on the Parties (Article 14.5). While Parties are entitled to publish their own position and submissions to the tribunal, there are protections for confidential information and the hearings themselves are closed.

Parties are required to comply with the arbitral tribunal's findings within a reasonable period of time. If this is not done, the Parties are required to enter into negotiations. If the Parties do not reach a mutually satisfactory solution the aggrieved Party may retaliate by suspending the application of specific benefits under the Agreement, usually in the sectors in respect of which the dispute has been brought (Article 14.8).

Expenses are to be borne equally between the Parties in the normal course (Article 14.9).

The Parties may also have recourse to non-binding forms of dispute resolution including mediation and may mutually terminate binding proceedings at any time if they are able to resolve their differences (Articles 14.3 and 14.7).

[6] Investor state dispute settlement is also available under the existing and amended Investment Chapter but only where the state consents to arbitration.

5.11.4 General Provisions

Chapter 16 (General Provisions) of the amended CEP renumbers Part 11 (General Provisions) of the existing CEP with changes to only a limited number of obligations. The General Provisions Chapter sets out a mix of technical provisions relating to the operation of the Agreement often described as 'final provisions' and exceptions.

Final provisions

Final provisions provided for in both the existing and revised General Provisions Chapter include obligations:

- clarifying the application of obligations in the Agreement to local governments and authorities (Article 16.1);
- providing for transparency obligations applying to measures of the Parties (Article 16.2);
- providing for exchange of information on business law (Article 16.3);
- setting out rules relating to other obligations on the movement of natural persons (Article 16.5);
- regarding the disclosure of sensitive information (Article 16.10);
- providing for for accession or association by other states to the Agreement (Article 16.12);
- providing for amendment of the Agreement (Article 16.15);
- the status of annexes and appendices to the Agreement (Article 16.6)
- provision for the entry into force, and termination of the Agreement (Article 16.17).

The new General Provisions Chapter makes two changes to the 'final provisions':

- the first is to delete the existing Article 68 (Review). This is because this Article is replaced by the new Chapter 15 (Institutional Provisions) referred to above.
- The second change is to amend the article on the relationship between the Agreement and other international agreements of the Parties. Article 80 of the existing CEP included a provision clarifying that the Agreement does not exempt a Party from its obligation under other agreements and that any inconsistency between agreements would be resolved in accordance with international law. This provision has been amended slightly under the new Article 16.13 to require the Parties to consult on any inconsistency with a view to reaching an agreement on how the obligations should apply. Additionally, one of the side-letters to the Protocol clarifies how the Agreement should relate to existing free trade agreements between New Zealand and Singapore. It clarifies that exporters, service suppliers, and investors are entitled to take advantage of the more favourable treatment provided under Singapore and New Zealand's other

FTAs. These provisions mean that neither the Protocol itself, nor the amended CEP, will undermine New Zealand's rights under these FTAs or the WTO Agreement.

The Exceptions

The exceptions allow the Parties to justify actions and policies that might otherwise violate the obligations in the other Chapters of the Agreement.

Existing exceptions that are unchanged in the amended General Provisions Chapter include those relating to measures taken:

- in the event of serious balance of payments or external financial difficulties (Article 16.6)
- to accord more favourable treatment to Māori, including in fulfilment of obligations under the Treaty of Waitangi (Article 16.7);
- by Singapore, to relieve a crucial shortage or threat thereof to imports deemed essential to Singapore (Article 16.8);
- for security purposes (Article 16.9); and
- pursuant to preferences required under other agreements of either of the Parties (Article 16.14).

The Protocol also amends two of the exceptions in the general provisions Chapter: the general exceptions and the taxation exception provisions.

The General Exceptions

The Protocol modernises the existing general exceptions provision in the CEP. This provision originally set out a list of specific exceptions to apply across the Agreement which are based on the general exceptions in the GATT and GATS Agreements. For example specific exceptions in the GATT relate to public morals, human, animal or plant life or health, and the conservation of exhaustible natural resources. The revised provision, Article 16.4, directly incorporates these exceptions from the GATT and GATS, applying them specifically to relevant Chapters in the Agreement,[7] as well as providing some clarifications on how these exceptions should be interpreted.

[7] Article XX of the General Agreement on Tariffs and Trade (GATT) provides for exceptions to what is broadly characterised as trade in goods, and would apply to Chapter 2 (Trade in Goods), Chapter 3 (Rules of Origin), Chapter 4 (Customs Procedures and Trade Facilitation), Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 6 (Technical Barriers to Trade), Chapter 7 (Investment), and

The general exceptions provide additional protection to the existing (unchanged) Government Procurement Chapter applying the exceptions contained in the Revised Agreement on Government Procurement in Annex 4 of the WTO Agreement (paragraph 4).

