



NEW ZEALAND
FOREIGN AFFAIRS & TRADE
Manatū Aorere

FEB 2022

New Zealand-United Kingdom Free Trade Agreement

National Interest Analysis



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Frequently used acronyms and terms

AD Agreement	Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade (WTO Anti-Dumping Agreement)
ASEAN	Association of South East Asian Nations
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EU	European Union
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
G7	the Group of Seven Industrialised Countries
G20	the Group of Twenty large world economies which together account for approximately 75-80% of international trade
GATS	General Agreement on Trade in Services (the WTO agreement covering trade in services)
GATT	General Agreement on Tariffs and Trade 1994 (the WTO agreement covering trade in goods)
GDP	Gross Domestic Product
GIs	Geographical Indications (a sign or name used in relation to goods that have a specific geographical origin and qualities essentially attributable to that origin, for example, 'Champagne')
Harmonised System (HS)	the Harmonised Commodity Description and Coding System, a near-universal method for classifying international trade in goods
ICT	Information and Communication Technology
IP	Intellectual Property
ISDS	Investor-State Dispute Settlement

MBIE	Ministry of Business, Innovation and Employment
MFAT	Ministry of Foreign Affairs and Trade
MPI	Ministry for Primary Industries
MFN	Most-Favoured-Nation treatment, a requirement that preferential treatment extended to one nation (the 'most favoured') be extended to others
National Treatment	A requirement that the same level of treatment extended to domestic entities be extended to the entities of the other Party to the Agreement
NHS	National Health Service (the UK's national health system)
NIA	National Impact Assessment
NTM	Non-Tariff Measure
NZ-UK FTA	New Zealand-United Kingdom Free Trade Agreement
OECD	Organisation for Economic Cooperation and Development
OIE	World Animal Health Organisation
PSR	Product Specific Rules of Origin
Safeguards Agreement	WTO Agreement on Safeguards
SMEs	Small and Medium-Sized Enterprises
SPS	Sanitary and Phytosanitary measures (applying to animal or plant health)
TBT	Technical Barriers to Trade (non-tariff barriers to trade in goods)
UK	The United Kingdom of Great Britain and Northern Ireland
WHS	Working Holiday Scheme
WTO	World Trade Organisation

1. Executive Summary

The New Zealand-United Kingdom Free Trade Agreement (NZ-UK FTA) establishes bilateral preferential trade arrangements between Aotearoa New Zealand¹ and one of our oldest and closest international partners, the United Kingdom.

On 17 June 2020, New Zealand and the United Kingdom formally launched negotiations towards a free trade agreement. This was an important step in developing New Zealand's future trading relationship with the UK and follows preparations that began in 2017.

Both countries indicated their commitment to working expeditiously to conclude a high quality, comprehensive and inclusive agreement, capable of setting a precedent for modern, liberalising trade agreements consistent with the New Zealand Government's Trade for All objectives.

Agreement in principle on the main outcomes of the NZ-UK FTA was announced on 20 October 2021, with a full explanatory document outlining these outcomes issued at that stage.

The Agreement was subsequently finalised and signed on 28 February 2022 (UK time).

1.1 The UK as a Trade and Economic Partner

The UK is an important economic partner for New Zealand. It is **the world's fifth-largest economy** (as at 2020), with **GDP of NZ\$4.3 trillion** and a member of the G7 and the G20. With a population of over 67 million, the UK constitutes a **NZ\$3 trillion consumer market**.

The UK was the **world's fourth-largest trader in 2020**, with total trade of NZ\$2.4 trillion, evenly split between imports and exports.² It was the world's sixth-largest importer of food products in 2020, worth NZ\$81 billion and accounting for around half of total UK food consumption. The UK is also the third-largest exporter of commercial services and the eighth-largest exporter of goods globally.

New Zealand's trade relationship with the UK is long-standing and substantial. The UK was New Zealand's seventh-largest trading partner pre-COVID, with two-way trade worth **NZ\$6 billion** for the year to March 2020.

New Zealand goods exports to the UK were worth **NZ\$1.5 billion** in the year to March 2020, with the leading products including meat, wine, fruit, honey, wool and some machinery. The main New Zealand goods imports from the UK included vehicles and parts, machinery, equipment and pharmaceuticals, worth **NZ\$1.7 billion**.

The UK is also an important services trade partner for New Zealand. In the year to March 2020, New Zealand exported **NZ\$1.67 billion** of services to the UK (making the UK New Zealand's fifth-largest services export market), and imported **NZ\$1.18 billion** worth of UK services.

Investment has long been an important strand to the economic relationship too, with the UK currently New Zealand's sixth-largest source of foreign direct investment (FDI) and the fourth-most important

¹ Referred to as New Zealand in the FTA and hereafter in this National Interest Analysis.

² UK Department for International Trade, Trade and Investment Core Statistics Book, 21 January 2022 edition.

destination for New Zealand overseas direct investment (ODI). In the year to March 2021, UK FDI in New Zealand amounted to **NZ\$5.6 billion**. In international terms, the UK was the fourth-largest source of outward FDI globally in 2019, with total outward FDI stock amounting to NZ\$2.9 trillion that year.

1.2 Broader New Zealand and UK Context for the FTA

Securing an FTA with the UK has been a significant New Zealand priority since the UK's decision to leave the EU in 2016. This was important to ensure New Zealand was not disadvantaged vis-à-vis other trade partners, as the UK moved to adopt an independent trade policy following its departure from the EU, as well as to strengthen and expand New Zealand's trade and economic connections with the UK in this new environment.

In the period since the UK decision to exit the EU, the UK has moved to conclude roll-over trade agreements with the bulk of its former EU FTA partners, as well as reaching agreement to continue duty-free and quota-free access for EU goods under the EU-UK Trade and Cooperation Agreement signed in December 2020. The UK has also put in place an ambitious forward negotiating agenda. This includes concluding a new FTA with Australia (in December 2021), opening negotiations with India, working to upgrade its FTAs with Canada and Mexico and applying to accede to CPTPP.

The UK has also shown an interest in working to achieve modern, advanced, international trade arrangements. This has enabled New Zealand and the UK to work together in the context of the NZ-UK FTA to set high quality precedents in international trade rules, including in areas such as trade and environment, trade and development, small and medium-sized enterprises and trade and gender equality.

In addition to the economic benefits of the NZ-UK FTA, it is in New Zealand's wider interest to have the UK more closely connected to the Indo-Pacific region and to have the UK contribute towards supporting an open, rules-based trading system globally and regionally. Conclusion of the NZ-UK FTA constitutes an important stepping stone towards this, as the UK pursues its accession to the region's premier trade agreement, CPTPP.

The relationship between New Zealand and the UK is of special significance for Māori, given the British Crown's status as one of the original signatories to Te Tiriti o Waitangi (the Treaty of Waitangi). Protecting and promoting Māori interests has been a priority for New Zealand throughout the negotiations on the NZ-UK FTA, as has engagement with Māori during the negotiation process.

Recognising this, the NZ-UK FTA includes a dedicated chapter on Māori Trade and Economic Cooperation, as well as incorporating a suite of outcomes across the Agreement as a whole that respond to particular Māori interests and concerns. Moreover, as with all of New Zealand's contemporary FTAs, the NZ-UK FTA also includes New Zealand's Treaty of Waitangi exception. This protects the New Zealand Government's ability to adopt policies that fulfil its obligations to Māori, including under the Treaty of Waitangi, without being obliged to offer equivalent treatment to our trading partners.

1.3 Estimated economic impact

Evidence shows that trade and other forms of international engagement often provide aggregate economic and other benefits, particularly for smaller economies.³ However, international engagement can also have associated environmental, social and other impacts.⁴ The overall impact of the NZ-UK FTA on the New Zealand economy will be a result of the complex interaction of the different aspects of the Agreement.

Independent economic modelling has been commissioned to assess the impact of the NZ-UK FTA. This was undertaken by ImpactECON,⁵ which estimated that the effect of the NZ-UK FTA, when fully implemented (by 2040), will be to **boost New Zealand's annual real GDP by between NZ\$710 million and NZ\$811 million** (0.10% - 0.12%) relative to the 2040 modelled baseline. Moreover, the relatively short phase-in periods for most of the goods market access benefits mean the bulk of these economic gains will be realised within the first few years of the Agreement entering into force.

ImpactECON's estimate of the impact of the NZ-UK FTA on New Zealand's economy are broadly similar to the initial estimates arrived at by the UK. This initial UK estimate indicated a New Zealand-UK FTA could lead to an increase in New Zealand exports to the UK by up to 40% and deliver a possible increase to New Zealand's GDP of some NZ\$970 million.⁶

The economic, social, cultural and environmental costs and effects, as well as the fiscal impacts, of the NZ-UK FTA are discussed in Sections 7 and 8.

³ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

⁴ Ibid.

⁵ ImpactECON LLC: Impacts of the New Zealand-UK Free Trade Agreement on New Zealand: A Dynamic Computable General Equilibrium Analysis, Walmsley, Strutt and Minor: February 2022.

⁶ UK-New Zealand free trade agreement: the UK's strategic approach', Department for International Trade, June 2020. This initial UK study was conducted prior to the start of negotiations, however, so was based on assumptions made before the Agreement outcomes were available.

Table 1.3: Estimated Impact of NZ-UK FTA

Area	Increase in NZ GDP when fully in effect (2040), relative to baseline	
	Percent of real GDP ⁷	Constant 2019 NZ\$
Reductions in tariffs on goods trade. (Economic benefit).	0.039	\$267 million
Expansion in quota access for goods trade. (Economic benefit).	0.049	\$335 million
Reductions in non-tariff measures (NTMs) on goods trade. (Economic benefit).	0.009 to 0.020	\$62 million to \$138 million
Reductions in NTMs on services trade. (Economic benefit).	0.007 to 0.014	\$50 million to \$95 million
Total economic benefit.	0.10 to 0.12	NZ\$710 million to NZ\$811 million

Impact on New Zealand		
Employment	Net positive	Aggregate employment is unchanged with a modest increase in real wages.
Social Regulation	No negative impact expected	Does not inhibit the right to regulate for legitimate public policy purposes.
Health	No negative impact expected	Does not impinge on the regulation or operation of New Zealand's health and disability system.
Immigration	No negative impact expected	Commitments on temporary entry of business persons do not apply to persons seeking access to the

⁷ Source: ImpactECON Report. Note: Ranges are based on the upper and lower estimates from the scenarios. Estimates are based on market access outcomes per the Agreement in Principle, 5-10% reduction in the cost of some goods and services NTMs, and 10% reduction in customs processing times.

		employment market of New Zealand, or to nationality, citizenship, or residence.
Human Rights	No negative impact expected	No effect on human rights in New Zealand.
Treaty of Waitangi	No negative impact expected	Nothing in the NZ-UK FTA that would prevent the Crown from meeting its obligations to Māori.
Small and Medium-Sized Enterprises (SMEs)	Net positive	Outcomes expected to modestly benefit SME exporters.
Māori	Net positive	Outcomes expected to benefit Māori business owners, exporters and workers.
Women	No negative impact expected	May improve trade engagement for women business owners and workers.
Culture	No negative impact expected	Does not impinge on policies towards or preclude support for New Zealand culture and the creative arts, including ngā toi Māori, traditional knowledge and cultural practices.
Environment	Net effect expected to be limited.	The NZ-UK FTA incorporates advanced provisions on trade and environment, including in relation to environmentally harmful subsidies and on liberalisation of environmental goods. Does not inhibit the right to regulate environmental matters for legitimate public policy purposes.

1.4 Benefits for Goods Exporters

The NZ-UK FTA contains some of the best market access outcomes of any of New Zealand's FTAs. For goods, 99.5% of New Zealand's current trade with the UK will face no customs duties on day one of entry into force of the Agreement. This comprises immediate tariff elimination on 69.2% of our current exports into the UK, including on wine, honey, kiwifruit, and onions, plus a further 30.3% of current trade which will benefit from duty-free transitional quotas on entry into force.

The duty-free transitional quotas in the FTA will apply for apples (for 3 years, only for exports in the period from August to December), butter (for 5 years), cheese (for 5 years), beef (for 10 years, followed by a product-specific safeguard for a further 5 years) and sheep meat (15 years). For all products, quota volumes exceed current trade levels, and all customs duties will be eliminated after the quotas cease to apply.

New Zealand will eliminate customs duties on all tariff lines for UK imports on entry into force, putting the UK on a par with other New Zealand FTA partners including Australia, ASEAN, China, Korea, and CPTPP (under which a small subset of customs duties finish phasing out in two years).

Savings on customs duties for New Zealand exports have been estimated, based on current export volumes, at NZ\$37 million from entry into force of the agreement. This is a combination of elimination of customs duties (NZ\$30 million) and duty-free quotas (NZ\$7 million). Once fully implemented, these savings on customs duties are estimated to grow to NZ\$37.8 million per year at current trade volumes. These savings on customs duties could be even larger though, due to potential increases in trade, with modelling forecasting that New Zealand goods exports to the UK could increase by half following the full implementation of the FTA.

1.5 Benefits for Services Exporters

The Agreement features commitments which will help facilitate and provide certainty of access and regulatory conditions for services exporters. This includes four chapters and three annexes covering specific services trade issues and sectors, including on domestic regulation, financial services, telecommunications, professional services, express delivery services, and international maritime transport services.

Market access commitments in the Agreement build upon and add to those each country has made under the WTO General Agreement on Trade in Services (GATS). These have been scheduled using the clearer, more transparent, 'negative listing' approach characteristic of modern FTAs, including CPTPP. Among the expanded services commitments in the Agreement, both New Zealand and the UK have agreed to make commitments on a broader range of aviation services, including in ground-handling, airport operations and specialty air services. Several of the improved UK services commitments contained in the Agreement, for example those on the provision of environmental consultancy services and those covering services incidental to manufacturing, also support New Zealand's goods exporters (many of whom increasingly look to undertake services-related activities to support their international business).

The chapter on domestic regulation has the objective of ensuring that each country's licensing and qualification requirements and procedures are transparent, non-discriminatory and not unduly burdensome. The Agreement also includes provisions aimed at facilitating and expanding the recognition of professional qualifications and registration in each other's jurisdiction.

1.6 Benefits for Investors

The investment provisions in the NZ-UK FTA incorporate modern investment protection rules similar to those contained in other recent FTAs and provide certainty and stability in regard to market access for investors from both countries. This will help to create the conditions for further growth and development in two-way investment between New Zealand and the UK.

New Zealand's existing investment screening regime under the Overseas Investment Act will continue to apply. The NZ-UK FTA will enable UK investors to benefit from the same screening threshold, NZ\$200 million, applied to many of New Zealand's other FTA partners, including CPTPP Parties, China, and Korea.

There is no provision for Investor-State Dispute Settlement (ISDS) in the NZ-UK FTA. It has also been agreed that ISDS would not apply between New Zealand and the UK in the context of future UK accession to CPTPP either.

1.7 Innovations in the Agreement

New Zealand and the UK share the objective of establishing a high quality, inclusive and future focused FTA. This has been achieved, with the FTA breaking new ground in a number of areas of importance to New Zealand, particularly those central to the Government's Trade for All objectives.

This includes six new chapters covering:

- ***Māori Trade and Economic Cooperation*** – this chapter recognises the unique context and special relationship between Māori and the UK, including as a result of Māori and the British Crown being original signatories to Te Tiriti o Waitangi/The Treaty of Waitangi. It has the purpose of promoting cooperation between the Parties to the Agreement to enable and advance Māori economic aspirations and wellbeing. This dedicated chapter complements other areas across the Agreement focused on issues of particular interest or concern to Māori, including in the chapters on Goods Trade, Digital Trade, Intellectual Property, Environment, Government Procurement and the General Exceptions.
- ***Trade and Gender Equality*** – the NZ-UK FTA is the first New Zealand bilateral agreement to contain a stand-alone chapter on trade and gender equality. This recognises the contribution trade and investment can make to advancing women's economic empowerment and improving gender equality, reaffirms the commitments both countries have made to implement international agreements fostering women's economic advancement and puts in place cooperation arrangements, including to promote utilisation of the benefits of the FTA by women and in the collection, monitoring and analysis of data covering the gender-based effects of trade.
- ***Trade and Development*** – a dedicated chapter on trade and development is included in the NZ-UK FTA, a first for New Zealand. This recognises the contribution an open, rules-based trade and investment environment can make to sustainable and inclusive development and provides for cooperation between New Zealand and the UK on trade and development issues, including sharing information and working together in multilateral and regional bodies, with a focus on least developed countries and small island developing states.
- ***Consumer Protection*** – the agreement contains a specific chapter covering consumer protection. It recognises the need to maintain policies and practices to protect consumers from fraudulent and misleading actions, including in the online environment; and highlights the need for cooperation between countries to develop ways to enhance access to effective redress for consumers in each other's jurisdictions.
- ***Animal Welfare*** – this chapter recognises the high priority both countries afford animal welfare in farming practices, acknowledges the comparability of both countries' high standards in this area and sets out how the two countries will work together cooperatively, including in international standard-setting bodies, to promote animal welfare.

- **Anti-Corruption** – this chapter contains provisions that build on New Zealand-UK cooperation on anti-corruption in multilateral fora and includes measures to combat corruption, as well as covering enforcement, whistle-blowing and integrity among public officials.

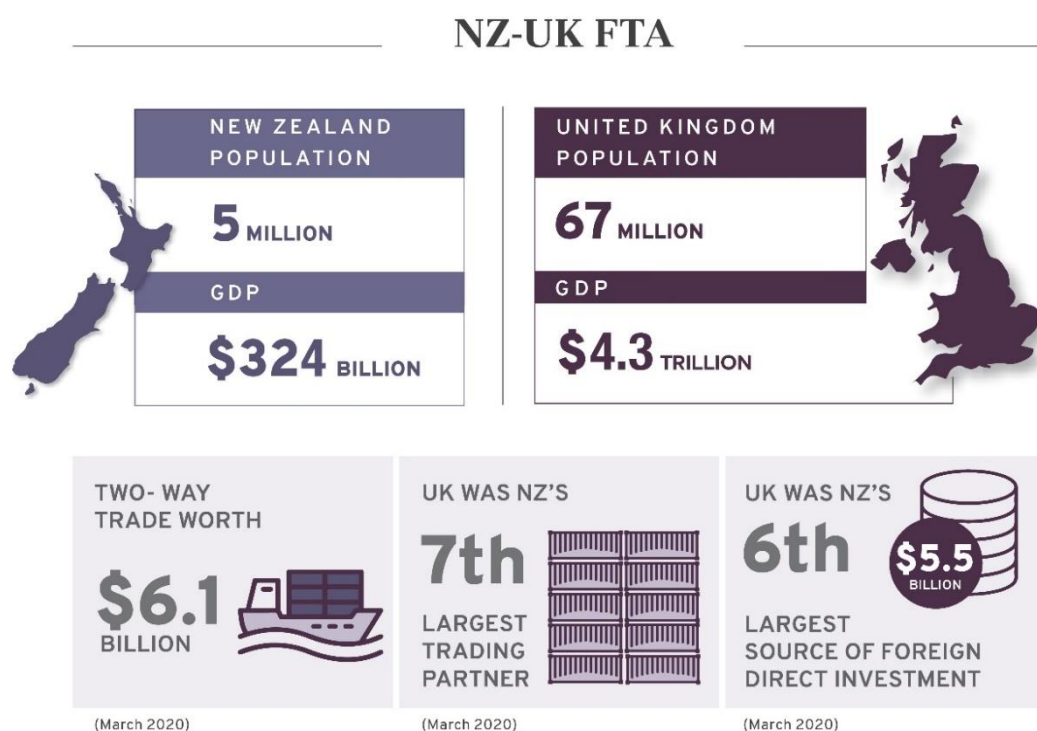
In addition to the above new chapters, the NZ-UK FTA also contains advanced new provisions in a range of other areas of particular interest to New Zealand. These include:

- The **Environment** chapter includes the most far-reaching commitments New Zealand has ever negotiated on trade and the environment, including commitments to prohibit subsidies which increase fishing capacity, and to take steps to eliminate harmful fossil fuel subsidies. The environment chapter will also prioritise the elimination of tariffs on 293 environmentally beneficial products – the largest such list agreed in any FTA to date.
- New elements in the **Trade and Labour** chapter include a focus on workplace equality, such as to support non-discrimination in work and women’s equality in the workplace, as well as steps to address the issue of modern slavery.
- The **Digital Trade** chapter has a focus on practical matters to build trust in and facilitate digital trade, including provisions facilitating the use of e-contracts and e-invoicing. In addition the chapter promotes innovation and economic growth through cooperation, including in relation to emerging technologies and digital inclusion.
- Provisions supporting **Small and Medium Enterprises (SMEs)** are found across the NZ-UK FTA, in particular in the Goods, Services, Customs, Government Procurement and Digital Trade chapters. In addition, there is a chapter focused on SMEs aimed at facilitating ease of access to information for SMEs and cooperation between government agencies to promote uptake of the FTA by SMEs.

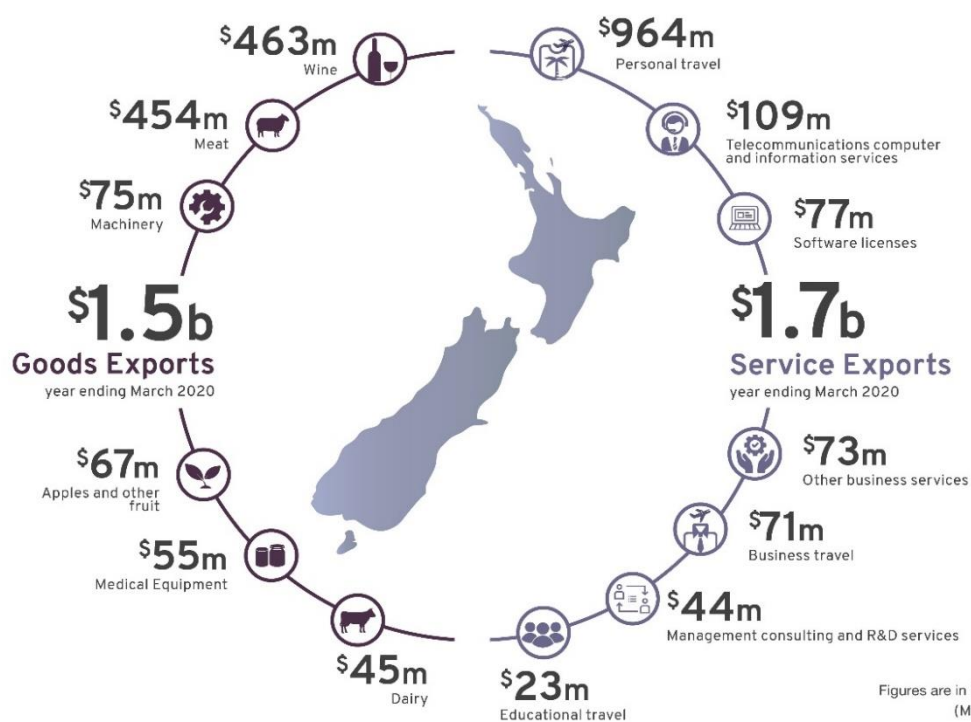
Graphic 1.7.1: NZ-UK FTA: Benefits for New Zealand



Graphic 1.7.2: New Zealand-UK Trade Data (NZD)



NEW ZEALAND'S EXPORTS TO THE UK



1.9 Exceptions and Protections Provided Under the Agreement

The NZ-UK FTA incorporates the comprehensive range of general and specific exceptions and protections usually included in New Zealand's FTAs.

As outlined above, an important requirement for New Zealand is inclusion in the NZ-UK FTA of a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. This replicates similar provisions included in all of New Zealand's contemporary FTAs and ensures that nothing in the NZ-UK FTA would prevent the Crown from meeting its obligations to Māori. It also specifies that New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement.

At the same time as supporting New Zealand's trade objectives, the NZ-UK FTA expressly preserves the Government's right to regulate for legitimate public policy purposes, in areas including health, education, social welfare, the environment, security and taxation policy. The FTA also preserves policy space for procurement policies to achieve environmental, social, and labour outcomes, such as the Progressive Procurement Policy.⁸ The Agreement also reaffirms the two Parties' commitment not to impose regulations that are not for legitimate public purposes but are unjustified, disguised or discriminatory barriers to trade.

New Zealand's preferred general exception covering the full scope of creative arts (including ngā toi Māori (Māori arts), as well as creative online content) is also included. It will not, however, apply to the Intellectual Property chapter of the Agreement, which contains its own specific provisions protecting the rights of those engaged in the creative arts.

The General Exceptions chapter also specifically recalls and notes the range of exclusions and exceptions across the Agreement that apply to the UK's National Health Service and New Zealand's health and disability system.

The general exceptions provisions underline that the right of each government to take measures necessary to protect human, animal and plant life or health includes taking measures necessary to mitigate climate change and to conserve natural resources.

The NZ-UK FTA does not provide for Investor-State Dispute Settlement (ISDS).

The impacts of the full range of NZ-UK FTA provisions and their advantages and disadvantages are set out in more detail in Section 4.

1.10 Legislative Amendments

The bulk of the obligations in the NZ-UK FTA are already met through New Zealand's existing domestic legal and policy regime. There are a limited number of legislative and regulatory amendments that

⁸ The Progressive Procurement Policy is an approach to increase the diversity of government suppliers, starting with Māori businesses. For more information, see <https://www.tpk.govt.nz/en/a-matou-kaupapa/maori-economic-resilience/progressive-procurement>.

would be required to implement certain obligations under the NZ-UK FTA. These are described in more detail in Section 6 of the NIA, and include:

- an amendment to the Tariff Act 1988 to amend the ‘Tariff’ (as defined in that Act) to enable the application of the preferential tariff rates agreed in the NZ-UK FTA;
- an amendment to the Tariff Act 1988 to provide for the transitional NZ-UK FTA safeguard mechanism under the Trade Remedies chapter;
- an amendment to the Dairy Industry Restructuring Act 2001 to administer the transitional quotas for dairy and butter;
- an amendment to an existing Act (e.g. the New Zealand Horticulture Export Authority Act 1987) or new legislation to administer the transitional quota for apples;
- an amendment to the Customs and Excise Regulations 1996 to implement the agreed rules of origin and product specific rules of origin (PSRs) for goods imported from the UK;
- an amendment to the Copyright Act 1994 to give effect to an extension of the copyright term (which the FTA provides New Zealand 15 years to implement); and
- new legislation to establish an Artist’s Resale Rights regime.

1.11 Consultation

As highlighted in Section 9, throughout the negotiations on the NZ-UK FTA, the Ministry of Foreign Affairs and Trade (MFAT) together with other government agencies, has been active in engaging with Māori, as well as with a wide spectrum of New Zealand stakeholders. Consultations were undertaken in order to provide the opportunity for New Zealanders to seek more information about the negotiations and the Agreement arrived at, as well as to enable their views to be taken into account throughout the negotiation process.

As is standard practice for FTAs, the NZ-UK FTA will be scrutinised by a parliamentary select committee and Parliament will consider the necessary legislative changes required to give effect to the Agreement’s outcomes.

2. Nature and Timing of Proposed Treaty Action

The NZ-UK FTA was signed on 28 February 2022 (UK time) by Minister for Trade and Export Growth Damien O'Connor for New Zealand, and Secretary of State for International Trade Anne-Marie Trevelyan for the United Kingdom.

Entry into force of the FTA is subject to the completion of the necessary domestic procedures by each of the Parties. The FTA will enter into force on a date to be agreed in writing once each side's applicable legal requirements and procedures for entry into force are completed. Both sides are working towards this taking place late in 2022, if possible.

New Zealand and the UK have also concluded three side instruments to the Agreement, each of non-treaty status:

- Side letter on the Haka Ka Mate: this is an understanding under which New Zealand and the UK each acknowledge the association Ngāti Toa Rangatira has with, and its guardianship of, the Haka Ka Mate;
- Side letter on oenological (winemaking) practices: this is an understanding reached between New Zealand and the UK in which the UK has committed to a process for assessing and, as appropriate, recognising specified winemaking practices used in New Zealand, and to allowing wine using such practices to be imported into the UK;
- Side letter on Scottish whisky localities: this is an understanding that New Zealand will not permit the sale of whisky labelled or advertised with representations of Scottish whisky localities including Campbeltown, Islay, Highland, Lowland, or Speyside unless manufactured in Scotland, to the extent that the use of such representations is found to be misleading or deceptive under the terms of New Zealand's Fair Trading Act 1986 or any successor legislation.

New Zealand has made a commitment in the Intellectual Property chapter to make all reasonable efforts to accede to the Hague Agreement Concerning the International Registration of Industrial Designs, done at Geneva on July 2, 1999.

The NZ-UK FTA and its accompanying side letters would not apply to Tokelau.

Both sides agreed during the FTA negotiations to amend the NZ-UK Sanitary Agreement 2019⁹ (covering animals and animal products) to include 'composite products'¹⁰ within its scope. This amendment is recorded in an exchange of letters and will enter into force once relevant approval processes in both countries are completed.

⁹ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand on Sanitary Measures Applicable to Trade in Live Animals and Animal Products 2019.

¹⁰ A foodstuff containing both products of plant origin and processed products of animal origin as defined by Commission Decision 2007/275/EC of 17 April 2007 in retained UK legislation.

3. Reasons for New Zealand Becoming a Party to the Treaty

A bilateral FTA between New Zealand and the UK both delivers on important commercial interests and contributes to broader relationship and trade policy objectives. Trade remains a vital sinew of New Zealand economic and social wellbeing and acts as an important driver of productivity, employment, innovation, and incomes. New Zealand's core objective in trade policy is to improve wellbeing and living standards for all New Zealanders, while safeguarding the Government's right to regulate in the interests of New Zealand and our people.

An important component of this is removing and reducing barriers to trade and investment. This is important in the context of especially high barriers to trade in areas such as agricultural and food products where New Zealand has a comparative advantage, but which face particularly restrictive trading conditions in a market such as the UK. It is also especially important at a time when the UK is actively engaging with other trade partners to liberalise its trade relations with those partners, some of whose exporters compete with New Zealand exporters.

Beyond the area of goods trade, modern, forward-looking FTAs play a key role in creating the environment in which trade and investment linkages can develop, grow and evolve; whilst ensuring these outcomes contribute towards a more productive, sustainable and inclusive economy. From the outset, this is an objective New Zealand and the UK have shared and one which has been delivered through the innovative and advanced features contained in the NZ-UK FTA.

3.1 Advancement of the New Zealand-UK Relationship

New Zealand has a uniquely close bond with the UK, born of our shared history. This means that the UK is one of New Zealand's closest and most important partners across the full spectrum of our geopolitical, economic, social and multilateral interests. These ties encompass strong political, economic and trade, social, environmental, security, educational, cultural, sporting, and people-to-people links.

Moreover, there is a deep connection between Māori and the UK, particularly given the role of the British Crown as one of the original signatories of Te Tiriti o Waitangi/The Treaty of Waitangi.

The NZ-UK FTA will open a further chapter in this relationship by liberalising, expanding and modernising the environment for the development of stronger trade, economic and investment connections, innovation, and collaboration between our two countries. It will also work to redress some of the imbalance between the deep bilateral connection enjoyed between our two countries and peoples and the poor quality of trade access we have experienced in each other's markets in recent times. New Zealand has been one of only a handful of countries not to previously enjoy preferential access into the UK market, despite the closeness of other aspects of our bilateral relationship.

Securing an FTA with the UK has been a significant New Zealand priority since the UK's decision to leave the EU in 2016. This was important to ensure New Zealand was not disadvantaged vis-à-vis other trade partners into the UK market, as the UK moved to adopt an independent trade policy following its departure from the EU. It was also important to provide a platform for both sides to strengthen and expand their trade and economic connections in this new environment.

The ongoing strength of people-to-people connections is evidenced in the continued high numbers of those from the UK migrating or spending time living and working in New Zealand and vice versa. These connections are supported by reciprocal Working Holiday/Youth Mobility schemes. In the pre-COVID period, some 12,000-13,000 young British travellers came to New Zealand per annum on working holidays while between 3,500-4,000 young New Zealanders benefitted each year from the UK's Youth Mobility scheme.

Consistent with these close ties, the two governments have also undertaken, in parallel to the FTA negotiations, to work on arrangements to extend and improve the current respective Youth Mobility/Working Holiday schemes. This will build on the long tradition in youth mobility between New Zealand and the UK to improve access in both directions. This will mean that young New Zealanders will have enhanced opportunities in the years to come to live and work in the UK. The details of these improvements are still to be finalised with the UK.

New Zealand and the UK also have a range of other government-to-government agreements that support the wider bilateral relationship, including in the trade and economic area. These include a bilateral Sanitary Agreement (covering animals and animal products), an Agreement on Mutual Recognition of Conformity Assessment for a range of manufactured sectors, a Customs Mutual Assistance in Administrative Matters Agreement, a Double Taxation Convention and an 'Open Skies' Air Services Agreement.

3.2 Enhanced Trade and Economic linkages

The NZ-UK FTA creates opportunities to further develop our existing long-standing trade and economic linkages with the UK. This includes opportunities for New Zealand businesses, both large and small, to grow, invest and diversify in partnership with UK counterparts. The Agreement also reduces costs and incorporates trade facilitating rules in support of further growth in the New Zealand-UK trade, economic and investment relationship.

Pre-COVID, the UK was New Zealand's seventh-largest trading partner. Total two-way trade amounted to NZ\$6 billion in the year to March 2020, with goods trade accounting for NZ\$3.2 billion.

Of this, **New Zealand goods exports to the UK** amounted to **NZ\$1.5 billion**. The UK was New Zealand's second-largest market for wine (NZ\$469 million), our second-largest market for sheep meat (NZ\$421 million) and an important market for apples (NZ\$67 million), honey (NZ\$44 million), wool and some machinery products.

Under the NZ-UK FTA, customs duties on all goods trade between New Zealand and the UK will be eliminated. The UK will eliminate customs duties on 97% of tariff lines at the time the Agreement enters into force, covering close to 70% of current New Zealand goods trade to the UK by value. Combined with the duty-free transitional quotas established for certain products on entry into force of the Agreement, 99.5% of New Zealand's current exports would be duty free from the first day of operation of the FTA. For products which are subject to duty-free transitional quotas, quota volumes will grow over time, until all quotas and customs duties are removed as per the terms of the agreement, within 3-15 years after entry into force depending on the product. Tariffs on the final 0.5% of trade will be eliminated through staged tariff elimination over 3 or 7 years after entry into force.

New Zealand's **goods imports from the UK amounted to NZ\$1.7 billion** in the year to March 2020. The UK and New Zealand economies are highly complementary, with New Zealand's main goods imports from the UK made up of vehicles and parts, machinery, pharmaceuticals and equipment. New Zealand will eliminate all remaining customs duties on UK imports on entry into force of the Agreement, putting the UK on par with our other FTA partners, including Australia, ASEAN, China, Korea, and CPTPP (under which a small subset of customs duties finish phasing out in two years).

Pre-COVID, the UK was New Zealand's fifth-largest services trade partner. In the year to March 2020, New Zealand **services exports to the UK were NZ\$1.67 billion**, of which the largest components were travel services (NZ\$1.1 billion), charges for the use of IP (NZ\$144 million), other business services (NZ\$117 million), and IT services (NZ\$109 million). **Services imports from the UK were NZ\$1.18 billion**, comprising travel services (NZ\$467 million), other business services (NZ\$222 million), IT services (NZ\$156m), insurance and pension services (NZ\$145m) and charges for the use of IP (NZ\$119 million).

Investment has long been an important strand to the economic relationship too, with the UK currently New Zealand's sixth-largest source of overseas foreign direct investment and the fourth-largest destination for New Zealand offshore direct investment. In the year to March 2021, the stock of **foreign direct investment in New Zealand from the UK amounted to NZ\$5.7 billion**, and the stock of overseas direct investment from New Zealand to the UK was NZ\$958 million. Internationally, the UK was the fourth-largest source of outward FDI globally in 2019, with total outward FDI stock amounting to NZ\$2.9 trillion.

3.3 Improving the Competitive Environment, Including New Market Access Opportunities

In the period since the UK decision to exit the EU, the UK has moved to conclude trade agreements with the bulk of its previous FTA partners, including agreement to roll-over EU FTA conditions with 63 countries, as well as reaching new or improved agreements or agreements in principle with several other trade partners, including Japan and Australia. The UK also continues to enjoy duty-free and quota free goods trade with the EU under the EU-UK Trade and Cooperation Agreement signed in December 2020. In February 2021, the UK applied to accede to CPTPP and it is also conducting consultations on negotiations to upgrade its bilateral FTAs with Canada and Mexico, and has commenced FTA negotiations with India.

New Zealand is one of a small number of trade partners not to have preferential trade access to the UK market through FTA arrangements. The NZ-UK FTA will rectify this situation.

New Zealand's exporters face competition from a number of other UK trade partners who currently enjoy or will soon enjoy better access than New Zealand. This includes beef (for which Canada and shortly Australia benefit from better access conditions), kiwifruit (Chile), and dairy (the EU and shortly Australia). The NZ-UK FTA will help to create a level playing field for duties applied to New Zealand exports. In some cases, these improvements will be phased in over a period of time, but the end point (elimination of all customs duties and removal of all volume restrictions) will provide New Zealand exporters with the opportunity to compete for additional business in the UK market.

3.3.1 New Market Access Opportunities

3.3.1.1 Goods

The NZ-UK FTA provides for the elimination of all customs duties between the UK and New Zealand over time, with nearly all trade being duty free on entry into force of the Agreement (99.5% of New Zealand trade into the UK, including through tariff elimination and transitional duty-free quotas, and 100% of New Zealand's duties on imports from the UK). Specific outcomes for products of particular interest to New Zealand include:

- the elimination of customs duties on wine (currently up to NZ\$34 per 100 litres), honey (currently 16%), onions (currently 8%), kiwifruit (currently 8%) and other products upon entry into force;
- the elimination of customs duties on most dairy products (including liquid milk and cream, milk powders and yoghurt) at entry into force or within three years;
- the elimination of customs duties on specific fish and seafood products, including hoki (currently subject to a 6% tariff) at entry into force and mussels (currently subject to tariffs ranging from 8%-20%) within three years;
- the elimination of customs duties on apples exported to the UK during the seasonal period of January to July at entry into force, and over three years on apples exported during the period from August to December (during which a duty-free quota of 20,000 tonnes per annum will apply);
- the elimination of customs duties on butter and cheese exported to the UK over five years following entry into force, with transitional duty-free quotas starting at 7,000 metric tonnes (for butter) and 24,000 metric tonnes (for cheese), rising to 15,000 metric tonnes and 48,000 metric tonnes respectively by year five;
- the elimination of customs duties on beef exported to the UK 10 years after entry into force, with transitional duty-free quotas starting at 12,000 metric tonnes, rising to 38,820 metric tonnes over a 10-year period. A product specific safeguard will then replace the quota and operate for beef over the period from years 11 to 15, with a trigger volume of 43,056 metric tonnes in year 11, rising to 60,000 metric tonnes by year 15, above which the UK can apply a 20% value-based duty in any given year;
- the elimination of customs duties on sheep meat exported to the UK 15 years after entry into force, with transitional duty-free quotas of 35,000 metric tonnes per annum for years 1-4, rising to 50,000 metric tonnes per annum for years 5-15. This new access is additional to that under existing WTO quotas; and
- the elimination of New Zealand customs duties on products of export interest to the UK, including chocolate, gin, motorhomes, buses and campervans (currently subject to tariffs of between 5-10%) on entry into force of the Agreement.

3.3.1.2 Services

The NZ-UK FTA contains high quality services commitments and uses a comprehensive and transparent ‘negative list’ approach to scheduling.

Among these commitments are included key sectors of export interest for New Zealand such as private education and professional services. In the area of legal services, both sides have committed to enable each other’s qualified legal professionals to provide legal advisory services in relation to the law of their home country (i.e. the jurisdiction in which they qualified), as well as foreign and international law, and to provide arbitration, mediation and conciliation services related to these branches of law.

Both sides have also committed to coverage of an expanded range of aviation services, including airport operation services, ground handling services and speciality air services.

The Agreement also contains an expanded range of regulatory disciplines aimed at ensuring a competitive environment for two-way trade in services. These include chapters covering financial services and telecommunications together with annexes on professional services, express delivery services and international maritime transport services. The professional services annex also contains provisions aimed at promoting cooperation between respective regulatory bodies in this area, as well as encouraging the relevant authorities on each side to provide for further recognition between professional services providers.

3.3.1.3 Investment

The NZ-UK FTA contains modern investment protection rules, including those related to National Treatment, Market Access, Most-Favoured Nation, Prohibition of Performance Requirements, Senior Management and Board of Directors, Expropriation and Compensation, and Transfers. It provides certainty and stability in regard to market access for investors and investments in both directions.

The Agreement does not alter New Zealand’s existing investment screening regime, provided for under the Overseas Investment Act. The FTA does, however, extend to the UK the same screening threshold – NZ\$200 million – currently applied to many of New Zealand’s other FTA partners, including CPTPP Parties, China, and Korea.

3.3.1.4 Temporary Entry of Business Persons

The Agreement contains a Temporary Entry of Business Persons chapter to enable people from both countries to travel and work temporarily in each other’s jurisdictions for business purposes. Both countries have made commitments with regard to temporary entry on the following categories of business persons:

- intra-corporate transferees, such as senior managers/managers, executives and specialists;
- business visitors, in support of goods and services trade and investment, and to attend conferences, business meetings and negotiations;
- independent professionals, including in sectors such as professional services; and
- contractual service suppliers, in a limited number of sectors and subject to safeguards, and services and installers.