The revised provision also retains and expands on the exception contained in the existing CEP that itself elaborates on the GATT exception relating to the protection of national treasures of artistic, historic or archaeological value. This exception serves to underscore the importance New Zealand attributes to the protection of its natural heritage and culture (paragraph 5).

The Taxation Exception

The Protocol modernises the existing taxation exception in the CEP. The original taxation exception provided that the Agreement would not apply to *any* taxation measure. Under the new taxation exception, Article 16.11, a specific set of obligations *will* apply to taxation measures.

Obligations that do apply to taxation measures are:

- those obligations that already apply to taxation measures under the WTO Agreements. For example, Article 2.3 (National Treatment on Internal Taxation and Regulation) will apply to internal taxation measures in the same way as Article III (National Treatment) of the GATT;
- Article 2.14 (Export Duties); and
- Article 7.8 (Expropriation and Compensation).

There are also provisions providing helpful guidance on:

- what measures are and are not included in the meaning of 'taxation measures' (paragraph 7);
- what process should be followed should a dispute arise in respect of a taxation measure (paragraphs 4 and 6); and
- what the relationship is between the CEP and tax conventions which New Zealand and Singapore are both a party to (paragraphs 3 and 5).

Chapter 13 (Regulatory Cooperation). The exceptions in Article XIV of the General Agreement on Trade in Services (GATS) would similarly apply to Chapter 7 (Investment), Chapter 8 (Services), Chapter 9 (E-Commerce), Chapter 13 (Regulatory Cooperation).

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 the Protocol and all of the obligations in the MRA 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. Additionally, New Zealand already has a number of other trade agreements with Singapore and one of the key drivers of the upgrade negotiations was to modernise the provisions of the original Agreement to align them with New Zealand's other, more recent trade agreements.

A small number of regulatory amendments are needed in order to implement certain obligations under the Protocol, and thereby enable New Zealand to bring the Protocol into force. These are set out below. As no changes to primary legislation are required, the Government does not intend for the Protocol and MRA to be implemented through a Bill.

6.1 Changes Required

The following changes have been identified as being required:

6.1.1 Trade in Goods

An amendment order under the Tariff Act to implement Article 2.17 that creates an obligation not to apply a customs duty to a good that re-enters New Zealand's after it has been temporarily exported to another country for repair or alteration. The amendment will be made when the Protocol enters into force.

Section 8 of the Tariff Act provides the Minister with authority to approve an exemption from the tariff rate to goods specified within Part II of the Tariff. Goods re-entered after alteration and repair are an existing Concession (Ref 66).

6.1.2 Rules of Origin and Origin Procedures 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 Singapore. The amendment will be made when the Protocol enters into force.

Sections 403(1), 407, and 412 of the Customs and Excise Act 2018 provide the authority to make this amendment.

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

The overall impact of the Protocol, MRA and associated instruments on the New Zealand economy will be limited. New Zealand and Singapore have already achieved full tariff elimination through the existing CEP and subsequent other trade agreements with Singapore.[8] Therefore, the primary value-add of the upgrading the CEP is strategic. The Protocol will reinforce the role both countries can play as leaders in trade and economic integration which can serve as a model for the wider Asia-Pacific region in years to come.

The Protocol preserves the New Zealand Government's right to regulate for legitimate public policy purposes. The Preamble to the Agreement 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 is inconsistent with an obligation in the Agreement, there are a range of general protections 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 can't pay its debts). Similar protections are included in the MRA.

As with all of New Zealand's contemporary trade agreements, the amended Agreement 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 the Agreement. The Waitangi Tribunal (WAI 2522) has considered this provision, and noted that it provides a "reasonable degree of protection to Maori interests."[9]

[8] The Trans-Pacific Strategic Economic Partnership (P4) with Chile and Brunei (2005), and the Agreement Establishing the Association of South East Asian Nations-Australia-New Zealand Free Trade Area (AANZFTA) (2010).

[9] Waitangi Tribunal, Report on the Trans-Pacific Partnership 2522 (2016), Pages 51 – 52.

7.1 Economic effects

Trade makes a significant contribution to New Zealand's economic performance. Exports of goods and services account for around 27 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.

Extensive 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.[10] In New Zealand's case, this is particularly true – as a smaller economy, trade openness allows a focus on areas of comparative advantage, encouraging, for example, greater participation in global value chains.