3.4 Trade Facilitation through Advanced Trade Rules

In addition to the market access opportunities it creates, the NZ-UK FTA has a focus on improving and modernising the rules governing the trading environment between the two economies in order to facilitate the growth of two-way trade and economic connections, while safeguarding each government's right to regulate for legitimate public policy purposes. Particular examples include the chapters on Customs and Trade Facilitation, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Domestic Regulation and Regulatory Coherence and Cooperation, Small and Medium-Sized Enterprises and Digital Trade.

The chapter on **Customs and Trade Facilitation** provides for efficient and transparent customs procedures that will support an increase in trade between the UK and New Zealand. It promotes the use of advanced electronic data and electronic systems to facilitate trade. The chapter contains commitments to release goods within clear timeframes to provide traders with certainty, with goods in general to be released as soon as possible on or before arrival and at least within 48 hours, while perishable products will be released within six hours of arrival.

The **Technical Barriers to Trade (TBT)** chapter will deliver a modernised framework that builds on the WTO TBT Agreement to address non-tariff barriers. The chapter will also include sector-specific commitments for cosmetics, medicines and medical devices, and a Wine and Distilled Spirits Annex, with a number of commitments to facilitate trade by addressing sector-specific barriers.

The **Sanitary and Phytosanitary (SPS)** chapter builds on the existing NZ-UK Sanitary Agreement which recognises the equivalence of veterinary measures maintained by both Parties for the protection of public and animal health. The SPS chapter provides for greater transparency and promotes confidence in each Party's respective SPS regimes, while protecting plant health and enabling trade. Under the SPS chapter, the two Parties have committed to cooperation on antimicrobial resistance.

Facilitating access for **Small and Medium-Sized Enterprises** under the Agreement was a particular focus for both sides. The NZ-UK FTA contains a dedicated SME chapter aimed at facilitating ease of access to information to enable SMEs to utilise the Agreement, as well as promoting further cooperation between government agencies in supporting the uptake of the Agreement by SMEs. In addition, the interests and concerns of small business were taken into account across the Agreement and are reflected particularly in SME-friendly provisions in the Goods, Services, Customs Procedures and Trade Facilitation, Government Procurement and Digital Trade chapters, as well as cross-referencing with provisions in the Māori Trade and Economic Cooperation chapter.

The Agreement also includes a suite of chapters supporting **good regulatory practice** and the way in which this benefits trade. These include a chapter on Good Regulatory Practice and Regulatory Cooperation (with a focus on the role of regulatory cooperation in facilitating trade and investment) on Transparency (setting standards and norms for the publication of laws and regulations affecting trade) and on Domestic Regulation in services (with the objective of ensuring that licensing and qualification requirements and procedures affecting trade in services are transparent, non-discriminatory and not unduly burdensome).

Both New Zealand and the UK put a high priority on ensuring the Agreement contained modern rules to promote and regulate digital trade. The **Digital Trade** chapter will support and facilitate easier and more effective digital means of trading, including through use of e-contracts, e-authentication and e-invoicing. The chapter also contains a focus on unlocking future opportunities through cooperation in areas such as digital identities, open government data and digital inclusion. It also contains agreement to cooperate on digital innovation and emerging technologies. This will provide an ability for New Zealand and the UK to work together on new issues and new technologies as they arise, both from a trade perspective and as part of other policy developments as well.

Data is at the heart of digital trade and the wider digital economy. The NZ-UK FTA contains commitments to ensure that data can flow freely between the UK and New Zealand. This includes preventing burdensome requirements for businesses from one Party having to store or 'localise' their data within the territory of the other Party. Recognising that this is a rapidly changing area, the UK and New Zealand have also agreed that these obligations must be balanced with the need to maintain the right to regulate and develop policies in the public interest for future unknowns relating to data. For New Zealand, this may include any future measures that are implemented to protect Māori data. With this in mind, the Parties have included an early review clause to enable the Parties to review the operation and implementation of the Chapter (and a related provision on the transfer of financial data) within two years.

3.5 Advancing New Zealand's Trade for All Objectives

The NZ-UK FTA is the first FTA begun and concluded under New Zealand's Trade for All policy. Seeking to reflect New Zealand's Trade for All objectives and interests in the NZ-UK FTA was one of the overarching key principles guiding New Zealand's approach throughout these negotiations. This included working to secure inclusive trade outcomes, especially for Māori, women and small and medium enterprises, as well as in support of trade and sustainable development, including in relation to trade and environment, trade and labour and trade and development.

New Zealand and the UK share an interest in being at the forefront of the global trade agenda in many of these areas, particularly as our economies are recovering from the COVID-19 pandemic. Given this, both sides had a shared focus on working to secure a high quality, inclusive agreement capable of establishing new benchmarks in sustainable and inclusive trade rules.

For Māori, the concentration of significant Māori assets, as well as substantial Māori employment (estimated at approximately 50,000 jobs) in the primary sector, means the goods market access outcomes of the NZ-UK FTA are of particular importance. An independent report, prepared at the conclusion of the NZ-UK FTA Agreement in Principle in October 2021,¹¹ estimated that the removal of tariff and quota restrictions on New Zealand primary sector exports to the UK has the potential to deliver around 400 additional jobs for Māori.

¹¹ Report on NZ-UK Agreement in Principle prepared for Te Taumata by Sense Partners Ltd, October 2021.

This report also makes clear that the benefits to Māori go considerably beyond the goods market access area, with the collective impact of the Agreement on business conditions creating an overall ‘bilateral economic environment that is friendlier to Māori firms’. Areas where this is evident include the specific recognition of Māori perspectives and concepts in the Environment chapter, as well as recognition of the importance of, and cooperation in relation to, traditional knowledge, traditional cultural expressions and genetic resources to Māori in the Intellectual Property chapter.

The FTA also incorporates a ground-breaking **Māori Trade and Economic Cooperation** chapter focused on promoting cooperation between the Parties in order to contribute to enabling and advancing Māori economic aspirations and wellbeing. At the same time, the Agreement includes the Treaty of Waitangi exception that ensures that nothing in the NZ-UK FTA would prevent the New Zealand Government from meeting its obligations to Māori.

The NZ-UK FTA also includes New Zealand’s first dedicated chapters on:

- Trade and Gender Equality;
- Trade and Development; and
- Consumer Protection.

In including a stand-alone chapter on **Trade and Gender Equality**, New Zealand and the UK have underlined their clear intention to implement the NZ-UK FTA in a manner that advances women’s economic empowerment, promotes gender equality and recognises the contribution trade and investment can make to these important goals. The chapter contains commitments by both Parties to ensure the implementation and enforcement of their respective laws, policies and practices promoting gender equality and improving women’s access to trade and economic opportunities. It also has an important focus on cooperation between the Parties, including in areas such as policies to address barriers to participation of women in international trade and efforts to enhance the ability of women, including wāhine Māori, to fully access the benefits under the FTA.

The **Trade and Development** chapter recognises the important contribution sustainable trade and investment can make towards economic development and inclusive economic growth. It establishes arrangements for cooperation between New Zealand and the UK to advance trade and development issues, including by working together in multilateral and regional bodies and identifies a focus on least developed countries and small island developing states.

Cognisant of the particular importance and challenges of consumer protection in an online environment, the NZ-UK FTA includes a dedicated **Consumer Protection** chapter, which highlights the need for cooperation between countries to develop ways to enhance access to effective redress for consumers in each other’s jurisdictions.

As well as a specific **Small and Medium Sized Enterprises** (SMEs) chapter aimed at ensuring information to enable SMEs to participate in international trade is easily available and at facilitating cooperation to support SMEs to take advantage of the Agreement, other provisions across the NZ-UK FTA also take into account SME interests and concerns. This includes SME-focused provisions in the Goods, Services, Customs, Government Procurement, Māori Trade and Economic Cooperation and Digital Trade Chapters.

In support of **sustainable development**, the NZ-UK FTA has some of the highest commitments on trade and environment and trade and labour of any New Zealand FTA. These include clear commitments by each country not to waive or otherwise derogate from their respective environment and labour standards or to fail to enforce these to encourage trade or investment.

The **Environment** chapter goes beyond outcomes secured in previous New Zealand FTAs to include more extensive provisions to address environmentally harmful subsidies (particularly fisheries subsidies and fossil fuel subsidies) and the Parties commit to working together to take actions to address climate change. The chapter also includes the largest range of environmental goods (293 products) to benefit from improved trade conditions that New Zealand has negotiated to date. In the case of **Trade and Labour**, this chapter contains additional provisions promoting non-discrimination and gender equality and commitments on identifying and addressing modern slavery in each Party's domestic and global supply chains.

3.6 Progressing New Zealand's Trade Recovery Strategy, including through Enhancing Opportunities for Trade Diversification

New Zealand's trade recovery strategy seeks to ensure that New Zealand is in the best possible position to emerge from the COVID-19 pandemic as quickly as possible. Trade links (both exports and imports) and maintaining and expanding a more open, rules-based trade and investment environment are central to New Zealand's ability to address COVID-19 impacted supply chains, and for New Zealanders to thrive as the country recovers from the impact of COVID-19 on New Zealand's people and economy.

Expansion of New Zealand's FTA network will make a major contribution to New Zealand's recovery, through increased access to the goods, services, and investment required and provided by new markets. Reaching agreement on a high-quality, comprehensive and inclusive FTA with a high value, close partner like the UK was a key priority for this strategy and offers New Zealand business options to expand and diversify their trade profiles.

New Zealand's goods trade profile is heavily dominated by primary sector exports and these have traditionally been the products subject to the highest levels of protection internationally, including in the UK. Agreement in the NZ-UK FTA to eliminate the customs duties and quota barriers that have precluded or restricted trade in such products can make an important contribution to building greater diversity and resilience in New Zealand's trade.

Many of the export products for which New Zealand is best known internationally are heavily concentrated in a few very large markets. This means that opening up further opportunities to expand New Zealand's trade in these products into additional high-value markets, such as the UK, has a particularly valuable role to play in efforts to build an appropriately diversified trade portfolio to assist in recovery from the economic impacts of COVID-19. In a recent study, independent economic

consultancy Sense Partners pointed to the benefits of this for the Māori economy.¹² A similar point applies across New Zealand's trade and economic relationship with the UK more generally.

¹² Report on NZ-UK Agreement in Principle prepared for Te Taumata by Sense Partners Ltd, October 2021.

4. Advantages and Disadvantages of New Zealand Becoming a Party to the Treaty

This section of the NIA outlines the advantages and disadvantages for New Zealand from entering into the NZ-UK FTA. The sub-sections below cover the specific chapters and annexes of the NZ-UK FTA. Each of these would set rules or frameworks for the different areas covered. The net effect of these different elements in the NZ-UK FTA on New Zealand is assessed in Section 7 of this NIA.

4.1 Chapter 2: National Treatment and Market Access for Goods

4.1.1 General

The chapter covering National Treatment and Market Access for Goods sets out the rules New Zealand and the UK will apply for qualifying goods imports from the other country, including the elimination of customs duties.

Each Party has agreed a 'schedule' of tariff commitments, which are included in an annex to Chapter 2 (National Treatment and Market Access for Goods) of the Agreement. This is standard practice in FTAs. The UK's schedule specifies its full list of national tariff lines and sets out the preferential duty treatment that will apply for qualifying imports from New Zealand up until all customs duties are eliminated for all goods after 15 years following entry into force. New Zealand's schedule sets out its commitment to eliminate all customs duties on qualifying imports from the UK upon entry into force of the Agreement.

4.1.2 Advantages

4.1.2.1 Goods market access – exports

Since the UK joined the European Communities in 1973, New Zealand's preferential trade access for goods exports has largely been limited to country-specific quotas established under the WTO by the EU for select products such as sheep meat, butter and cheese. Currently, less than 28% of New Zealand's exports to the UK enter under fully liberalised conditions (i.e. duty-free, quota-free).¹³

Entering into an FTA with the UK would deliver immediate economic and commercial benefits for New Zealand goods exporters. The bulk of these benefits would occur on entry into force of the Agreement, with duty-free coverage provided to 99.5% of New Zealand's current exports from day one – comprising 69.2% of trade subject to immediate elimination of customs duties, plus a further 30.3% of trade occurring under duty-free transitional quotas.

All customs duties, quotas and product-specific safeguards on New Zealand's trade will be eliminated within 3-15 years following entry into force, depending on the product. Based on existing goods trade levels (NZ\$1.6 billion in UK imports from New Zealand), New Zealand stands to benefit from an

¹³ A further 28% of New Zealand exports enter the UK under an existing WTO duty-free quota for sheep meat.

estimated NZ\$37.8 million in duty savings by the end of the transition period, over NZ\$37 million of which would occur immediately upon entry into force of the Agreement.¹⁴

New market access opportunities will become available particularly for beef and dairy exports. These are sectors in which New Zealand is a significant global exporter, but has previously been constrained in the UK market due to prohibitively high customs duties and restrictive quota conditions. In conjunction with duty savings on existing trade, modelling estimates that New Zealand goods exports to the UK have the potential to increase by 51-53% per annum by 2040 (an increase of NZ\$2.13 – NZ\$2.2 billion over the baseline).¹⁵

This improved access will place New Zealand goods exporters on an even playing field in the UK market where other competitors already benefit from preferential access or soon will in the future as the UK concludes FTAs with other trading partners.

4.1.2.2 Estimated duty savings

The UK's commitments to eliminate customs duties mean that based on 2017-2019 average trade volumes:

- at entry into force of the Agreement:
 - NZ\$678 million of dutiable New Zealand exports would benefit from duty savings of an estimated NZ\$30.2 million annually through immediate elimination of customs duties. This includes products such as wine, honey, onions, vegetable seeds, infant formula, aluminium, other manufactured goods, and some seafood products.
 - NZ\$34.4 million of dutiable New Zealand exports would benefit from duty savings of up to NZ\$7 million annually through transitional duty-free quotas from entry into force of the Agreement, for seasonal apples, butter, cheese, and beef. In addition, a new duty-free transitional quota for sheep meat will be established. The quotas more than cover current export volumes of these products, with further scope for growth over the transitional period until they are eliminated after 3-15 years.
- over 3 or 7 years after entry into force of the Agreement:
 - NZ\$8.3 million of dutiable New Zealand exports would benefit from duty savings of up to NZ\$640,000 annually after customs duties are gradually eliminated over 3-7 years (almost all over 3 years). This includes products such as mussels, cherries, milk powders, and some fish and seafood.

Elimination of customs duties will also extend to products where New Zealand is a significant global exporter but currently trades only modestly into the UK due to high customs duties. This includes elimination of customs duties:

¹⁴ \$30.2 million of the duties saved are on goods subject to immediate customs duty elimination, and \$7.0 million on goods trading under duty-free quotas from entry into force of the agreement.

¹⁵ This would be partially offset by a decrease in exports to other markets, leading to an overall increase in New Zealand's real goods exports globally of 0.26 - 0.30% in 2040 (an increase of \$460 - \$527 million per annum over the baseline).

- at entry into force for infant formula, ice cream, and some chocolate;
- over three years for milk powders, whey, albumins;
- after 5 years for butter and cheese; and
- after 10 years for beef products (following which a product specific safeguard applies for a further 5 years).

4.1.2.3 Benefits of transitional quota access

To reflect UK domestic sensitivities, transitional duty-free tariff rate quotas (TRQs) have been agreed for beef, sheep meat, butter, cheese, and fresh apples. Quotas for these goods will provide significant, commercially meaningful access upfront, that will grow annually until quotas and customs duties are removed after 3 years for apples (August-December only), 5 years for butter and cheese, 10 years for beef,¹⁶ and 15 years for sheep meat.¹⁷

In most cases, products subject to quotas currently have particularly high customs duties (for example up to NZ\$3,740 per tonne of cheese). The transitional quotas agreed with the UK offer New Zealand the opportunity to export commercially meaningful volumes from day one of the Agreement without facing such prohibitively high duties. These quotas will be managed and administered by New Zealand through export certification, with no conditions or restrictions applying upon importation into the UK.¹⁸

Table 4.1.2: Transitional Quota Volumes

<u>Product</u>	<u>Starting quota volume</u>	<u>End quota volume</u>	<u>Duration of quota</u>
Apples ¹⁹	20,000 tonnes		3 years (seasonal)
Butter	7,000 tonnes	15,000 tonnes	5 years
Cheese	24,000 tonnes	48,000 tonnes	5 years
Beef	12,000 tonnes	38,820 tonnes	10 years (see footnote 16)
Sheep meat	35,000 tonnes	50,000 tonnes	15 years

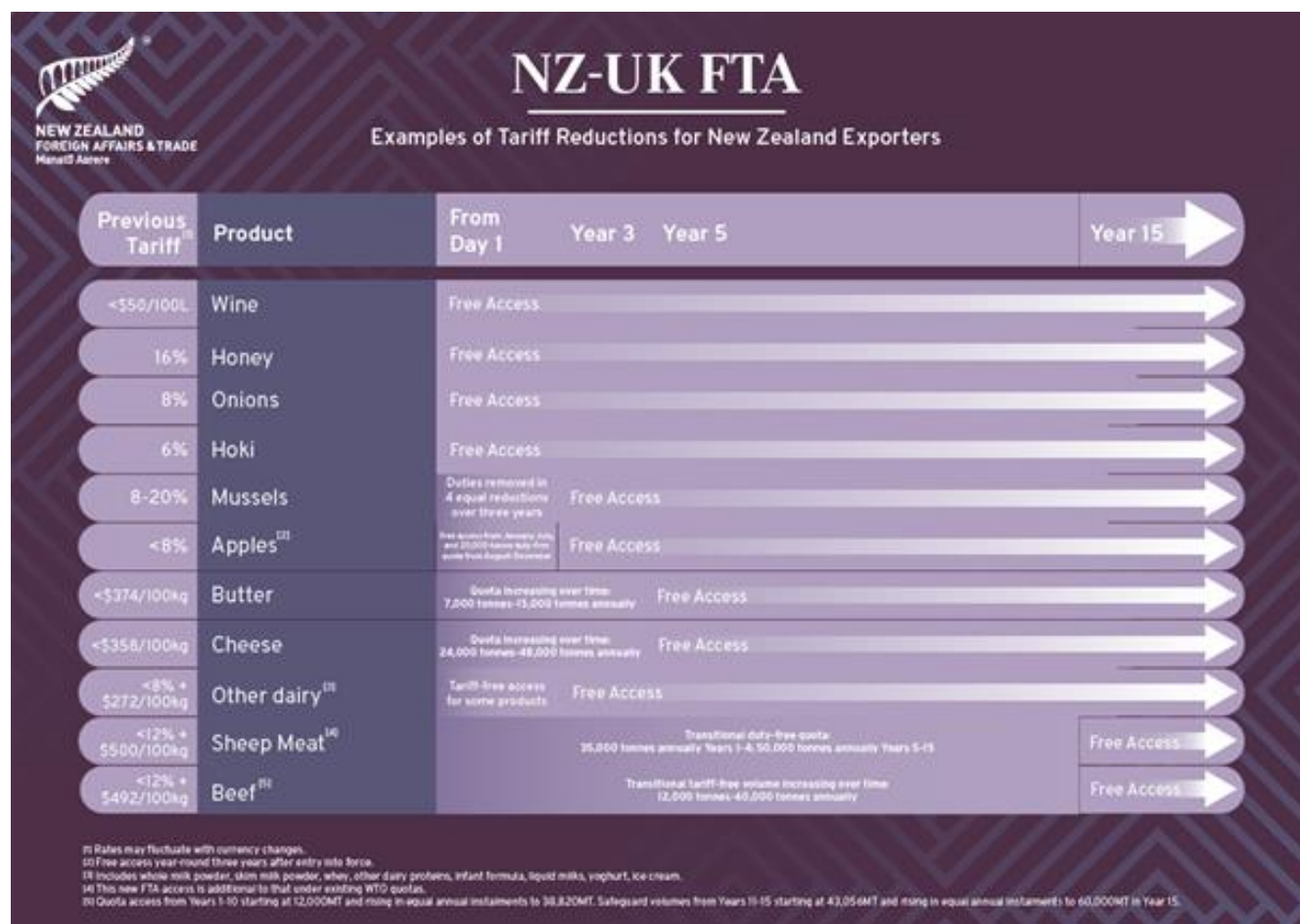
¹⁶ Following removal of the TRQ on beef, a volume-triggered product specific safeguard of 20% can be applied to beef in years 11-15. Trigger volumes increase in equal annual instalments starting at 43,056 tonnes in year 11 and rising to 60,000 tonnes in year 15.

¹⁷ The FTA sheep meat quota is additional to that under existing WTO quotas.

¹⁸ Notwithstanding the conditionality built into the sheep meat quota, in order to access the FTA quota for sheep meat in any given year, exporters must first fill at least 90% of the UK's WTO country-specific sheep meat quota for New Zealand.