Although Singapore and New Zealand already enjoy full tariff elimination, the Protocol's regulatory cooperation provisions will aid the Government's ability to resolve non-tariff barriers faced by New Zealand exporters in Singapore. The UNCTAD database on non-tariff measures lists nearly 300 Technical Barriers to Trade (TBT) applied by Singapore, and 127 Sanitary and Phytosanitary measures (SPS). Not all of these TBT and SPS measures affect New Zealand traders, and measures are generally in place for legitimate reasons. But this does highlight that there is potential for smoothing trade through regulatory cooperation. Reducing or removing barriers to goods and services exports 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 the export market.

Singapore is New Zealand's sixth largest trading partner, with exports and imports of goods and services worth NZ$4.9 billion in the year ending June 2018 (see table) and 3.2 percent of New Zealand's total trade. The share of New Zealand goods exports going to Singapore doubled between 2001 and 2007 to 3.2 percent, but has changed little since. Singapore accounts for 2.0 percent of New Zealand services exports.

NZ$ million	Goods	Services	Total
NZ exports	1,249	503	1,752
NZ imports	1,933	1,295	3,227

[10] OECD. 2003. *The Sources of Growth in OECD Countries, Paris.*

7.2 Social effects

The Protocol and MRA would have few implications on New Zealand's ability to develop social policy. The Protocol's preamble reaffirms the importance of preserving each government's right to regulate in the public interest. The Protocol would have minimal impact on immigration and the MRA would have no impact. While closer economic ties with Singapore may result in new patterns of movement of people, the Protocol does not affect New Zealand's immigration policy framework. Neither the Protocol nor the MRA would have any effect on human rights in New Zealand.

7.2.1 Employment

Neither the Protocol nor the MRA will have no direct impact on employment in New Zealand. However, in general terms increased trade is expected to have a positive effect on employment. MFAT has estimated that 8,565 New Zealanders are employed for every $1 billion of exports. The relationship between employment and exports may not be linear, and employment growth will be constrained by labour supply, but it is likely that employment will expand due to the expansion of exports generated by trade agreements. While in theory highly-protected sectors can experience increased competition following the liberalisation of protective barriers (such as tariffs or other restrictions on imports), New Zealand has very few if any such protected sectors.

7.2.2 Health impacts

There are no quantifiable direct economic benefits to the health portfolio arising from the Protocol or MRA. The Protocol would not change the Government's existing ability to regulate for legitimate public policy purposes, including public health objectives. Importantly, the Investment Chapter expressly recognises that non-discriminatory actions of the Government that are designed and applied to protect public health will not to be covered by the Agreements obligations on expropriation. While the wording of some of these exceptions in the Agreement differs from previous New Zealand FTAs, the overall implication for health policy is that the Agreement accords an equivalent level of protection.

Additionally, tobacco control measures are covered in Article 7.14(3) of the Investment Chapter, under a provision that prohibits any investor covered by the agreement to bring a claim against the state in respect of a tobacco control measure of New Zealand.

7.2.3 Social regulation

New Zealand's social regulation frameworks would not be affected by the Protocol or MRA. The Protocol was negotiated so as not to impair New Zealand's right to regulate and make legitimate public policy. The Protocol's preamble reaffirms the importantance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development and traditional

knowledge, as well as the importance of preserving the Government's right to regulate in the public interest.

In the unusual situation where action (or inaction) by the Government would breach an obligation, then the exceptions (contained in Chapter 16) provide a further safety net to ensure legitimate public policy is allowed. The exceptions cover a range of areas including national security, health, environment, creatives arts, national works or specific sites of historical or archaeological value, and situations involving serious balance of payments difficulties. The MRA clarifies that it does not limit the authority of a Party to determine the level of protection is considers necessary with regard to health, safety and the environment.

7.2.4 Immigration

Neither the Protocol nor the MRA require any changes to New Zealand's immigration policy or legislation. While Singapore has made some additional commitments related to the movement of people that will benefit New Zealanders, there are no new commitments in this area by New Zealand that add to what was already committed to under the existing Agreement. As a consequence, the Protocol would not result in any substantial change to people flows in New Zealand.

7.2.5 Human Rights

Neither the Protocol nor the MRA includes any provisions that are inconsistent with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Their implementation would have no effect on human rights in New Zealand.

7.3 Effects on Māori

7.3.1 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. Since the existing CEP was negotiated in 1999-2000, all of New Zealand's FTAs have provided extra protection to ensure that the unique relationship between the Crown and Māori is preserved. This 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. The existing CEP, which entered into force in 2001, was New Zealand's first FTA to include a specific Treaty of Waitangi exception and since then this has been included in all New Zealand's FTAs.

7.3.2 Treaty of Waitangi exception

The Treaty of Waitangi exception remains substantially unchanged from the original Agreement with the only changes made to update the cross-references to other chapters and articles in the Agreement as a result of the renumbering and new nomenclature that the Protocol introduces.

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

Article 16.7 contains the Treaty of Waitangi exception. This exception specifically refers to the Treaty of Waitangi, and applies to the entire Agreement (as modified by the Protocol). It allows New Zealand to adopt any measure that it deems necessary to afford more favourable treatment to Māori in respect of the matters covered by the Agreement.

7.3.3 Other exceptions

Chapter 16 of the Protocol contains a number of exceptions that describe the areas where governments maintain the ability to adopt or retain polices and to regulate regardless of the obligations contained in the Agreement (as modified by the Protocol). Those exceptions cover a range of areas including national security, health, environment, health, environment, creative arts, national works, national works or specific sites of historical or archaeological value, and situations involving serious balance of payments difficulties.

The exception for creative arts makes clear that this covers a wide range of arts including ngā toi Māori (Māori arts), whakairo (carving), raranga (weaving) tā moko, and indigenous traditional practice and contemporary cultural expression.

7.4 Cultural effects

7.4.1 Cultural

The Protocol 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. The Agreement (as amended by the Protocol) incorporates the relevant WTO general exceptions (from GATT and GATS). This includes incorporation of the GATT Article XX(f) exception that allows Parties to take measures necessary to protect national treasures of artistic, historic or archaeological value, providing that such measures are not used for trade protectionist purposes.

The Protocol also contains a specific creative arts exception (Article 16.4(5)) that allows the Parties to adopt and enforce measures necessary to protection of national works or specific sites of historical or archaeological value, or to support creative arts of national value provided that such measures are not used for protectionist measures. The footnote to this exception further clarifies what is included under creative arts. It states that what is defined as "creatives arts" includes ngā toi Māori (Māori arts), the performing arts – including theatre, dance, music, haka and waiata – visual arts and craft such as painting, sculpture, whakairo (carving), raranga (weaving) and tā moko,

literature, film and video, language arts, creative online content, indigenous traditional practice and contemporary cultural expression, and digital interactive media and hybrid art work, including those that use new technologies to transcend discrete art form divisions. The footnote further clarifies that the term "creative arts" encompasses those activities involved in the presentation, execution and interpretation of the arts; and the study and technical development of these art forms and activities.

The MRA, which has a much narrower scope than the Protocol, does not have any cultural impacts.

7.4.2 Digital economy

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 also have significant cultural effects.

The Electronic Commerce Chapter of the Protocol could be expected to foster e-commerce in a way that would deliver economic benefit for New Zealand exporters and consumers, through creating an environment capable of making it easier to sell and purchase goods and services online, and facilitating the growth of new products. The Protocol also includes provisions that relate to the regulation of aspects of the way New Zealanders interact with particular online or electronic products. These include consumer protection, privacy, SPAM, information flows, source code, location of computer facilities, and measures to promote e-commerce.

The overall effect of the Electronic Commerce Chapter is expected to support New Zealand's digital culture – helping create an environment conducive to the growth of weightless exports and other forms of e-commerce, and increasing the uptake of new online products and services (for example through promoting protection of personal information for New Zealand users of e-commerce based in Singapore, and helping address SPAM).

7.5 Environmental effects

The Protocol would not inhibit the New Zealand Government's ability to regulate for environmental protection. 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. The Protocol incorporates the relevant WTO general exceptions (from GATT and GATS).

The Protocol 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 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.

8 The costs to New Zealand of compliance with the treaty

All costs associated with the implementation of the Protocol and related instruments will be met through existing resources and agency baseline funding. Following ratification of the Protocol, government agencies would work with the private sector and others to best leverage the opportunities that arise from the FTA and the broader Singapore Enhanced Partnership. The Trade Negotiations Fund has a funding pool dedicated to FTA promotion which would be used for such activities. There will be no costs to business of complying with the Protocol.

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

9.1 Engagement overview

The Government has engaged widely with the public, Maori and other stakeholders on the CEP upgrade negotiations, however there was limited interest in the negotiations from all groups.

In October 2017, MFAT conducted a business survey on the Singapore Enhanced Partnership, which includes the CEP upgrade. The survey asked business to outline the current barriers to doing business in and with Singapore. Nine businesses responded to the survey. The main feedback was around extending the period of visa-free entry for New Zealanders in Singapore. This has been secured in the Protocol and New Zealanders (including business visitors) are now able to enter Singapore visa-free for three months.

As part of the Government's outreach to the public on trade agreements between December 2017 and May 2018, the Singapore CEP Upgrade was discussed at events in 15 locations: 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.