¹⁹ The fresh apple quota is for seasonal trade only (August-December). Apples traded from January-July enter the UK duty free from entry into force of the Agreement.

Graphic 4.1.2: Tariff Elimination Timeline on Key Products



Source: www.mfat.govt.nz/nzukfta

4.1.2.4 Goods market access – imports

At entry into force of the NZ-UK FTA, New Zealand would eliminate all customs duties on goods imports from the UK. While many UK exports already enter New Zealand duty free, remaining UK imports are subject to estimated duties of NZ\$19.5 million annually (at 2017-2019 trade levels). New Zealand's economy is dependent on imports in order to supply a range of goods and services to producers and consumers, meaning the removal of these duties has some advantage for New Zealand. Consumers may benefit marginally from cheaper imported products, in particular, vehicles, cosmetics, gin, and chocolate.

4.1.2.5 The cost of not entering into an FTA with the UK

Without an FTA with the UK, New Zealand goods exporters would face increasing deterioration of comparative market access opportunities relative to other trading partners, which either already enjoy preferential access into the UK or will in the future as the UK expands its free trade coverage post-Brexit. Most notably, EU goods exporters already enjoy quota-free and duty-free access, and Australia

will soon enjoy a similar level of access under its FTA with the UK signed in December 2021, including for products where New Zealand is a significant global exporter.

Without an FTA, New Zealand exports would be at a significant disadvantage to these and other UK FTA partners, as New Zealand exports would be subject to the UK's non-preferential tariffs. This would continue to constrain access and restrict New Zealand's opportunity to achieve market share relative to other competitors in the UK market – including for products such as beef and dairy for which the UK has agreed to eliminate tariffs for Australia, and to provide transitional quota access. Without an FTA, New Zealand would also risk losing its current market share in the UK for major exports such as wine, honey, apples, or onions.

4.1.2.6 Other advantages

In addition to increased market access opportunities, the goods chapter includes a range of provisions to help facilitate trade in goods. In line with many of New Zealand's other FTAs, both Parties have agreed to:

- prohibit export duties;
- uphold WTO rules in respect of import and export restrictions;
- transparency provisions for import and export licensing procedures; and
- trade-facilitative rules for temporary admission of goods, remanufactured goods, and repaired or altered goods.

4.1.3 Disadvantages

No disadvantages have been identified for New Zealand from entering into an FTA with the UK in respect of the customs duty elimination commitments made by the UK to New Zealand.

New Zealand's commitment to eliminate all customs duties on UK goods at entry into force of the Agreement will result in foregone tariff revenue of NZ\$19.5 million per annum (at 2017-2019 trade levels). It may also marginally expose some of New Zealand's manufacturing sector to more competition and create adjustment effects for domestic producers as a result of increased exposure to UK imported goods.

The potential impacts are likely to be extremely limited, however, due to the fact that New Zealand's economy is already largely liberalised with most goods imported into New Zealand facing no import duty. 63.4% of UK goods exports already enter New Zealand duty free. The customs duties New Zealand still retains are relatively low (mostly 5% and none more than 10%). Dutiable UK exports primarily include buses, motorhomes, campervans, chocolate, some cosmetics, and some manufacturing items. Of note, New Zealand also applies tariff concessions on some products, further reducing the duties that are paid in practice. Where customs duties do apply, these have already been eliminated for other FTA partners – for example with Australia, ASEAN members, China, Korea and in most cases with CPTPP (under which some customs duties are still phasing to zero over the next two years). The agreement also provides the ability for either Party to apply a bilateral safeguard mechanism in the case of any serious injury arising from the liberalisation of customs duties.

4.2 Chapter 3: Rules of Origin

The Rules of Origin chapter establishes the rules to determine whether goods traded between the Parties under an FTA are considered to “originate” in a Party, and therefore qualify for preferential tariff rates, and other benefits, provided in the agreement. All FTAs include such rules.

Under the Rules of Origin in the NZ-UK FTA, goods are originating (under Article 3.2) if they are:

1. wholly obtained or produced entirely in the territory of either New Zealand or the UK (such as fruit, plants or animals);
2. produced entirely in the territory of either New Zealand or the UK, exclusively from originating materials from the two Parties; or
3. produced entirely in either New Zealand or the UK using non-originating materials (that is materials from a country other than New Zealand or the UK), provided that the non-originating materials meet the criteria set out in Annex 3A (Product Specific Rules of Origin or PSRs).

Under the third option, the FTA’s PSRs provide traders with alternative (co-equal) rules based on change in tariff classification (CTC) for almost all goods, or value add (Regional Value Content or RVC) for most goods. These rules establish the level of production that needs to be undertaken on a non-originating good to give it originating status.

For some goods there are three co-equal rules: an RVC rule, a CTC rule, and a process rule. Establishing co-equal rules in this way provides flexibility that enables a trader to choose which rule to use, depending on which approach best suits their business model and capability.

4.2.1 Advantages of entering the NZ-UK FTA

Rules of Origin, in themselves, do not confer an advantage or disadvantage on the Parties to an FTA. They are a necessary technical part of an FTA to determine which products are eligible to benefit from the preferential tariffs agreed between the Parties to an FTA. Rules of Origin can be a key determinant in how easily producers, exporters and importers are able to utilise the preferential market access provided in an FTA. The NZ-UK FTA rules of origin meet New Zealand’s objective of ensuring trade-facilitating rules that will enhance trade.

4.2.1.1 Proof of origin document

Evidence of origin in the NZ-UK FTA can be through self-declaration by the producer or exporter of the good, or through the importer’s knowledge that the good is originating. Self-declaration is New Zealand’s preferred approach to evidencing origin as this reduces transaction costs for businesses trading under the Agreement.

For self-declaration, the Agreement contains a minimum data set that must be provided (Annex 3B (Origin Declarations – Guidance)), but leaves it to the trader as to how they provide the necessary data.

4.2.1.2 Tolerance

Article 3.9 (Tolerance) provides for a tolerance (also known as ‘De Minimis’ in some other FTAs) for a good to still gain origin status, even if the good does not meet the applicable requirement in the PSRs (provided the good meets all the other applicable requirements of the chapter).

The NZ-UK FTA applies a 15% value-based tolerance across all goods, but this only applies when the rule that is not met is a CTC rule (i.e. this tolerance cannot be used to meet an RVC rule). For example, if the CTC rule does not allow manufacture from non-originating parts for a certain good, the tolerance provision softens that requirement and means the good can still be originating provided the value of non-originating parts does not exceed 15% of the value of the good.

In addition, for goods classified in chapters 1-24 and 50-63 of the Tariff, there is a 15% tolerance based on the net weight of non-originating materials. Net weight is the weight of the material or good not including the weight of any packaging.

4.2.1.3 Cumulation of inputs

The rules in the NZ-UK FTA provide a means to allow materials to be cumulated across the two Parties during a production process (Article 3.8: Cumulation).

In addition, recognising the extensive existing supply chains used by producers in both the UK and New Zealand, and the forward-looking approach of the FTA, the cumulation provisions also allow for New Zealand and the UK to explore how cumulation can be extended to include developing countries and mutual FTA partners in the future.

4.2.1.4 Flexibility in the transport and storage of goods being transported between New Zealand and the UK

Article 3.10 sets out the Non-Alteration provisions in the Agreement (also known as ‘*direct shipment*’ or ‘*direct consignment*’ in some New Zealand FTAs) and specifies the controls applied to goods transiting through a third country while being transported between New Zealand and the UK. The rules allow a good to retain origin status, and still qualify for preferential tariff rates, despite having been in transit in a third-party, which is valuable for New Zealand exporters given our distance to the UK market.

The Agreement provides controls that goods transiting through a third party must adhere to (the goods are not released into free circulation and only undergo certain processes). Provided these controls are met, the length of time a good can spend in transit is not limited. This provides additional flexibility for New Zealand exporters. For example, a business operating a ‘hubbing’ operation can move stock from New Zealand to a third party that is closer to a range of potential markets, including the UK, and then move the stock onto the UK in a timely fashion when needed.

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

Article 3.23 (Minor Errors and Discrepancies) ensures that minor errors or discrepancies in documentation cannot be the sole reason to render origin documents invalid, provided these errors or discrepancies do not bring the origin of the goods into doubt. This is important because where traders’ documentation is rendered invalid by the importing customs authority, the necessary

information to verify origin status under an FTA may be deemed ‘not provided’ and the imported good may be disqualified from accessing preferential tariff rates under the FTA.

In addition, where a document is illegible or defective, the importer will have 30 days to resubmit the document to the customs authority of the importing Party.

4.2.2 Disadvantages

No disadvantages have been identified for New Zealand resulting from the Rules of Origin chapter.

4.3 Chapter 4: Customs Procedures and Trade Facilitation

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

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

4.3.1 Advantages

The enhanced commitments in this chapter will benefit exporters through increased efficiency at the border and expedited release of goods.

The chapter aims to simplify and minimise the complexity of import, export and transit formalities and documentation requirements by ensuring that they are adopted and applied with a view to a rapid release of trade, and in a manner that aims to reduce the costs of compliance for traders (Article 4.6.1). As such, each Party has committed to making electronic systems accessible to users, allow electronic declarations, and employ electronic and automated risk management systems (Article 4.6.2).

The chapter also contains specific provisions to ensure the consistent application of customs procedures and processes (Article 4.3), increasing certainty for traders.

The Agreement requires the Parties to publish easily accessible information, including online, on a wide range of trade-related areas (Article 4.5). This information includes:

- import, export and transit procedures (including required forms and documents);
- rates of duties and taxes imposed on or in connection with importation, exportation or transit;
- any fees and charges imposed by Government agencies on or in connection with importation, exportation or transit;
- import and export restrictions and prohibitions; and
- appeal and review procedures.

Further, each Party shall ensure that new or amended laws and regulations of general application related to customs matters are published, or information on them made publicly available, as early as possible before entry into force, to enable interested parties to be advised of them (Article 4.5.2). Exceptions to that obligation are contained in Article 4.5.3.

The Agreement requires the Parties to provide advance rulings on the origin and classification of goods (Article 4.12). These rulings provide greater certainty and predictability for New Zealand exporters, and make compliance with customs laws and regulations and requirements easier. New Zealand businesses often report that uncertainty about the treatment of their goods can represent a significant cost or barrier to trade. The Agreement provides for written advance rulings to be issued within 90 days, provided all necessary information has been received.

The chapter sets an expectation that goods will be released as soon as possible on or following arrival, but in any case within 48 hours of arrival at Customs, provided all requirements have been met (Article 4.9). Further, of particular relevance to New Zealand, the Agreement recognises fast tracked clearance for expedited shipments (Article 4.8), as well as perishable goods (Article 4.10), such as seafood or fresh fruit and vegetables, where such goods are to be released within six hours of arrival, provided all requirements have been met. Perishable goods will also be given appropriate priority when scheduling any required examinations (Article 4.10.3).

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

4.3.2 Disadvantages

No disadvantages have been identified for New Zealand resulting from the Customs Procedures and Trade Facilitation chapter.

4.4 Chapter 5: Sanitary and Phytosanitary Measures

The Sanitary and Phytosanitary (SPS) chapter builds on the close, effective cooperation and trust established between relevant competent authorities under the existing world leading NZ-UK Sanitary Agreement²⁰ (covering animals and animal products) by extending commitments under the FTA to processed foods and plant products. Both sides agreed during the FTA negotiations to amend the NZ-UK Sanitary Agreement 2019 (covering animals and animal products) to include ‘composite products’²¹ within its scope. This amendment is recorded in an exchange of letters and will enter into force once relevant approval processes in both countries are completed.

4.4.1 Advantages

The chapter affirms New Zealand’s rights under the WTO SPS Agreement, and contains provisions which set out the relationship between the SPS chapter in the NZ-UK FTA and the WTO SPS Agreement.

²⁰ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of New Zealand on Sanitary Measures Applicable to Trade in Live Animals and Animal Products 2019.

²¹ A foodstuff containing both products of plant origin and processed products of animal origin as defined by Commission Decision 2007/275/EC of 17 April 2007 in retained UK legislation.

Importantly it also recognises the principle of equivalence of SPS measures where the exporting country objectively demonstrates that its measures achieve the importing country's appropriate level of protection.

Under the chapter, each side will accept the other's determinations on pest-free areas, places of production and production sites. Phytosanitary regional conditions can therefore be recognised in a way that enables both sides to take into account the pest status of areas from which goods may be sourced, while protecting plant life and health.

For low risk processed foods, official certification will only be required in cases where this is justified by risk analysis and approval processes for establishments and facilities within the scope of the chapter will not be required. Both of these provisions acknowledges the robustness of each other's SPS regimes.

The chapter envisages cooperation between respective New Zealand and UK experts in the development of international approaches on SPS issues, including those that may constitute an unwarranted barrier to trade.

Both sides continue to be able to adopt emergency measures to address urgent problems of human or plant health protection and the chapter provides mechanisms to discuss and resolve incidents where either side considers that a measure or draft measure, or its implementation, is inconsistent with the obligations in the chapter.

A new feature in the chapter is also the commitment it contains to enhance cooperation on the issue of antimicrobial resistance both bilaterally and in relevant international fora. This has a particular focus on addressing the unnecessary use of antibiotic agents in the rearing of animals for food production and protecting the efficacy of critical antibiotic agents.

4.4.2 Disadvantages

There are no significant disadvantages identified for New Zealand from this chapter. All the disciplines in the chapter are consistent with current New Zealand regulatory settings.

4.5 Chapter 6: Animal Welfare

The NZ-UK FTA is New Zealand's first FTA to include a stand-alone chapter on animal welfare of farmed animals. Its objective is to enhance cooperation between the UK and New Zealand – both countries with a keen interest in and internationally recognised high standards of animal welfare.

A Joint Working Group on Animal Welfare is established under the chapter and will act as the forum to coordinate and manage cooperation between the Parties in the development and promotion of science-based animal welfare standards, including in international bodies.

4.5.1 Advantages

Inclusion of a specific chapter on animal welfare underlines the importance New Zealand attaches to this issue. The chapter makes clear that while there are differences in farming practices and systems between New Zealand and the UK, both Parties recognise the high standards the other has adopted in

this area and that the systems each has in place for delivering on these high standards achieve comparable outcomes for the welfare of farmed animals.

This is important, given the differences in the farming environments between New Zealand and the UK, and in responding to the interest that stakeholders in each country have in seeing robust, science-based, animal welfare standards maintained. New Zealand exporters benefit from the clear indication this chapter provides that the standards and systems New Zealand applies to promote the welfare of farmed animals are accepted as delivering comparable outcomes to the standards and systems that apply in the UK.

A further advantage to the chapter is the establishment of a dedicated Joint Working Group to advance cooperation between New Zealand and the UK in the area of animal welfare. This includes an undertaking to work together on these issues in relevant international bodies, including the World Animal Health Organisation (OIE).

At the same time, the NZ-UK FTA chapter on Animal Welfare recognises that it would not be appropriate to apply the FTA's dispute settlement mechanisms to this chapter, which is aimed at promoting cooperation between New Zealand and the UK on animal welfare. This establishes a useful precedent for future animal welfare provisions of a similar nature.

4.5.2 Disadvantages

Future FTA partners might also seek similar specific chapters on animal welfare in subsequent trade negotiations and may look to include provisions that do not accord with or recognise New Zealand's particular circumstances. In this context, the NZ-UK FTA chapter on animal welfare provides a helpful precedent in the explicit recognition it contains of comparability of animal welfare standards and outcomes, despite differences in farming practices, as well as the focus it has on practical cooperation.

4.6 Chapter 7: Technical Barriers to Trade

New Zealand and the UK commit to provisions that ensure technical barriers to trade (TBT) are non-discriminatory and do not create unnecessary obstacles to trade, while preserving each country's ability to take measures to fulfil legitimate objectives, including for the protection of health, safety, national security, and the environment. The FTA will result in increased cooperation regarding technical regulations, standards, and conformity assessment.

The approach taken in the TBT chapter is broadly aligned with New Zealand's policy settings and the outcomes achieved in the TBT chapters of New Zealand's previous FTAs, with a few novel provisions in areas of market surveillance and sector-specific provisions.

4.6.1 Advantages

The diversity of regulatory requirements among countries can make it more difficult and expensive for exporters to understand and comply with the different requirements in each market. These can create TBT 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 aims to address these issues and facilitate trade between New Zealand and the UK, which would ultimately benefit New Zealand exporters. The chapter includes provisions to enhance transparency in the development of TBT measures and promote greater regulatory cooperation, good regulatory practice across the chapter and encourage the adoption of international standards. The chapter also has provisions to minimise the adverse effects regulations can have, while also providing mechanisms for the Parties to address specific trade issues with the aim of reducing or eliminating unnecessary TBTs.

New features in the TBT chapter, which differ from those in previous New Zealand FTAs, are:

- the sector-specific provisions focus on promoting increased cooperation and collaboration, where appropriate, in areas of mutual interest, including in relevant international organisations. Sector-specific provisions include cosmetics, medicines, and medical devices. This is in addition to the Wine and Distilled Spirits Annex;
- provisions aimed at enhancing cooperation between New Zealand and the UK on market surveillance, as well as cross-cutting commitments on marking and labelling to further facilitate the movement of goods, and to provide flexibility for New Zealand exporters in labelling requirements; and
- provisions that promote the ability to develop implementing arrangements setting out areas of mutual interest, with a view to removing or reducing regulatory barriers between the Parties. This helps ensure the chapter remains relevant and fit-for-purpose in addressing current and future TBT issues and opportunities.

4.6.2 Disadvantages

The TBT chapter as a whole is consistent with New Zealand's existing regulatory regime and the principles of the chapter are already fulfilled through New Zealand's implementation of TBT chapters in other FTAs, such as CPTPP. There are some new features in the TBT chapter that differ from our previous FTAs due to the UK's constitutional arrangements and ongoing work arising from the UK's departure from the EU. Nevertheless, the chapter is not expected to entail any significant disadvantage to New Zealand's ability to develop and implement technical regulations, standards, and conformity assessment procedures.

The scope of the TBT chapter is limited to technical regulations, standards and conformity assessment procedures administered by central government bodies (i.e. the UK Government). However, there are safeguarding provisions within the chapter, including the Scope and the Transparency articles, to ensure that the UK Government encourages observance by its regional level governmental bodies (Northern Ireland, Scotland, and Wales):

- Article 7.7 (Equivalency of Technical Regulation);
- Article 7.8 (Conformity Assessment Procedures); and
- obligations that all final measures and proposals are published by its regional level governmental bodies.

Due to the UK's constitutional arrangements and the work resulting from the UK's departure from the EU, provisions relating to recognising conformity assessment bodies in the territory of the other Party, on terms no less favourable than those in its territory could not be negotiated. This could mean that New Zealand exporters may be required to undertake conformity assessment tests and assessments for certain products from conformity assessment bodies located in the UK, as opposed to those in New Zealand. However, this will not affect New Zealand exports in the seven manufactured product sectors²² already covered under the New Zealand-UK Agreement on Mutual Recognition in Relation to Conformity Assessment 2019. This provides for acceptance of conformity assessment results (e.g. testing or certification) in New Zealand for exports of these products to the UK (and vice versa for UK exports to New Zealand). For other products, the NZ-UK FTA outcome in this area is also mitigated to some extent by both Parties agreeing to include a review mechanism provision. This provision requires both Parties to undertake a review of Article 7.8 (Conformity Assessment Procedures) within 12 months of the entry into force of this Agreement, or such longer period as the Parties both agree.

The review will take place with a view to:

- amending the Agreement to include a requirement that each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than it accords to conformity assessment bodies located in its own territory if, by the date of the review, the CPTPP has entered into force in respect of the UK; or
- exploring amending the Agreement to include a requirement in line with the above CPTPP obligation, if, by the date of the review, the CPTPP has not entered into force in respect of the UK.

4.7 Chapter 7: Technical Barriers to Trade - Annex 7A: Wine and Distilled Spirits Annex

New Zealand and the UK have committed to provisions in the Wine and Distilled Spirits Annex to address barriers to bilateral trade in wine and distilled spirits. The UK is New Zealand's second-largest market for wine, with trade of NZ\$469 million per annum (2017-2019 average).

Two side letters will accompany the Wine and Distilled Spirits Annex. The first letter will set out the process by which the UK will assess five winemaking practices not covered by the Annex, with the aim of allowing for recognition in the UK under the Wine and Distilled Spirits Annex post-signature. The second letter will affirm that New Zealand will not permit the sale of whisky labelled or advertised with representations of Scottish whisky localities, unless it has been wholly manufactured in Scotland, to the extent that the use of the representations are found to be misleading or deceptive under the terms of the Fair Trading Act 1986, or any successor legislation.

²² The seven sectors covered under the Mutual Recognition Agreement are medicinal products Good Manufacturing Practice inspection and batch certification, medical devices, telecommunications terminal equipment, low voltage equipment, electromagnetic compatibility, machinery, and pressure equipment.