MFAT hosts a webpage https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/singapore/ that provides detailed information and documents relating to the existing CEP and the upgrade negotiations. This page also provides contact details for the public to share their views on the CEP at any time:

Email: TND@mfat.govt.nz

Post: Coordinator, Singapore CEP Upgrade, Ministry of Foreign Affairs and Trade, Private Bag 18-901, Wellington

During the CEP upgrade negotiations, no written submissions were received and no specific concerns were raised during public outreach events.

9.2 Engagement with Māori

Engagement with Māori was 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.

An international treaties list is emailed every six months to almost 150 groups representing Māori interests, including iwi and their rohe, hapu, marae, and organisations whose mandates to represent these iwi/hapu have been recognised by the New Zealand Government. It is also sent to Waitangi Tribunal claimants. The list contains information about all treaties that New Zealand has either entered into or is in the process of negotiating and therefore the Singapore CEP Upgrade was included. Māori who received this list were advised they could contact MFAT at any time to discuss any interests or concerns, but none have been received regarding the Singapore CEP Upgrade.

MFAT also sent separate pānui (written updates) to Māori throughout the negotiating process to provide information on how the CEP upgrade negotiations were tracking and to seek views. MFAT did not receive any responses on the CEP upgrade following the pānui. In November 2017, MFAT officials also attended a Federation of Māori Authorities (FOMA) hosted workshop on trade negotiations, which included the CEP Upgrade. The workshop provided for an open discussion allowing participants the opportunity to ask questions and share their views, however there was little interest in the CEP upgrade negotiations. In December 2017 and February 2018, MFAT also held trade policy consultation hui with claimants in Auckland and Wellington. Once again, no concerns were raised.

9.3 Inter-departmental consultation

The negotiation of the Protocol was conducted by an inter-agency team led by MFAT. The inter-agency team primarily comprised 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 Ministry of Health, Ministry for the Environment, Customs, Te Puni Kōkiri 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 Protocol amends the CEP through the existing Article 82 of the original Agreement. Under the amended Agreement Article 82 has been replaced by Article 16.15 but is otherwise unchanged.

Article 16.15 provides that the Agreement may be amended through agreement in writing and that these amendments will enter into force on a date to be agreed by them. An amendment can only be made if the Parties agree in writing, and would only enter into force after each Party had approved the amendment in accordance with its applicable domestic legal procedures.

A proposal for an amendment may come about as a result of work done by the Joint Commission, or by a Committee or other subsidiary body established under the Agreement. The Commission itself has review functions which could lead to consideration of amendments, while committees established under the Agreement may have specific functions related to amendments and in other cases have general functions that could lead to consideration of amendments.

Article 6.15 of the CEP provides for additional product specific annexes to the TBT Chapter to be added to the Agreement in accordance with the amendment process. This provides a mechanism for negotiating the removal of barriers to trade or increased facilitation of trade in the future for new and innovative sectors or for those sectors where manufacturing and supply chains may become more complex in the future.

Article 14 of the MRA provides that the MRA may be amended by mutual agreement of the Parties. The MRA provides for the conclusion of sectoral annexes which would set out the implementation arrangements in respect of specific product sectors. Any sectoral annexes that are concluded once the MRA enters into force would be incorporated into the MRA by an amendment to the treaty.

New Zealand would consider any proposed amendments to the Agreement or the MRA on a case by case basis.

11 Withdrawal or denunciation provision in the treaty

Article 16.17 of the Protocol, which is identical to the original Article 84(2), allows for New Zealand or Singapore to terminate the Agreement following 180 days' notice to the other Party. The Protocol itself cannot be amended by either Party, meaning that once the amendments enter into force they cannot be undone except by mutual agreement of the Parties. However as noted above, either Party has the option of terminating the entire Agreement.

Article 13 of the MRA provides for termination of the agreement in its entirety or any one or more of its sectoral annexes. A Party would be required to give the other Party six months' advance notice in writing. If a Party were to terminate a sectoral annex or annexes, the MRA would continue to be in force including any other sectoral annexes contained within that had not been terminated. Article 13 also provides that confidentiality obligations remain binding on the Parties after termination. Parties are also required to continue to accept the results of conformity assessment activities if they were performed prior to termination unless the Party decides not to accept the results due to health, safety or environmental protection considerations.

12 Agency Disclosure Statement

This extended NIA has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. The extended NIA identifies all the substantive legal obligations in the Protocol, some of which will require regulatory changes to implement, and analyses the advantages and disadvantages to New Zealand in becoming a Party to the FTA.

Implementation of the obligations arising under the Protocol 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.