4.7.1 Advantages

The Wine and Distilled Spirits Annex provides for the recognition of a large number of New Zealand winemaking practices, via a list appended to the Annex. This will improve access for New Zealand exporters into the UK market (as New Zealand exporters will not be as limited in the processes they can undertake for wine destined for the UK market). It will also give added flexibility to New Zealand producers exporting across a number of markets with different rules relating to winemaking practices.

The Wine and Distilled Spirits Annex also provides for a commitment that Great Britain will not require administratively burdensome VI-1 certification for wine, or any subsequent certification with equivalent requirements. While the UK has already announced unilateral removal of the existing VI-1 certification system for all imports into Great Britain, this commitment will help to ensure that New Zealand wine is not faced with similar unduly burdensome and costly requirements in the future.

The Wine and Distilled Spirits Annex also contains a number of provisions relating to labelling requirements for bilateral trade in both wine and distilled spirits. Commitments on the expression of alcohol content and grape vine variety labelling will specifically address administrative burden, improving current conditions for New Zealand wine exporters. Other provisions, including those relating to the expression of net contents information and making information on regulations publicly available, seek to lock in existing best practice to provide certainty for exporters on the rules for the future.

Ongoing cooperation is also provided via a commitment to a joint Wine and Distilled Spirits Working Group. The Wine and Spirits Working Group will be a forward-looking body, with a mandate to request modifications to the list of winemaking practices in the Annex as appropriate, and to consider how the emerging product categories of dealcoholised and partially dealcoholised wine may be addressed in the Annex in the future.

4.7.2 Disadvantages

The Wine and Distilled Spirits Annex and the two side letters which accompany the Annex are consistent with New Zealand's existing regulatory frameworks.

New Zealand has made a commitment to support any good faith application to Food Standards Australia New Zealand to include a 'whisky'/'whiskey' definition in the joint Australia New Zealand Food Code as defined in the Annex. New Zealand does not currently define 'whisky'/'whiskey' in law, and this commitment does, to an extent, limit New Zealand's future policy space. However, the commitment does not compromise the integrity of the established policy process (conducted jointly with Australia) to amend the New Zealand Australia Food Code.

4.8 Chapter 8: Trade Remedies

Trade remedies allow governments to provide temporary relief to domestic industry from injurious trade practices such as unfair competition from abroad or an unexpected surge in imports. World Trade Organization (WTO) rules cover three types of trade remedy:

- Anti-dumping duties: These are applied, in certain circumstances, if the “export price” on an imported good is lower than its “normal value”. An “export price” is the price an importer pays for the goods. The “normal value” is the price the goods sell for in the country of export.
- Subsidies and countervailing measures: WTO rules seek to limit trade-distorting subsidies, and provide for countervailing duties to offset the use of certain subsidies by other WTO Members.
- Safeguard action: Temporary measures applied to allow domestic producers to adjust to sudden surges in imports causing serious injury to the domestic industry.

The NZ-UK FTA Trade Remedies chapter makes clear that the Parties retain their rights and obligations under the relevant WTO Agreements, and includes additional provisions to promote transparency and best practice in trade remedy investigations. This includes providing for the application of the “lesser duty rule” when imposing antidumping and countervailing duties, and the consideration of the “public interest” during antidumping and countervailing investigations.

The chapter also includes a general injury-based bilateral safeguard measure (BSM). A Party can apply a BSM on imported goods from the other Party if, as a result of tariff elimination under the Agreement, there is an increase in imports causing or threatening to cause serious injury to the Party’s domestic industry. The chapter sets out the conditions and procedures for such measures. Although New Zealand did not seek a BSM, it accepted its inclusion due to the quality of the outcome on goods market access.

4.8.1 Advantage

The Trade Remedies chapter protects the interests of New Zealand exporters faced with trade remedy actions in the UK. It confirms that WTO rules will apply to the application of global safeguards and to the administration of anti-dumping and countervailing duties on trade between the Parties, and includes additional, best-practice provisions to ensure any trade remedy actions taken are conducted fairly, robustly and transparently. It also provides for the opportunity to apply a BSM in the event of serious injury or threat of serious injury from an increase in imports from the UK.

4.8.2 Disadvantages

New Zealand would not be disadvantaged by entering the NZ-UK FTA with respect to trade remedies. New Zealand uses trade remedies sparingly, reflecting our already open economy and internationally competitive businesses. The Trade Remedies chapter would not impose any additional obligations or changes to New Zealand’s current practice.

As is sometimes the case in FTA negotiations, the UK was only able to agree tariff liberalisation on particular products of key export interest to New Zealand in conjunction with a BSM that would allow it to remedy any serious injury experienced by its domestic industry as a result of tariff liberalisation under the FTA. Under the FTA, a BSM could be applied for a period of five years beyond the tariff elimination period, and could be applied on products covered by a transitional quota, outcomes New Zealand accepted as part of the final negotiated package. If applied, a BSM could temporarily undermine the agreed market access outcomes. The Trade Remedies chapter mitigates this to some extent — and hence protects market access outcomes for New Zealand exporters — by establishing clear processes to discipline and limit the ability of the UK to take BSM actions. Such BSM actions would

also be available to New Zealand in the case of serious injury to New Zealand's domestic industry arising from tariff liberalisation under the Agreement.

4.9 Chapter 9: Cross-Border Trade in Services

The Cross-Border Trade in Services chapter seeks to facilitate the expansion of trade in services, including in sectors such as professional and business services, environmental services, educational services, distribution and transport services, as well as services that support New Zealand's goods trade with the UK.

Services provided in the exercise of governmental authority, some air transport services, audio-visual services and government procurement are specifically excluded from this chapter. New Zealand has also entered reservations against coverage for a range of public and social services such as healthcare and public education, so that these are excluded from the scope of New Zealand's market access commitments. Financial services is covered in a separate chapter, as are regulatory disciplines concerning telecommunications services, and domestic regulation of services.

As in other modern FTAs, the manner in which market access commitments for services and investment are recorded in the NZ-UK FTA is through a 'negative list' framework. This format provides exporters and investors a simple way to determine whether the services and investment chapters apply to their area of business between the two Parties. Under a 'negative list' approach, each Party commits to provide market access except in areas where restrictions are listed in a Party's services and investment schedule (**Cross-Border Trade in Services and Investment Non-Confirming Measures**). These restrictions are known as 'non-conforming measures' or 'reservations'. This format is intended to provide a simpler and clearer way for business and other interested stakeholders to identify what commitments a Party has made in particular services sectors of interest, and the specific nature of any restrictions that may apply, versus a 'positive list' format.

Each Party's 'negative list' of services and investment market access commitments (Cross-Border Trade in Services and Investment Non-Confirming Measures) has two parts, Annex I and Annex II:

- **Annex I** sets out existing measures (laws, regulations, decisions, practices and procedures) that the listing Party retains the right to maintain in their present form, but not make more restrictive. Measures in Annex I:
 - may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors;
 - are subject to a so-called 'standstill' commitment meaning that the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed in Annex I; and
 - are subject to a so-called 'ratchet' mechanism meaning that each Party commits that, if it autonomously liberalises a listed measure, such liberalisation will be automatically 'locked' in to the FTA.
- **Annex II** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain measures that would breach any one or more of the reservable discipline obligations. For those measures in Annex II:

- the listing Party retains the full right to regulate in a restrictive or discriminatory way, as it deems necessary;
- the so-called ‘standstill’ commitment does not apply; and
- the so-called ‘ratchet’ mechanism does not apply.

If a Party does not list any restrictions for a particular services sector it means that Party is committed to not applying any measures that would be inconsistent with specific Cross-Border Trade in Services or Investment chapter obligations, such as discriminatory practices that favour local service suppliers, and is committing to keep that market open for each other’s services suppliers and investors.

4.9.1 Chapter Text

Four articles in the chapter cover ‘reservable obligations’. These concern:

- market access – specifying the quantitative limitations and form of business requirements that are not permitted unless explicitly reserved against;
- national treatment – providing for non-discriminatory treatment vis-à-vis local suppliers unless explicitly reserved against;
- most favoured nation treatment – providing for non-discriminatory treatment vis-à-vis suppliers from other trade partners unless explicitly reserved against; and
- local presence – specifying that a local presence, e.g. in the form of a representative office or other form of enterprise, is not required for the supply of a service unless explicitly reserved against.

Other articles contain more general obligations in support of trade in services between the Parties, in several cases based on similar provisions in the GATS. These include Article 9.9 covering payments and transfers, and Article 9.12 on recognition.

A new feature in the chapter is the inclusion of a cooperation article recognising the role that trade in services can play in economic development and poverty reduction for developing countries. This encourages the two Parties to cooperate in support of developing country participation in trade in services, including in relevant international fora.

4.9.2 Related Annexes

Three additional annexes support the commitments in the chapter on Cross-Border Trade in Services. These are:

- Annex 9A (Professional Services and Recognition of Professional Qualifications);
- Annex 9B (Express Delivery Services); and
- Annex 9C (International Maritime Transport Services).

4.9.2.1 Professional Services

In the Annex on Professional Services, the two Parties recognise the essential role these services play in facilitating trade and investment across both goods and services sectors, and in promoting economic growth and business confidence. The Annex establishes a Professional and Business Services Working

Group and sets up a work programme for the group, including to encourage further recognition of professional qualifications, licensing or registration.

As part of this work programme, each Party has undertaken to consult its relevant authorities and to encourage them to establish a dialogue aimed at promoting further recognition of qualifications. Annex 9A is clear that this recognition can be achieved through a variety of means, including regulatory dialogue, harmonisation, recognition of regulatory outcomes, as well as recognition of qualifications and professional registration, whether accorded autonomously or by mutual arrangement.

The Annex also indicates an openness to consideration of arrangements to provide for temporary recognition or project specific licensing or registration to enable professional service suppliers visiting the host jurisdiction on a temporary basis to supply professional services.

Specific areas for further dialogue are identified in respect of architectural services (particularly concerning the inclusion of sustainability skills in qualifications recognition) and legal services (commitments to permit the practise of home country and international law).

4.9.2.2 Express Delivery Services

This Annex prevents either Party from allowing a postal monopoly or a universal service obligation to be able to cross-subsidise its own or another competitive supplier's express delivery services or to abuse its monopoly position in the supply of services. It also establishes a requirement for an independent regulator for the provision of express delivery services and precludes setting a condition of universal service on a supplier of express delivery services.

4.9.2.3 International Maritime Transport Services

This Annex requires most favoured nation and national treatment to be accorded to international maritime transport service suppliers of the UK and New Zealand with respect to access and the fees and charges for the use of ports, port infrastructure and services (such as pilotage, provisioning, fuelling and watering, navigation aids, anchorage, berthing and shore-based operational services essential to ship operations), the use of maritime auxiliary services, access to customs facilities and in relation to the assignment of berths and facilities for loading and unloading. It prevents the establishment of cargo-sharing arrangements with non-parties, including for dry, liquid bulk and liner trade and precludes national cargo-carrying arrangements for international cargo. It also allows for the movement of empty containers subject to the appropriate authorisation.

4.9.3 Advantages

Services are vital to New Zealand's international competitiveness, accounting for approximately 66% of New Zealand's GDP of NZ\$324 billion in 2020. New Zealand global services exports were worth NZ\$27.6 billion in the year ending March 2020 (around 31 percent of total exports). The UK is New Zealand's fifth-largest services export market, accounting for just over 6% of total services exports, including knowledge-intensive services such as IT, insurance and pension services, charges for the use of intellectual property, and other business services (collectively valued at NZ\$600 million).

New Zealand services suppliers – both those currently active in the UK market and those looking to develop their trade in the UK – will benefit from the greater certainty and predictability of access that

the UK's commitments under the NZ-UK FTA will provide. This will make it easier for New Zealand service exporters, such as providers of professional, business, education, environmental, transportation and distribution services, to identify and take up new opportunities in the UK market and increase their competitiveness and profitability.

This is particularly the case for New Zealand services suppliers active in sectors or sub-sectors where the UK's commitments go beyond those made in its WTO GATS schedule. These include areas such as environmental services (where the UK has not taken any reservations on cross-border supply, e.g. of consultancy services, in the NZ-UK FTA); services incidental to manufacturing; a range of other business services, including telephone answering services, speciality design services and demonstration and exhibition services; as well as the services related to air transport included in the expanded coverage agreed under the NZ-UK FTA, such as airport operations services (except for air traffic control) and speciality air services.

Improved commitments for services are also important for many New Zealand goods exporters, both in regard to their own services related activities where applicable and to provide access to competitive services in support of their goods exports, including in the areas of transport, ICT and business and professional services. Growth in services trade can increase productivity through greater specialisation and agglomeration and by growing the level of competition in the domestic market. Exporters gain from improved access to a larger market, such as the UK, while consumers benefit from access to a wider variety of internationally competitive services.

On the import side, New Zealand businesses and consumers will benefit from likely stronger interest from UK businesses to provide services or enter into collaboration or partnerships to supply services in New Zealand. Given the UK's prominence as a global services exporter, this would increase opportunities for knowledge and technology transfer and overcome to some extent the deterrent effect that New Zealand's small market may currently have on expansion of services imports.

The commitments made under this chapter also support growth for New Zealand services sectors by providing New Zealand services suppliers with improved certainty and predictability in regard to the regulatory environment that would apply to their business in the UK. Other than where exceptions apply or the UK has listed a specific reservation, these core chapter obligations mean that New Zealand services and services suppliers would be entitled to non-discriminatory treatment in the UK market, both in regard to local UK services suppliers (i.e. 'national treatment'), as well as in regard to services suppliers from other UK trade partners (i.e. 'most favoured nation treatment'). This 'most favoured nation' treatment also means any improved treatment the UK provides to services suppliers from other trading partners under future trade agreements would also be passed on to New Zealand.

In addition, the core chapter commitments prevent the UK imposing a local presence requirement on New Zealand services suppliers, apart from in the few instances where this has been specifically identified in the UK's list of non-conforming measures (e.g. for intellectual property agency services). This is of particular importance to New Zealand services suppliers wanting to provide services cross-border, without having to establish a (costly) presence in the UK. These core obligations are supported

by other disciplines such as provisions to enable the free transfer of payments and to promote recognition of qualifications and licensing arrangements.

These regulatory disciplines are given further specificity in the Annexes to the chapter covering Professional Services (Annex 9A), Express Delivery Services (Annex (B)), and International Maritime Transport Services (Annex 9C). This ensures that New Zealand suppliers in these sectors will have an even clearer understanding of the UK regulatory environment applying to their sectors and more specific assurance regarding issues such as efforts to enhance recognition of New Zealand professional qualifications, a competitive level-playing field for provision of express delivery services, and access to and use of important services auxiliary to maritime transport services.

4.9.4 Disadvantages

Core obligations in the Cross-Border Trade in Services chapter are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in its other recent FTAs, including CPTPP. There are no disadvantages arising from replicating these obligations in the NZ-UK FTA context.

In those services sectors or sub-sectors where New Zealand has made more advanced market access or other commitments under the Cross-Border Trade in Services chapter, none of these go beyond existing New Zealand regulatory settings, so would not entail any change to these. Rather, they provide certainty and predictability to UK services suppliers that these regulatory settings will not be made more restrictive in future. At the same time, the UK has made similar commitments that go beyond its existing GATS commitments in a number of areas and deliver this same degree of additional certainty and predictability for New Zealand services suppliers seeking to operate in the UK market.

The Annexes on Professional Services and International Maritime Transport Services contain some commitments that are new for New Zealand. Nevertheless, the commitments made are consistent with existing New Zealand policy and regulatory settings, so will not require changes being made to these.

Additional resourcing requirements may arise particularly from the further work with regulatory agencies and professional bodies envisaged under the Annex on Professional Services. The latter are often not fully resourced or equipped to undertake international recognition work of this nature, nor do relevant government negotiating or regulatory agencies currently have resource able to be dedicated to follow up in these areas. This will necessitate careful dialogue and prioritisation with the competent authorities and professional bodies concerned.

It is possible that inclusion of these annexes and the new commitments they contain may lead to further pressure on New Zealand from other negotiating partners to include similar additional annexes (in these or other services sectors) and/or advanced commitments and that these may go beyond current New Zealand policy or regulatory settings. In such circumstances, it would be important to

point to the specific outcomes arrived at in the NZ-UK FTA and the way in which these cater to New Zealand's particular circumstances.

4.10 Chapter 10: Domestic Regulation

The Domestic Regulation chapter (Chapter 10) complements the broader chapters on Transparency (Chapter 29) and Good Regulatory Practice and Regulatory Cooperation (Chapter 21) in respect of trade in services. Its aim is to ensure that the measures each Party takes that affect trade in services – specifically those concerning licensing requirements and procedures, qualification requirements and procedures, and technical standards – are developed and administered in a reasonable, objective and impartial manner, so that services suppliers of the other Party are not unduly disadvantaged.

The chapter draws from and builds on the requirements in Article VI.4 of the GATS through reaffirming the overarching principles in the GATS and providing further elaboration on specific requirements in particular circumstances, such as where an authorisation or license is required to provide a service.

At the core of the chapter is the requirement that the measures concerned are based on objective and transparent criteria, are impartial, clearly expressed and publicly available. In addition, the chapter specifies that the measures must not discriminate on the basis of gender.

The procedures related to such measures must also be impartial and accessible to all participants, with decisions taken in an impartial, objective and independent manner. There is also a requirement to provide for review of any administrative decisions taken under such measures.

4.10.1 Advantages

New Zealand services suppliers benefit from a regulatory environment based on clear, objective, impartial rules for, and decisions on, matters affecting trade in services in international markets. This is particularly the case given the preponderance of SMEs across New Zealand's services sector and the asymmetry this gives rise to when New Zealand services suppliers are competing against much larger domestic incumbents in international markets.

As a result, the reaffirmation in the Domestic Regulation chapter of the key principles that licensing and qualification requirements and procedures, as well as technical standards, should be developed and administered in such a way as not to create a discriminatory barrier to foreign services suppliers is important to New Zealand services exporters.

In addition, the provision in the chapter stating that any requirement to obtain an authorisation or license to provide a service must not constitute an undue impediment to the ability of a foreign service supplier to compete is also particularly helpful to smaller and newer market participants. New Zealand services suppliers therefore also stand to benefit from the more detailed provisions in the chapter that:

- act to facilitate applications from smaller or more remote services suppliers (e.g. the undertaking to avoid the need for applicants to approach multiple authorities in regard to a single application); the ability for applications to be made electronically; the acceptance of authenticated copies of documents in place of originals; and

- ensure due and independent process is followed in taking decisions between applicants (e.g. the requirement to ensure the relevant competent authorities do not take decisions arbitrarily); acknowledgement of receipt of applications, provision of indicative timelines for processing and advising applicants of incomplete applications and the information required to complete them.

The chapter also provides important reassurance to smaller and more remote New Zealand services suppliers that the costs of any such administrative procedures will be reasonable and not such as to restrict competition in supplying the service (Article 10.9 requires that any fees charged for an authorisation are reasonable, transparent and notified publicly in advance) and that the technical standards applied will be developed through open and transparent processes.

By underlining the importance of impartial, objective and transparent domestic regulation affecting trade in services, this more detailed, stand-alone, chapter sets a useful precedent, not only in the context of NZ-UK trade and investment, but also for future agreements with other important trade partners for New Zealand.

4.10.2 Disadvantages

There are no evident disadvantages to New Zealand from this chapter, with all provisions in the chapter consistent with current New Zealand policies and practices. Rather, the chapter serves as a useful indicator of the kind of more detailed services domestic regulatory disciplines drawing from and building on GATS Article VI.4 that can usefully be elaborated.

4.11 Chapter 11: Financial Services

The Financial Services chapter in the NZ-UK FTA establishes a framework of rules governing the cross-border trade in financial services between the Parties. Financial services are an important underlying service essential to all international trade and investment. The inclusion of a separate chapter of commitments on financial services, similar to that found in CPTPP, recognises the importance of financial services in this regard.

Specific investment-related provisions that apply in the case of the Financial Services chapter as well are listed in Article 11.2 (Scope). This is New Zealand's preferred format, as it provides a simple outcome for businesses, providing clarity that the chapter commitments will apply to every area, except those detailed in the 'negative list' of non-conforming measures. At the same time, the list of non-conforming measures under the Cross-Border Trade in Services and Investment chapters in relation to the provisions on market access, national treatment and senior managers and boards of directors also apply to the Financial Services chapter.

Each Party's Schedules of Non-Conforming Measures for Financial Services are set out in **Annex III (Financial Services Non-Conforming Measures)**, in two sections, Section A and Section B:

- **Section A** sets out existing measures (laws, regulations, decisions, practices and procedures) that a Party retains the right to maintain in their present form – but not make more restrictive. Measures in Section A:

- may restrict the access of foreign financial service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors;
 - are subject to a so-called ‘standstill’ commitment meaning that the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed;
 - are subject to a so-called ‘ratchet’ mechanism. This means that the listing Party commits that, if it autonomously liberalises a listed measure, such liberalisation will be automatically ‘locked in’ to the FTA; and
 - are also subject to a so-called ‘ratchet’ clause, requiring the listing Party to automatically extend the benefits of any future liberalisation of these measures to the other Party.
- **Section B** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain measures that would breach any one or more of the reservable discipline obligations. For those measures in Section B:
 - the listing Party retains the full right to regulate in a way that breaches the listed reservable disciplines, as it deems necessary;
 - the so-called ‘standstill commitment does not apply; and
 - the so-called ‘ratchet’ mechanism not apply.

Each Party’s commitments to allow the provision of financial services between the Parties on a cross-border supply basis are set out in each Party’s Schedules to Annex 11A (Cross-Border Trade in Financial Services), in a ‘positive list’ format.²³

4.11.1 Advantages

The framework of rules provided by the Financial Services chapter helps underpin financial services-related trade and investment activity between the two countries, through providing increased certainty and predictability to financial services suppliers and their consumers regarding the rules and requirements that apply in this area.

The chapter includes market access commitments to ensure access for each other’s financial service suppliers by, among other things, not imposing quantitative restrictions on the number of established financial services suppliers; the value of transactions; or by requiring a particular type of legal entity or joint venture to provide the service. The chapter’s commitments also ensure that once established as

²³ New Zealand, in its positive list covering cross-border trade in financial services, made commitments on National Treatment (Subparagraph 1(c) of Article 11.5 on the following financial services, as defined in Article 11.1 of the chapter):

- (i) insurance services (insurance risk for maritime shipping, commercial aviation, space launching and freight, goods in international transit, credit and suretyship, land vehicles including motor vehicles, fire and natural forces, other damage to property, general liability, miscellaneous financial loss, difference in conditions and difference limits, reinsurance and retrocession, services auxiliary to insurance, and insurance intermediation, such as brokerage and agency services); and
- (ii) banking and other financial services (provision and transfer of financial information and financial data processing, and advisory and other auxiliary services (excluding intermediation)).

a financial service provider, New Zealand or UK suppliers of financial services into each other's markets would not be disadvantaged compared to other providers of the same or similar services under other trade agreements, subject to limited exceptions. The obligation relating to portfolio management, which reflects existing New Zealand policy, will also reduce barriers to trade for New Zealand and UK suppliers in each other's markets.

Specific commitments are also included in the chapter that will promote transparency, which is particularly important in the financial services sector given that regulation is often highly technical.

4.11.2 Disadvantages

New Zealand already has an open and transparent financial services policy regime. This, together with the policy space preserved under the NZ-UK FTA to regulate for prudential reasons, means there would be little policy risk and minimal disadvantage for New Zealand to the commitments under the chapter on Financial Services.

Like the WTO and all New Zealand FTAs, the NZ-UK FTA preserves the ability to apply any form of prudential regulation, such as laws or regulations to protect investors and depositors, or to ensure the integrity and stability of New Zealand's financial system more broadly. Further exceptions are included in New Zealand's non-conforming measures schedule (as outlined in Section 5 of this NIA).

4.12 Chapter 12: Telecommunications

The Telecommunications chapter sets out regulatory disciplines to underpin effective market access and competitive markets in telecommunications services between New Zealand and the UK. Both the UK and New Zealand recognise telecommunications services as both an important infrastructure enabler for trade in goods and services, as well as a distinct services sector in its own right. Better connectivity helps facilitate services delivery and digital trade and enables more inclusive participation in global trade.

The chapter builds on the disciplines developed in the GATS Telecommunications Annex and Basic Telecommunications Reference Paper. It extends and updates these original GATS regulatory disciplines to reflect the developments in approaches to the regulation of markets since the conclusion of the GATS in the 1990s, including through drawing on concepts and approaches in the more recent CPTPP chapter on Telecommunications.

All the disciplines in the chapter are assessed as consistent with current New Zealand regulatory settings. In particular, the chapter acknowledges that regulatory needs and approaches will differ between markets and that each Party may determine how best to implement its obligations under the chapter. This reaffirms the flexibility for New Zealand to rely on competition in the market, as well as regulatory intervention where warranted in the market, to meet its obligations.

4.12.1 Advantages

The chapter provides a clear indication to international service suppliers and investors that New Zealand has in place a pro-competitive regulatory framework in the telecommunications sector that is consistent with international practice and focussed on the long-term benefits to end-users of

telecommunications services. This forms part of the environment that supports the attraction of leading technology, capable of generating wider economic development in New Zealand.

It also provides New Zealand telecommunications services suppliers with greater certainty that telecommunications regulation will be transparent, objective and non-discriminatory. Disciplines that ensure telecommunications services are freely available and competitive provide value not only for telecommunications suppliers, but also for New Zealand businesses operating offshore, whether to facilitate operations, enable service delivery or to connect with customers. The Telecommunications chapter in the NZ-UK FTA also has a valuable signalling effect in indicating agreement to a common set of expectations regarding the regulatory issues capable of affecting market access in the telecommunications sector. These include rules providing for enhanced transparency of that regulation and requirements to ensure:

- service suppliers can access and use public telecommunications networks and services, including for the movement of information across borders;
- inter-connection and access to technical equipment or facilities required to provide telecommunications services (including number portability, re-sale, unbundling of network elements, leased circuits, co-location of equipment). These provisions build on and update the GATS Basic Telecommunications Reference Paper to provide the conditions for effective market entry for telecommunications suppliers;
- commitments not to engage in anti-competitive practices; and
- telecommunications regulatory bodies are independent.

The chapter recognises that the cost of international mobile roaming is a significant practical issue for business and consumers in today's globally inter-connected world. It includes an undertaking for the Parties to work together to promote transparent and reasonable rates, and enable consumers to be well informed and be able to use technological alternatives.

The chapter also includes an explicit recognition that different jurisdictions take different approaches to regulation, including that some have a tradition of using ex-ante regulation, while others – including New Zealand – adopt a combination of approaches aimed at maximising efficiency in relation to the size and competitive conditions of our market.

4.12.2 Disadvantages

There are no significant disadvantages identified for New Zealand from this chapter. All the disciplines in the chapter are consistent with current New Zealand regulatory settings. The provision on approaches to regulation ensures New Zealand's approach to regulating the telecommunications sector enables it to meet the obligations set out in this chapter.

4.13 Chapter 13: Temporary Entry of Business Persons

The objective of this chapter is to facilitate temporary entry by natural persons for business purposes and to ensure expeditious and transparent processes are applied.

The chapter applies to the following categories of natural persons: business visitors, contractual services suppliers, servicers and installers, independent professionals and intra-corporate transferees. It does not apply to persons seeking access to the employment market in New Zealand or measures regarding citizenship, nationality, residence or employment on a permanent basis.

4.13.1 Advantages

New Zealand business persons will benefit from the commitment in the chapter to ensure expeditious application procedures. The chapter also contains a commitment by both sides that the fees charged for any immigration formality will be reasonable and will not unduly impair or delay the trade or investment activities of those business persons applying for temporary entry.

The chapter also contains a commitment to transparency which provides for the two sides to publish all relevant information regarding temporary entry for business persons in the covered categories. This includes ensuring information is publicly available concerning the documentation required and conditions to be met by business persons applying under these categories, the relevant application fees and indicative timeframes for processing, the maximum length of stay under the different categories and any conditions related to extension or renewal of temporary entry, as well as available review or appeal procedures. This will enable New Zealand business persons to be better informed as to the temporary entry access available and requirements applying to their specific business activities in the UK.

Each side has made commitments to provide temporary entry to each other's business persons across an expanded range of categories or services.

New Zealand and the UK have agreed they will not set any numerical limits on the total number of individuals in each category of business persons to be granted temporary entry. Nor will either side impose 'economic needs tests' on the temporary entry of such business persons, other than those clearly set out in their schedules of commitments.

New Zealand has reserved its right to continue to apply an 'economic needs test' to the temporary entry of UK business persons under the contractual services suppliers category. This is consistent with current New Zealand policy.

Both Parties have also underlined that nothing in the chapter prevents either government from applying measures to regulate temporary entry to protect the integrity of their border or to ensure the orderly movement of persons across their borders.

Commitments made under this chapter are not subject to the formal dispute settlement provisions under the Agreement except in cases where there is shown to be a pattern of practice that raises concerns and that the individual business person has exhausted all available administrative avenues to address their concern. Instead the two sides have committed to try to resolve any matters arising from the implementation of the chapter through consultations or negotiations, before resorting to any other form of dispute settlement.

4.13.2 Disadvantages

The expanded range of categories of business persons in which commitments have been made to include contractual service suppliers is new for New Zealand. At the same time, specific safeguards

have been put in place to ensure the impact of these new commitments is manageable. These safeguards include a limitation of entry of not more than six months in any twelve month period and that temporary entry for contractual services suppliers is subject to an economic needs test. Contractual services suppliers seeking temporary entry under these commitments must also have been employed by an enterprise in the UK for at least a year prior to application for temporary entry, must have a valid employment contract with that UK enterprise, must be paid at a comparable or better level than equivalent New Zealand workers and be employed on conditions that at least meet required minimum New Zealand employment standards.

While the Government will want to continue to monitor the uptake of these new commitments, the converse is that these are matched by similar commitments taken by the UK and provide significant benefits to New Zealand business persons who will be able to avail themselves of these new opportunities provided for the first time under the NZ-UK FTA.

4.14 Chapter 14: Investment

The Investment chapter will establish a high quality and balanced framework of investment obligations to govern New Zealand's investment relationship with the UK. The chapter is designed to facilitate the flow of investment within a stable and transparent framework of rules. The obligations contained in the chapter, and New Zealand's specific reservations, are similar to those in New Zealand's existing trade and investment agreements (including CPTPP, and New Zealand's FTAs with China, ASEAN, Malaysia and Korea). The NZ-UK FTA does not include Investor-State Dispute Settlement (ISDS).

As in other modern FTAs, the manner in which market access commitments for services and investment are recorded in the NZ-UK FTA is through a 'negative list' framework. This format provides exporters and investors a simple way to determine whether the services and investment chapters apply to their area of business between the two Parties. Under a 'negative list' approach, each Party commits to provide market access except in areas where restrictions are listed in a Party's services and investment schedule (Cross-Border Trade in Services and Investment Non-Confirming Measures). These restrictions are known as 'non-conforming measures' or 'reservations'. This format is intended to provide a simpler and clearer way for business and other interested stakeholders to identify what commitments a Party has made in particular services sectors of interest, and the specific nature of any restrictions that may apply, versus a 'positive list' format.

Each Party's 'negative list' of services and investment market access commitments (Cross-Border Trade in Services and Investment Non-Confirming Measures) has two parts, Annex I and Annex II:

- **Annex I** sets out existing measures (laws, regulations, decisions, practices and procedures) that the listing Party retains the right to maintain in their present form – but not make more restrictive. Measures in Annex I:
 - may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors;
 - are subject to a so-called 'standstill' commitment meaning that the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed in Annex I; and

- are subject to a so-called ‘ratchet’ mechanism meaning that each Party commits that, if it autonomously liberalises a listed measure, such liberalisation will be automatically ‘locked’ in to the FTA.
- **Annex II** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain measures that would breach any one or more of the reservable discipline obligations. For those measures in Annex II:
 - the listing Party retains the full right to regulate in a restrictive or discriminatory way, as it deems necessary;
 - the so-called ‘standstill commitment does not apply; and
 - the so-called ‘ratchet’ mechanism does not apply.

If a Party does not list any restrictions for a particular sector it means that Party is committed to not applying any measures that would be inconsistent with specific Cross-Border Trade in Services or Investment chapter obligations, such as discriminatory practices that favour local service suppliers, and is committing to keep that market open for each other’s services suppliers and investors.

4.14.1 Advantages

The NZ-UK FTA would benefit New Zealand investors by providing improved conditions when making investments and doing business with the UK. Improved conditions for investment are also important for many New Zealand goods and services exporters, who increasingly look to undertake activities to support their international businesses (such as establishing an in-market presence, forming commercial partnerships and providing after-sales service).

New Zealand’s stock of outward direct investment (ODI) to the UK was NZ\$958 million as at March 2021. The NZ-UK FTA will help to further reduce barriers to investment and support New Zealand investors to better navigate the UK regulatory system. As the UK is starting to develop comprehensive FTAs with a number of partners, New Zealand investors would risk significant disadvantage if it was not to conclude an FTA containing high-quality investment rules.

The stock of foreign direct investment (FDI) from the United Kingdom was NZ\$5.6 billion as at March 2021, making the UK New Zealand’s fifth-largest source of FDI. This investment is a crucial source of capital to keep building New Zealand’s competitive and productive economy. Concluding a high-quality and modern investment chapter with the UK would continue to signal to UK investors that New Zealand is an attractive, stable and transparent investment environment.

4.14.1.1 Investment protections

The specific advantages provided by the Investment chapter to New Zealand investors in the UK and UK investors in New Zealand include:

- **non-discrimination:** provides that New Zealand investors and investments cannot be discriminated against by the UK compared to its own domestic investors in like circumstances, or against other foreign investors from any other country. Without these obligations, New Zealand investors could be treated less favourably than other investors (e.g. they could face more onerous investment authorisation requirements) at any stage of their investment's lifecycle.

- **standard of treatment:** confirms that investors and investments are to be treated in accordance with the minimum standard of treatment under customary international law, including fair and equitable treatment and full protection and security.
- **control over investments:** enables New Zealand investors to retain greater control of their investments in the UK, as it includes restrictions on the imposition or enforcement of performance requirements, such as a requirement to achieve a percentage of domestic content or to transfer technology. These types of requirements can be particularly onerous on small and medium size enterprises. The chapter also provides certainty that transfers relating to a covered investment will be able to be made freely and without delay. The NZ-UK FTA would also allow investors to appoint their own experts to governance and senior management positions.

4.14.2 Disadvantages

The framework of the Investment chapter, with its objective of facilitating and protecting investment flows between New Zealand and the UK, would not be expected to create additional regulatory requirements for New Zealand. This is because existing agreements and customary international law are already reflected in New Zealand's investment policy and regime.

While there is a broad benefit to New Zealand from the UK taking on our Investment chapter obligations, changes to New Zealand's investment screening thresholds for significant business assets will see a greater level of market access for UK investors. New Zealand was able to address any associated risk through specific reservations (non-conforming measures), exceptions and safeguards.

4.14.2.1 New Zealand screening thresholds

As part of a negotiated outcome on improved investment opportunities, New Zealand made improved market access commitments. Under the NZ-UK FTA, the threshold above which a non-government investor must get approval to invest significant business assets in New Zealand would increase to NZ\$200 million, bringing it into line with commitments made in CPTPP. New Zealand would be unable to reduce this threshold in the future.

Other than this specific threshold, the NZ-UK FTA would not have any further implications or required amendments for the investments currently screened under the Overseas Investment Act 2005. No changes would be required to the way New Zealand currently approves foreign investment in sensitive land (including farm land over five hectares) or fishing quotas. The NZ-UK FTA does not alter the restrictions in the Overseas Investment Amendment Bill on overseas people from buying residential land. However, under the NZ-UK FTA rules UK investors can purchase other property in New Zealand so long as they comply with the criteria set out in the overseas investment regime and any conditions specified by the regulator and the relevant Minister or Ministers. The New Zealand Government retains the ability to approve the acquisition or control of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's overseas investment legislation

Beyond the Overseas Investment Act screening threshold, New Zealand commitments under the NZ-UK FTA are consistent with current law and practice, but could potentially limit New Zealand's future policy flexibility. For example, New Zealand would make commitments not to impose particular performance requirements on investments, like the hiring of a given number of New Zealand nationals,

or impose conditions on the nationality or residence of the senior management or board of directors linked to an investment. However, where New Zealand has identified sectors where there is a need for future policy flexibility, we have taken reservations in Annex II of our market access schedule (Cross-Border Trade in Services and Investment Non-Confirming Measures). This balances New Zealand's commitment to high-quality investment rules and our need to preserve future policy space in certain areas of the economy.

Further reservations to Annex I and II (Cross-Border Trade in Services and Investment Non-Confirming Measures) relate to sensitive areas of policy (including health, public education and social security), reflect the same types of exceptions New Zealand has included in previous FTAs and, on the whole, are considered to retain appropriate future policy space.

4.15 Chapter 15: Digital Trade

New Zealand and the UK both recognise the potential for digital trade to generate opportunities for economic growth, development and inclusive trade. With this in mind, the Digital Trade chapter builds on recent New Zealand and UK trade agreement practice, including the Digital Economic Partnership Agreement (DEPA), in setting out important disciplines and principles that support the objectives of:

- promoting user confidence in digital trade;
- advancing the inter-operability of regulatory frameworks and systems to facilitate digital trade;
- avoiding unnecessary barriers to digital trade; and
- supporting digital inclusion.

The COVID-19 pandemic, with the increase in demand it has created for digital services and products, has highlighted further the importance of agreed rules to underpin digital trade. Many New Zealand businesses are already operating digitally or providing digital services and products. The Digital Trade chapter in the NZ-UK FTA means they will be able to access the UK market, confident that there are clear rules underpinning the operation of digital trade.

The chapter contains three groups of provisions:

- those aimed at boosting confidence among the users of digital trade. These provisions include the establishment of domestic legal frameworks governing electronic transactions, those concerning the protection of personal information of those engaged in digital trade, provisions dealing with unauthorised commercial electronic messages and those supporting digital innovation and emerging technologies through working together in the development of frameworks underpinning the trusted, safe and responsible use of emerging technologies;
- a second set of provisions focused on addressing practical issues arising in the conduct of digital trade, including those covering e-contracts, e-authentication, e-invoicing and relating to the cross-border transfer of information by electronic means and the use and location of computing facilities; and

- a third set of provisions encouraging cooperation in a range of areas of importance to the growth and development of digital trade, including digital inclusion, digital identities, open government data and supporting increased SME participation in digital trade.

In addition, the chapter contains a commitment by the two Parties not to impose customs duties on electronic transactions between them and to work to encourage a similar commitment by non-Parties. New Zealand has consistently advocated for the extension of the moratorium on the imposition of customs duties on electronic transactions that has been in place at the WTO since 1998 and has agreed to make this moratorium permanent with other CPTPP partners, as well as Chinese Taipei and Thailand. Under the NZ-UK FTA, this would also be the case with the UK.

The chapter also includes a broader cooperation commitment by the Parties to work together in the development of international frameworks for digital trade and to share information and best practice on regulatory matters. This provides an opportunity for the Parties to discuss future developments in digital trade as well as to promote and facilitate collaboration amongst public and private entities on trade, investment, and research and development opportunities in the digital space.

Recognising the rapid pace of change in the digital economy and the on-going need to ensure that countries' domestic regulatory settings can meet the range of issues and challenges that may arise in the future, the chapter also includes a review clause to provide an early opportunity to assess the functioning and implementation of the chapter.

4.15.1 Advantages

The Digital Trade chapter helps protect New Zealand users of digital trade, including through expanded provisions on the protection of personal information. These not only require the Parties to have in place a legal framework governing the protection of personal information of users of digital trade, but also elaborate a set of important principles the two sides expect to see as part of a robust personal information protection framework. They also recognise the importance of interoperability and comparability of such frameworks and contain an undertaking to work towards this.

There is also a provision that draws from the Digital Economic Partnership Agreement (DEPA) and recognises the need to work to develop domestic frameworks that support the trusted, safe and responsible use of digital innovation and emerging technologies. This commits the Parties to work together on these issues, including on developments regarding ethical use, industry led standards and algorithmic transparency and to address issues such as unintended biases and problems arising from the digital divide.

New Zealand businesses also stand to gain from the increased predictability of the regulatory environment governing their digital trade in the UK, including in regard to the commitment not to impose customs duties and the expectation that they will be able to transfer data electronically to support their business and not face potentially costly requirements to establish computer processing facilities in the UK or be obliged to use local processing facilities.

The emphasis on promoting inter-operability of systems in the chapter recognises that, for New Zealand businesses operating at a distance from major markets, and across many different markets where they are often smaller scale operators, it is important to be able to make full use of the

efficiency benefits of the tools that support digital trade, including e-contracts, e-authentication and e-invoicing.

At the same time, the chapter contains recognition of the regulatory requirements in a range of areas concerning digital trade and of the importance of regulatory authorities being able to conduct necessary investigative functions and to ensure the enforcement of each Party's laws and regulations in this area. These include the public policy safeguards incorporated into the provisions on cross border transfer of information by electronic means and on the location and use of computing facilities. The chapter also includes a clear acknowledgement of the need to ensure access for law enforcement to encryption used in ICT products that use cryptography pursuant to that Party's legal procedures.

Digital inclusion also features prominently in the chapter, with the Parties undertaking (Article 15.20) to work to promote digital inclusion, including in respect of Māori, women, persons with disabilities, rural populations, and low socio-economic groups. Similarly, particular attention is given to cooperation in support of increased SME participation and the participation of Māori-led and women-led enterprises, recognising their role in economic growth and job creation in digital trade (Article 15.20.3). This recognises digital trade as an enabler for everyone engaging in trade – and not just large enterprises – to utilise digital tools to engage directly with customers and other business relationships in different markets, overcome barriers and reduce the cost of doing business by enhancing efficiencies and costs of transactions.

4.15.2 Disadvantages

Concerns have been raised about the potential for digital trade rules, particularly relating to data, to impact on the Government's ability to regulate in this area. All of the obligations in the Digital Trade chapter sit within New Zealand's current policy settings.

In addition, the NZ-UK FTA contains a range of specific provisions, as well as the overarching General Exceptions in chapter 32, that provide broad policy space for the New Zealand government to regulate in the public interest in this area. The provisions on cross-border transfer of information by electronic means and those on location of computing facilities have a built-in public policy safeguard clause that enables the New Zealand government to take regulatory measures to achieve legitimate public policy objectives (e.g. to ensure robust privacy and consumer protection or to address issues arising from new digital technologies or new uses of digital technology). The Government is also able to implement measures contrary to the rules on data when it is in New Zealand's essential security interests.

Moreover, the coverage of the commitments on cross-border transfer of information by electronic means, and location of computing facilities. They do not apply to government information or to the non-conforming measures that either Party has listed under the Cross-Border Trade in Services or Investment chapters.

A further mechanism to address potential future issues or concerns in regard to the Digital Trade chapter is available through the review clause (Article 15.22), which will take place within two years of entry into force of the agreement.

4.16 Chapter 16: Government Procurement

The Government Procurement chapter establishes open, fair and transparent conditions of competition in the government procurement markets covered by the chapter. Businesses from New Zealand and the UK are afforded treatment equal to the treatment given to domestic suppliers in bidding for government contracts covered by the chapter.

New Zealand and the UK have each negotiated a schedule that sets out government entities, procurement activities, and minimum value thresholds that together determine what procurements are subject to the commitments in the chapter (“covered procurement”). Coverage under the schedule of each Party includes central government entities, sub-central government entities and other government entities.

The chapter also includes a commitment to undertake further negotiations of sub-central and other entities with a view to achieving expanded coverage if New Zealand alters its domestic government procurement policy settings to include specific categories of entity or if entities in those categories are covered in another international trade agreement.

4.16.1 Advantages

The Government Procurement chapter would provide New Zealand businesses new opportunities in the form of guaranteed access to covered government contracting opportunities in the UK. The UK’s government procurement market is substantial, totalling approximately NZ\$593 billion, or a third of all its public expenditure each year.²⁴ The New Zealand public sector spends approximately NZ\$51.5 billion on goods and services, including infrastructure, each year – around 20 percent of GDP.²⁵

Governments typically buy a wide range of goods and services in a variety of sectors including health, education, housing, transport, public utilities and construction, providing significant export markets for high value-added specialist services and goods manufacturers, such as communications equipment, security systems, healthcare (including IT, beds and dental equipment) and marine and aviation technology. This would provide opportunities for New Zealand to diversify its exports.

Both New Zealand and the UK are members of the World Trade Organisation Agreement on Government Procurement (GPA),²⁶ under which each Party has access to the procurement covered under that agreement.²⁷ The FTA builds on the commitments that have already been made under the GPA. The new opportunities for New Zealand exporters are in respect of improved entity coverage

²⁴ Transforming Public Procurement: Government response to consultation, December 2021.

²⁵ For more information, see www.procurement.govt.nz/about-us/news/growth-in-government-procurement-spend/.

²⁶ The GPA is a plurilateral agreement within the framework of the WTO, meaning that not all WTO parties are parties to the Agreement. At present, the GPA has 21 parties covering 48 WTO members.

²⁷ Details on the coverage of the United Kingdom and New Zealand under the GPA can be found at: https://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm.

and additional services covered by the UK, for example, telecoms related and some professional services.

The chapter includes a specific provision aimed at ensuring SMEs would be better placed to access procurement opportunities, for example by making all tender documentation available free of charge to the extent possible and appropriate and seeking opportunities to simplify administrative processes; requiring prompt payment, including to sub-contractors, and to take into account the size, design and structure of the procurement, including dividing procurement opportunities into smaller lots and promoting the use of joint bidding and subcontracting by SMEs. This is important for New Zealand exporters given our large proportion of small businesses.

The chapter also specifically recognises that the Parties can take into account environmental, social and labour considerations in procurement, as well as use procurement to ensure compliance with environmental, social and labour laws, international obligations and other standards of conduct, ethics and integrity, provided they are not discriminatory. This confirms that New Zealand can use its procurement to promote policies such as the living wage, environmental standards and progressive procurement and address behaviours such as modern slavery or lack of business integrity.

The chapter establishes certain procedures that provide for transparent and competitive tendering that the Parties must follow for covered procurement activities. These are aligned to and consistent with the WTO GPA procedures that the Parties have already committed to and ensure that bidding for government contracts is fair, accessible and transparent. Key elements include:

- requirements in respect of the nature and detail required in tender notices and documentation;
- minimum time frames for responding to tenders, to give businesses sufficient time to bid; and
- requirements relating to the treatment of tenders and awarding of contracts, including to publish post-award information and provide reasons to unsuccessful suppliers on why their tender was not successful.

These procedures are supported by the following key commitments:

- non-discrimination and national treatment, so that Parties must treat suppliers from the other Party no less favourably than domestic suppliers; and
- a prohibition against offsets (i.e. requirements for local content) as a condition for award of contract.

New Zealand's covered procurement excludes procurement related to national treasures and makes it clear that some activities, such as commercial sponsorship arrangements are not covered by the chapter. More generally, the right of Parties to take appropriate actions to protect essential security interests is preserved under Article 32.2 (Security Exceptions) of the General Exceptions and Provisions chapter. The chapter preserves the right to take measures for certain legitimate public policy purposes, such as public health, safety and protection of the environment.

4.16.2 Disadvantages

New Zealand would not be required to change its current procurement practice or regulatory framework on entering this Agreement, as the obligations for New Zealand are consistent with New Zealand's Government Procurement Rules. While New Zealand's covered procurement includes entities not previously committed under the GPA or another FTA, all entities committed in the FTA are already required to apply the Government Procurement Rules to their procurement. In short, no new obligations are placed on them.

While the chapter includes a commitment to further negotiations that could result in future coverage of entities not currently required to apply the Government Procurement Rules (e.g. local authorities, state-owned enterprises, and universities), this would arise only if New Zealand determined that it is in its interest to alter its domestic policy settings or commit some of these entities in another trade agreement.

The FTA would place the same restrictions on certain procurement-related policy options as several of New Zealand's existing trade agreements (including the WTO GPA), for example, the ability to compel government agencies to "buy local" under explicit preferential procurement policies. As these obligations are reciprocal, they benefit New Zealand businesses and the economy by enabling suppliers to compete on merit rather than country of origin. The FTA would not constrain the Government's ability to support local suppliers in other ways than through preferential procurement policy. As an example the Ministry of Business, Innovation and Employment (MBIE) and New Zealand Trade and Enterprise (NZTE) help support New Zealand businesses to develop their tendering capability so that they can be competitive both domestically and in foreign markets. These and other initiatives to support local businesses, such as through access to research grants or other incentives, are not precluded by the Government Procurement chapter.

The Parties must provide access to national remedies to suppliers having an interest in a particular procurement covered by the FTA, where they believe that the commitments in the chapter have not been applied by the procuring entity. In theory, this means New Zealand procuring entities covered by the chapter would be subject to new challenge proceedings. The actual effect of this for New Zealand is likely to be minimal, as New Zealand government agencies already accept tenders from foreign suppliers and provide rights of redress through the New Zealand courts, so the risk of any increase in legal proceedings is considered minimal.

4.17 Chapter 17: Intellectual Property

The Intellectual Property chapter includes provisions that cover copyright and related rights, geographical indications (GIs), patents, trade marks, industrial designs, trade secrets, undisclosed data, the enforcement of intellectual property rights and cooperation and information sharing between the Parties. The chapter also contains provisions on traditional knowledge, traditional cultural expressions and genetic resources. Although the chapter does not include any up-front commitments on the protection of GIs, New Zealand has agreed to review the GIs section in the future, including if New Zealand introduces a bespoke regime for the registration of GIs for agricultural products or foodstuffs.

The chapter builds on commitments both sides have already made under the World Trade Organisation Agreement on Trade-Related Intellectual Property (TRIPs) and a range of international IP agreements administered by the World Intellectual Property Organization (WIPO). Many of the obligations in the chapter are similar to those contained in recent New Zealand FTAs and reflect existing policy settings. In particular, nothing in the chapter will extend the term of patent or regulatory data protection for pharmaceuticals or otherwise impact that operation of Pharmac.

New Zealand has agreed to make some changes to our copyright system, specifically to extend the term of copyright and related rights protection by 20 years within 15 years,²⁸ introduce an Artist's Resale Right regime, and to expand rights of performers in relation to playing sound recordings of their performances in public.

New Zealand has retained flexibility to respond to Tiriti obligations, including those arising out of the Wai 262 Te Pae Tawhiti process.

Overall, the Government considers that obligations in the Intellectual Property chapter would involve minor short term costs for New Zealand, with potentially higher longer term costs after the commitment to extend the term of protection for copyright and related rights by 20 years is implemented. The Agreement allows up to 15 years after entry into force for New Zealand to implement a copyright term extension. These overall costs are not readily quantifiable. Any such costs must also be considered in the context of the benefits provided across the Agreement as a whole.

4.17.1 Advantages

4.17.1.1 Genetic resources, traditional knowledge and traditional cultural expressions

The Intellectual Property chapter contains obligations relating to traditional knowledge, genetic resources and traditional cultural expressions that go beyond comparable obligations in any previous international agreement entered by New Zealand.

This includes a requirement for the Parties to endeavour to cooperate to enhance understanding of matters of interest to Māori relating to intellectual property and issues relating to genetic resources, traditional knowledge and traditional cultural expressions.

The chapter requires that each Party works toward a multilateral outcome in the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC)²⁹ and that they share information and otherwise cooperate in working toward that outcome.

If an outcome in the WIPO IGC is achieved, the Parties are required to meet to discuss amending the agreement to reflect that outcome. The chapter also provides for a review if, after two years from entry into force, no international instrument has been adopted at WIPO.

²⁸ New Zealand would have 15 years from entry into force of the agreement to extend the term of protection for copyright and related rights.

²⁹ The WIPO IGC is an international forum focused on achieving a multilateral agreement to address the protection of genetic resources, traditional knowledge and traditional cultural expressions for indigenous peoples.

Mirroring requirements in CPTPP, the chapter also recognises that intellectual property systems and traditional knowledge associated with genetic resources are relevant to each other and requires the Parties to endeavour to cooperate to enhance each other's understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources in their own right. In addition to the comparable CPTPP text, the chapter acknowledges the involvement of Māori in these cooperation activities. Both Parties must also endeavour to pursue quality patent examination processes that take into account publicly available information related to traditional knowledge that may be relevant to registerability of a patent application.

4.17.2 Disadvantages

4.17.2.1 Loss of policy flexibility

To the extent that any obligations in the chapter constitute new obligations for New Zealand, they will place new limitations on the Government's ability to modify New Zealand's intellectual property settings to ensure they are appropriate for our domestic circumstances. Intellectual property regulation needs to be able to respond to new circumstances and technological change. 'Locking in' settings could have future implications for innovation and creativity that flow on to the wider economy, as well as implications for the Government's ability to meet other social, cultural and economic objectives.

This disadvantage arises in relation to the new copyright and artist resale right obligations discussed below that require domestic law changes. It may also arise where obligations do not require domestic law to the extent the obligation locks-in that existing domestic requirement. However, in almost all instances, these obligations already exist in previous international agreements, therefore the chapter does not give rise to a new loss of flexibility.

The implication of this loss of policy flexibility is difficult to quantify and predict. The extent to which it restricts New Zealand's intellectual property policy settings from being modified to meet future Government objectives would only become known in the future. Importantly, New Zealand retains flexibility to respond to Tiriti obligations like those coming out of Wai 262 and Te Pae Tawhiti.

4.17.2.2 Performer rights in relation to sound recordings

New Zealand has agreed to extend existing performers' property rights under the Copyright Act to include the playing in public of sound recordings of their performances. This new right would only apply to new sound recordings made after ratification of this agreement, and would mirror an existing right given to producers of such sound recordings. As with the other performers' property rights, performers may assign or transfer this right to third parties including to producers of sound recordings.

The overall impact of this change is expected to be minimal. It may be beneficial for some performers by allowing them to earn additional revenue from the licensing of playing sound recordings in public. However, it is common practice for producers of sound recordings to require performers to assign their property rights in sound recordings of their performance to them. It is likely that producers will simply extend their contracts with performers to also capture the assignment of performers' rights for the playing of sound recordings in public. There may be modest costs, therefore, for producers, and in

particular record companies, with amending current and future contracts with performers to accommodate this new right.

It is possible that additional performers' rights in the playing of sound recordings in public could result in a small increase in licence fees paid by venue providers and event organisers to play sound recordings, such as music. This in turn may result in a small, proportional increase in the income for those performers who have not assigned the right in question to a producer.

4.17.2.3 Reasonable Efforts to join the Hague Agreement

New Zealand has agreed to make all reasonable efforts to join the Hague Agreement Concerning the International Registration of Industrial Designs (Hague Agreement), which provides an international regime for protection of industrial designs in multiple countries and regions with minimal formalities. However, this is not an absolute commitment to join the Hague Agreement.

New Zealand's accession to the Hague Agreement is being considered as part of MBIE's review of the Copyright Act.³⁰ Further consideration will now be required as a result of this obligation of the question of New Zealand joining the Hague Agreement.

A full and separate National Interest Analysis and Regulatory Impact Assessment would be required to support any future decision to join the Hague Agreement. This would include consideration of the costs and benefits for New Zealand associated with designers being able to more easily register their designs offshore, foreign designers being able to more easily register their designs in New Zealand, establishment and administrative costs (including information technology costs) for the Intellectual Property Office of New Zealand and the impact on intellectual property lawyers and patent attorneys.

4.17.2.4 Geographical indications section review

Other than confirming that geographical indications (GI) may be protected through a trade mark or bespoke, *sui generis* system, no up-front commitments have been made on GIs. However, New Zealand has agreed that if it enters another international agreement that requires New Zealand to make a substantial change to its domestic GI law, or otherwise independently makes a substantial change to its domestic GI law, the FTA will be reviewed with a view to extending any benefits of those changes to the UK under the Agreement. If, for example, another international agreement is agreed and includes provisions for the protection of GIs, the review obligation will provide an opportunity for the UK to seek equivalent protection for its GIs in New Zealand and for New Zealand to seek protection of GIs in the UK.

In addition, if no such review has been triggered or the Agreement has not been amended as the result of such a review within two years of ratification, the agreement provides a further opportunity to review of the GI terms.

³⁰ Although industrial designs may be registered under the Designs Act 1953, they are also protected under the Copyright Act 1994.

4.18 Chapter 17: Intellectual Property - Copyright term extension

The chapter requires that New Zealand extend the term of protection for copyright and related rights by 20 years. New Zealand has, however, negotiated a 15 year transition period from ratification within which to implement this change.

Once implemented, this means that for many categories of copyright works such as books, screenplays, lyrics and artistic works, the term would change from “life of the author plus 50 years” to “life of the author plus 70 years”. Where the term of protection is not based on the life of a person (such as in the case of a producer’s and performer’s rights in a sound recording) the term will increase from the current 50 years to 70 years.

The extension, once implemented, would only apply to works that are still within their current term of protection under the Copyright Act. The extension would not apply to any works that had already fallen out of protection, and were therefore in the public domain, when the extension is implemented. Such works would remain in the public domain and therefore be freely available to use without authorisation or the payment of any licence fee. The extension will also mean New Zealand is consistent with longer terms of protection provided in all other OECD countries.

4.18.1 Advantages

Parts of the New Zealand publishing, recorded music and broader creative sectors support copyright term extension, as it would allow them to continue to have control over the use and exploitation of their works for an additional 20 year period. It will mean New Zealand rights holders would be able to receive additional revenue in New Zealand for the exploitation of their works for a longer period of time.

Another advantage is that New Zealand rights holders would also be able to receive the longer term of protection in those foreign jurisdictions (such as the UK and the EU) that only provide extended terms for authors resident in countries that provide equivalent extended terms of protection.

The 15 year transition period allows New Zealand to defer the impact of extending the term of protection.

4.18.2 Disadvantages

Disadvantages arising from the extension of the term of protection for copyright and related rights include:

- increased costs for third parties in New Zealand exploiting copyright works during the additional term of protection.
- as New Zealand is a net importer of copyright works, the balance of benefits is likely to accrue to foreign rights holders and result in a net increase in royalty payments to those right holders.
- as a consequence of most favoured nation obligations, the benefits for foreign rights holders will not be limited to UK right holders.

- increased number of works for which use and access will be restricted. This includes a majority of copyright works that do not have commercial value and are not commercially available at the expiry of the current term of protection, including orphaned works. Restricting use and access to such works is to the detriment of education and the gallery, library, archive and museum (GLAM) sectors, and hinders the ability of New Zealanders to publish and make available to the public older copyright works, including those of historical and cultural importance.
- there is no evidence that increasing the term of protection for copyright and related rights would incentivise either the creation of new copyright works or the dissemination of older works (which are the primary policy goals of copyright protection).

4.19 Chapter 17: Intellectual Property - Artist's resale right scheme

The chapter requires New Zealand to introduce an artist's resale right (ARR) scheme within two years of entry into force. An ARR scheme will enable visual artists to receive a royalty on the resale of their art works in the secondary art market for as long as the artwork remains protected by copyright. Once implemented, the ARR scheme would operate on a reciprocal basis with the UK's existing ARR scheme so that artists in each country may benefit from any resale of their art works within the other country.

New Zealand will introduce new legislation to implement the scheme. New Zealand has retained some flexibility to determine how the scheme will operate, including in relation to the amount of the royalty, threshold sales value for the scheme to apply, how the royalty will be collected and other criteria.

The reciprocity requirement means that New Zealand and UK artists will receive royalties for the resale of their work in other territories. New Zealand's introduction of an ARR regime will also mean reciprocity arrangements may also be put in place with other countries that operate their own ARR regime.

The Ministry of Culture and Heritage (MCH) commenced consultation and policy development work on the introduction of an ARR scheme in 2020. However, this was paused because of COVID-19. MCH has recommended that this work be undertaken, alongside a full regulatory impact assessment and development of legislation, to establish an ARR scheme within 2 years of entry into force.

4.19.1 Advantages

An ARR scheme will enable visual artists to receive a royalty on the resale of their works in the secondary art market, both within New Zealand and reciprocally in the UK. This will provide a mechanism for artists to benefit from the increased value of their works from the time of first sale and provide greater equality for visual artists, putting them more economically on par with musicians, writers and artists of other art forms that are replicated, traded, and exchanged beyond their primary sale.

An ARR will also help artists to track the ownership history, transmission, and location of an art object. This will provide artists with greater insights into the market for their work and will assist with developing relationships with collectors which can be drawn on, for example, for retrospective

exhibitions. Ownership history recorded through an ARR will establish verifiable provenance for works which will assist in proving authenticity of works and can assist in increasing the value of individual works and an artist's body of work.

4.19.2 Disadvantages

An ARR scheme will impose compliance costs on galleries, auction houses and any collection agency involved in the administration of the scheme, including in relation to the collection of royalties, the identification of relevant artists (or their heirs/estates) and the forwarding of royalty payments to those parties.

The distribution of benefits between artists is unclear. As is the case in other territories, the scheme will likely require a minimum threshold sale value below which artists will not receive a royalty (e.g. the threshold in the UK is £1,000 and in Australia is \$1,000). In addition, royalty values are normally relatively low. Australia, for example, applies a 5% royalty, while the UK provides 0.25% to 4% depending on the sale value. As a result, a common critique of ARR schemes is that any significant benefits from the regime may largely accrue to a few well-known artists whose works are resold at a premium, and other artists may only receive relatively modest returns. However, since Australia introduced its regime in 2010, it has generated AU\$10.4 million in total royalties and made payments to 2,240 artists in relation to 24,500 resales. Most royalty payments have been between AU\$50 and AU\$500. Although modest, this shows that emerging artists and those at the low end of the market are also benefiting from the scheme. It is also important to remember that emerging artists may also progress to being well-known artists, and gaining assistance from an ARR for early sales of their works will assist them in the sustainability of their careers.

An ARR scheme may impose costs on the Government depending on how the scheme is implemented and administered. The implementation of a similar scheme in Australia cost AU\$2.2 million, though costs in New Zealand can be expected to be proportionately less.

4.20 Chapter 18: Competition

The objective of the Competition Policy chapter is to facilitate economic efficiency and consumer welfare through promoting open and competitive markets. This chapter requires New Zealand and the UK to have in place competition laws that prohibit anti-competitive conduct, and authorities responsible for enforcing competition laws. However, each Party may create exemptions from the application of its national competition law based on public policy grounds, provided that those exemptions are transparent and established in the Party's law.

4.20.1 Advantages

Without the security of a strong competition regime in the UK, the benefits to New Zealand of increased flows of goods and services under this agreement could potentially be compromised by cross-border anti-competitive practices. 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 both countries have internationally well-regarded competition law and enforcement, the Competition Policy chapter sets a high-standard benchmark for the maintenance and operation of each country's competition regimes. For example, the chapter provides for procedural fairness and private rights of action. These provisions would protect the right of New Zealand businesses to take actions in the UK if they encounter anti-competitive behaviour. Procedural fairness disciplines also extend to merger reviews, building on CPTPP.

The Competition Policy chapter also recognises the importance of technical cooperation between the competition authorities relating to the application and enforcement of competition law, and where it is both Parties' common interest, for cooperation between the policy agencies to strengthen competition policy development.

This will ensure New Zealand businesses operating in the UK will have protections against anti-competitive conduct. It also strengthens enforcement cooperation between the UK and New Zealand competition authorities to better protect New Zealand businesses and consumers from any anticompetitive conduct in New Zealand markets arising from outside of New Zealand. Furthermore, it facilitates coordination between the UK and New Zealand policy agencies in maintaining competition laws that are fit for the digital age.

4.20.2 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. The Commerce Act 1986 prohibits anti-competitive conduct, and the Commerce Commission is primarily responsible for enforcing the Act.

Note that the chapter provides the ability to exempt certain commercial activities from laws prohibiting anti-competitive conduct. This would give flexibility for New Zealand to carve out specific areas of interest where there may be public policy grounds to do so.

4.21 Chapter 19: State-Owned Enterprises and Designated Monopolies

The objective of the State-Owned Enterprises (SOEs) and Designated Monopolies chapter is to ensure a level playing field between enterprises owned or controlled by the state and private competitors, whilst recognising each Party's right to establish and maintain SOEs and monopolies. There are specific exceptions preserving each Party's ability to pursue policy objectives through SOEs and monopolies.

The SOE provisions apply to companies more than 50 percent owned or controlled by the Government and that affect trade or investment between the two Parties. They do not apply to those Government owned or controlled businesses which operate principally on a not-for-profit or cost-recovery basis. For New Zealand, this would include some of the companies subject to the New Zealand *State-Owned Enterprises Act 1986* and other commercially focused companies in which the Government owns a majority share (e.g. Air New Zealand).

The monopoly provisions of the chapter apply to the trading activities of entities granted the exclusive right to buy or sell a good or service. This would cover the monopoly functions of a small number of

New Zealand government-owned entities in New Zealand, such as KiwiRail's functions related to the administration of New Zealand's rail network and Transpower's operation of the National Grid. It excludes existing privately-held monopolies but would include future private and government-owned entities that the Government designates as monopolies (Zespri, for example, would be excluded). PHARMAC is not covered by these provisions.

4.21.1 Advantages

New Zealand exporters and investors operating in the UK would benefit from the provisions in the chapter, which are designed to set an appropriate balance between ensuring the commercial activities of SOEs and monopolies do not negatively impact on trade, while preserving the ability of governments to deliver policy objectives through SOEs and monopolies. The obligations would help establish a level playing field for New Zealand businesses competing with UK SOEs.

The chapter would not prevent the New Zealand government from establishing new state-owned enterprises or from nationalising private firms in the future. In either case, fair compensation would need to be paid to owners, consistent with international law and domestic practice.

4.21.2 Disadvantages

There are no significant disadvantages for New Zealand arising from this chapter, primarily because New Zealand's state-owned commercial companies are already set up to operate on a level playing field with privately owned companies and are subject to domestic competition laws. New Zealand is therefore well placed to comply with these obligations in regard to SOEs and designated monopolies.

The chapter's approach is broadly in line with current practices and the principles behind the New Zealand's State-Owned Enterprises Act 1986. In addition, New Zealand has obtained flexibilities to allow future policies which may not be in compliance with aspects of the obligations in the future. The obligations also have a more limited impact on New Zealand's SOEs and monopolies given the majority of New Zealand entities are below the size threshold set in this chapter.

New Zealand is already subject to similar commitments arising from CPTPP. CPTPP extended existing WTO obligations to include subsidies provided to SOEs for services they provide outside New Zealand and subsidies provided to SOEs which produce and sell goods in New Zealand in competition with companies from CPTPP countries established in New Zealand. This would also apply to SOEs which produce and sell goods in New Zealand in competition with UK companies established in New Zealand under the NZ-UK FTA. As noted above, it is significant for New Zealand that the subsidies obligation does not cover government support for services an SOE supplies within New Zealand, with most of New Zealand's SOEs focused on providing services domestically.

4.22 Chapter 20: Consumer Protection

The NZ-UK FTA is New Zealand's first bilateral agreement to contain a specific chapter covering consumer protection. It recognises the need to maintain policies and practices to protect consumers from fraudulent and misleading actions, including in the online environment, and highlights the need

for cooperation between countries to develop ways to enhance access to effective and timely redress for consumers in each other's jurisdictions.

4.22.1 Advantages

Consumer confidence and wellbeing are essential aspects of ensuring a healthy and well-functioning economy and international trade. This is particularly true as more and more consumers look to online options for purchasing goods and services. The Consumer Protection chapter clearly describes the types of fraudulent, deceptive, misleading and unfair activities Parties want to protect consumers from and it commits Parties to maintaining measures that achieve this.

This chapter benefits New Zealand consumers by focusing on the need for robust consumer protection measures and their effective implementation, including in the online trade environment. It requires the Parties to maintain laws or other measures against fraudulent, deceptive, misleading or unfair commercial activities (including false claims regarding the quality, price or suitability of products or services or debiting consumers accounts without authorisation). Such laws also need to require that goods be of reasonable and satisfactory quality and that services be performed with reasonable skill and care, consistent with the claims of the suppliers.

To provide New Zealand consumers with access to information on the protections available and means of redress if required, the chapter commits New Zealand and the UK to publish the protections it provides for consumers, including online consumers. It specifies that this information should include the ways in which consumers can pursue remedies. Moreover, the Parties have also agreed to encourage businesses to publish their policies and procedures related to consumer protection.

Importantly, this chapter provides assurance that New Zealand consumers engaged in online commercial activities in the UK market will benefit from a level of protection no lower than that provided to consumers engaged in other (non-electronic) forms of commerce. These provisions recognise that the form of this protection may differ in an online environment, but establishes the important principle that the effect of the protection should not be less than that available to off-line consumers.

The necessity of ensuring consumers have access to appropriate redress for any breaches is also highlighted as a key requirement. Acknowledging the challenge involved in delivering effective and accessible means of consumer redress in an online or cross-border trading environment, the chapter also commits both Parties to cooperate in identifying obstacles to consumer access to redress in situations in which suppliers from the other Party are involved. It also commits New Zealand and the UK to consider ways to enhance the ability of consumers to access effective and timely redress, as well as for suppliers to provide this.

More generally, the chapter commits the two Parties to cooperation on consumer protection matters of mutual interest, including on the enforcement of consumer protection laws and issues regarding online consumer protection, including to build confidence in digital trade. To this end, the chapter also underlines the importance New Zealand and the UK attach to international cooperation and coordination in this area, including within the OECD and the International Consumer Protection and Enforcement Network.

Consultations between the Parties are also provided for under the chapter. This is intended both to promote general understanding between New Zealand and the UK on consumer protection issues, as well as to address any specific matters arising under the chapter. In recognition of the cooperative nature of the undertakings in the chapter, it is not subject to the formal dispute settlement provisions of the Agreement.

4.22.2 Disadvantages

No significant disadvantages for New Zealand have been identified regarding the Consumer Protection chapter. The principles embodied in the chapter are ones that are central to New Zealand's consumer protection regime and their incorporation in the NZ-UK FTA will help to reinforce these important norms internationally, including:

- the importance of having a robust framework of consumer protection laws and regulations in operation;
- the value of readily accessible information for both consumers and businesses to promote compliance with and redress under this consumer protection framework and the policies and practices business have adopted to give operation to this framework;
- that consumers in the online commercial environment should enjoy substantively equivalent protection to that available in the offline commercial environment; and
- the importance of consumers being supported to access effective and timely redress, including in the online environment.

While there are no disadvantages to this chapter, as provisions align with existing commitments and New Zealand's regulatory settings, there may be some resourcing required from each side, as appropriate and as resources allow, to give effect to the commitments on cooperation. This is particularly the case for cooperation on cross-border redress mechanisms, where the two Parties have agreed to a binding commitment to cooperate.

As noted above, in keeping with the shared intention to promote closer cooperation in the provision of appropriate protection for consumers in New Zealand and the UK, this chapter is not subject to formal dispute settlement under the Agreement.

4.23 Chapter 21: Good Regulatory Practice and Regulatory Cooperation

The Good Regulatory Practice and Regulatory Cooperation chapter is a cross-cutting chapter that supports a transparent and predictable regulatory environment, as well as regulatory cooperation to facilitate trade and investment. The chapter does not affect the right of each Party to determine its own approach to good regulatory practice and regulatory cooperation. It also does not affect the right of each Party to identify its regulatory priorities and to take regulatory action at the levels it considers appropriate.

Both the UK's and New Zealand's current regulatory management systems are already consistent with the good regulatory practice commitments in this chapter, so changes in good regulatory practices arising from this chapter are not expected in the short term. The regulatory cooperation components of the chapter are focused on facilitating cooperation when opportunities to do so arise.

4.23.1 Advantages

From a New Zealand perspective, the key benefit of this chapter is the use of contact points to support engagement on regulatory cooperation between the parties. Regulatory cooperation can help reduce barriers to trade and investment for business, and improve the effectiveness of domestic regulation.

Designated contact points for each Party will facilitate communication on, and the coordination of, regulatory cooperation activities. This should make it easier to identify, and make contact with, the relevant authorities in the UK when an issue arises that could benefit from discussion about a possible regulatory cooperation response, or the sharing of relevant experience.

The chapter expressly provides that regulatory cooperation activities may include both informal and formal options. This helps ensure that regulatory cooperation is tailored to the particular issue and can be undertaken in the most efficient way. The Parties have also agreed to try to encourage informal cooperation between regulators and their counterparts.

Engaging in a particular regulatory cooperation activity is optional. The possibility of opening up regulatory cooperation to wider participation is also addressed. Additionally, the Parties have agreed to share information and, where appropriate, to work together to influence the development of international models in international fora. New Zealand may benefit from working with the UK in this way.

The opportunity for cooperation on good regulatory practice, such as the provision for information exchanges and meetings, will allow New Zealand to share experience with the UK and discuss topical issues of mutual interest.

4.23.2 Disadvantages

Given the nature of the commitments in the chapter which generally have a degree of flexibility, there are no obvious disadvantages for New Zealand. The inclusion of a general principle on cost-effectiveness also applies to these obligations.

The main risk is that the obligations in the chapter are not sufficiently future-proof and may not allow practice to evolve over time. This risk is likely to be low, as many commitments are expressed flexibly.

Cooperation on good regulatory practice is not mandatory so New Zealand retains flexibility to determine what activities will be of most value to New Zealand. Likewise, participating in regulatory cooperation is not mandatory, which mitigates the potential disadvantage of having to commit resources to an activity which is not of particular value to New Zealand.

4.24 Chapter 22: Environment

The Environment chapter sets out far-reaching commitments on the elimination of environmentally harmful fossil fuel subsidies and prohibitions on fisheries subsidies. It also includes a list of 293 products (at HS 6 level) which New Zealand and the UK have identified as environmentally beneficial and which will have tariffs eliminated at entry into force of the agreement. The chapter includes for

the first time an article on sustainable agriculture. The chapter, also for the first time, gives expression to Māori concepts relating to environmental protection: kaitiakitanga and mauri.

4.24.1 Advantages

The advantages of the commitments in this chapter reside in three areas: action to address environmentally harmful subsidies (fisheries, fossil fuels); support for global initiatives including climate change, fisheries management, biodiversity protection, and the transition to a circular economy; and cooperation to advance policies on matters of mutual interest to New Zealand and the UK.

The most substantive outcome of the chapter is in the area of fisheries subsidies prohibitions. The NZ-UK FTA goes beyond the previous benchmark of CPTPP by restricting the Parties' subsidy policy settings; restricting subsidies for equipment that increase a vessel's fish finding ability; and prohibiting subsidies to operators who have fished illegally.

These ambitious prohibitions also provide New Zealand and the UK with the opportunity to work together in promoting these standards internationally. The fisheries subsidies prohibitions in the NZ-UK FTA set a higher and more robust international benchmark for other countries to follow in eliminating fisheries subsidies. This is in New Zealand's interests in helping to ensure the world's fish stocks are sustainable.

The environment chapter includes a list of 293 environmental goods (at HS 6 level). This is the most comprehensive list ever agreed outstripping the previous list of 132 in the ANZTEC Agreement. New Zealand has been at the forefront of efforts to push for international agreements which contain an ambitious list of environmental goods on which trade should be facilitated and tariffs eliminated in order to mitigate climate change and support other environmental protection policies for all natural resources. The expanded list will also contribute to New Zealand's efforts to gain support for the liberalisation of trade in environmental goods in plurilateral and multilateral fora, including APEC and the WTO.

The NZ-UK FTA Environment chapter is the first to include Māori environmental concepts and Māori perspectives on the environment. This opens the way for cooperation with the UK to develop new approaches to trade and environment policies that reflect these concepts.

4.24.2 Disadvantages

There are no disadvantages for New Zealand in this chapter. All of the commitments in the chapter are consistent with New Zealand's environmental legislation and with current policy settings.

While the chapter represents a new standard in respect of the scope and level of ambition of many commitments, it does not reflect the full extent of New Zealand's advocated positions in the Trade and Environment Framework. This is particularly the case with respect to the elimination of environmentally harmful subsidies which threaten global fish stocks and the exacerbation of climate change through greenhouse gases. Fuller commitments in these areas would provide more helpful precedents to support New Zealand's wider international environment aims both in international institutions and future trade agreements.

4.25 Chapter 23: Trade and Labour

4.25.1 Advantages

The chapter's obligations are intended to promote mutually supportive trade and labour policies and practices, protect and enforce internationally recognised labour rights,³¹ encourage high levels of labour protection and promote decent work, cooperation and dialogue between the Parties.

Chapter commitments will help ensure a level playing field in terms of the UK for New Zealand exporters, importers and their employees by setting minimum labour obligations for both parties and requiring that they not be able to waive or otherwise derogate from their respective labour laws or fail to enforce them to encourage trade or investment. The chapter also contains provisions promoting non-discrimination and gender equality and commitments on identifying and addressing modern slavery in the Parties domestic and global supply chains, further reinforcing the pursuit of high-quality labour outcomes. Provisions for independent advisory groups and their input to the governing labour committee of the chapter improve current opportunities for civil society involvement in the operation of the labour aspects of the Agreement. Obligations are enforceable through both chapter-specific processes and the dispute settlement provisions of the wider Agreement.

Another advantage to New Zealand is that of providing a platform for cooperation on labour policy issues of interest and potential benefit to New Zealand with the United Kingdom, an advanced economy with a comprehensive system of labour protections. This may give New Zealand greater ability to access resources and leverage than would otherwise be the case through unilateral actions.

4.25.2 Disadvantages

All obligations in the chapter are subject to dispute settlement, through chapter specific and Agreement-wide mechanisms. The inclusion of binding dispute settlement applicable to labour commitments, with the potential of trade sanctions or monetary compensation for breaches, reduces policy space and creates some risks for the Government in potentially dealing with unfounded actions. The public submissions and procedural matters commitments also provide opportunities for external parties to raise issues concerning domestic implementation issues. However, New Zealand's practice in this area, and the design of the relevant disciplines and dispute settlement mechanism, means these risks are low.

4.26 Chapter 24: Small and Medium-Sized Enterprises

This chapter requires each Party to make information relevant to small and medium-sized enterprises (SMEs) freely accessible in digital form. This includes information about the Agreement, as well as information that will be useful for SMEs interested in trading, investing or doing business in the other

³¹ These being freedom of association, the promotion of collective bargaining, non-discrimination in employment, the elimination of forced labour and abolition of child labour and, for the purposes of the Agreement, prohibition of the worst forms of child labour.

Party. The chapter also facilitates cooperation between the Parties to support SMEs to take advantage of the Agreement and to reduce the barriers to SME participation in international trade.

The interests and concerns of small businesses are also taken into account across the Agreement and are reflected particularly in SME-friendly provisions in the National Treatment and Market Access for Goods, Cross-Border Trade in Services, Customs Procedures and Trade Facilitation, Government Procurement, and Digital Trade chapters. The SMEs chapter cross-references some of those chapters.

4.26.1 Advantages

This dedicated SMEs chapter has the potential to benefit New Zealand SMEs interested in exporting to the UK or, more generally, in participating in international trade and global supply chains. The commitments on access to information largely reflect what both Parties are already doing. It also future proofs those commitments by not limiting access to particular forms of technology (such as a website), allowing both Parties to deliver access to the information through future digital media.

The cooperation provisions would allow New Zealand and the UK to share experience and best practice on supporting and assisting SMEs in a range of areas. There is flexibility to focus on issues that will be of most benefit to SMEs and to evolve that cooperation as priorities change or new issues emerge.

The chapter includes a specific commitment to cooperate on promoting the Agreement to SMEs as part of the process of implementing the Agreement. These promotional activities could include undertaking joint roadshows or providing guidance to SMEs. These activities can be targeted to support SMEs to understand how they can benefit from the opportunities created by the Agreement.

4.26.2 Disadvantages

There are no disadvantages to New Zealand under this chapter. The commitments in respect of information provision align with the practice in New Zealand of ensuring businesses have good access to information. They also align with existing commitments in CPTPP.

The cooperation provisions are flexible and ensure that activities can be focused on issues of benefit to New Zealand and its SMEs.

4.27 Chapter 25: Trade and Gender Equality

This is New Zealand's first bilateral FTA to contain a stand-alone chapter on trade and gender equality. The objective of the chapter is to underline the clear intention New Zealand and the UK have to implement the NZ-UK FTA in a manner that advances women's economic empowerment and promotes gender equality. This chapter recognises the contribution trade and investment can make to these important goals.

4.27.1 Advantages

The chapter contains clear affirmations of the key role that gender responsive policies can play in achieving inclusive economic growth and sustainable development, as well as the importance of promoting gender equality policies and practices and supporting this through capacity building. As

such, it supports New Zealand objectives to enable New Zealand women, including wāhine Māori, to benefit from increased engagement in trade and investment.

It contains commitments by New Zealand and the UK to ensure the implementation and enforcement of their respective laws, policies, practices and regulations promoting gender equality and improving women's access to trade and economic opportunities.

New Zealand and the UK have agreed on the clear expectation that neither side should waive or otherwise derogate from their gender equality laws to encourage trade or investment. They have undertaken too to promote public awareness of their respective gender equality laws, regulations, policies and practices relating to trade.

The two sides have also reaffirmed the commitments they have made to implement international agreements fostering women's economic advancement, including the obligations New Zealand and the UK both have under the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), as well as their endorsement of the objectives of the 2017 WTO Joint Declaration on Trade and Women's Economic Empowerment.

New Zealand will further benefit from the arrangements the chapter put in place to:

- share experience in the design, implementation, monitoring and evaluation of policies and programmes to address barriers to the participation of women in international trade;
- work together to identify the range of barriers that limit opportunities for women in the economy to enable the delivery of evidence based interventions in response;
- undertake cooperation activities (such as workshops, conferences, cooperation projects, internships and research) aimed at enhancing the ability of women, including wāhine Māori, workers, entrepreneurs, businesswomen and women business owners, to fully access and benefit from the opportunities under the NZ-UK FTA;
- areas identified for potential cooperation include capacity building and skills enhancement for women (particularly digital and financial skills), advancing the development of women's leadership and business networks and the participation of women in business leadership positions, improving women's participation in science, technology, engineering, mathematics, innovation and e-commerce, fostering women's entrepreneurship, growing women's involvement in trade missions and supporting economic opportunities for diverse groups of women in trade and investment;
- cooperation arrangements, including to promote utilisation of the benefits of the FTA by women and in the collection, monitoring and analysis of data covering the gender-based effects of trade. This may give New Zealand greater ability to access resources and leverage than would otherwise be the case through unilateral actions;
- work together in international and multilateral fora (including the OECD and WTO) to advance trade and gender equality issues and understanding; and
- develop a framework for analysing gender-disaggregated data and undertaking gender-focused analysis of trade policies, including through sharing of data insights, concepts and best

practices, as well as possible joint research. This will have the objective of improving analysis and monitoring of access to trade for wāhine Māori and women-led business.

The chapter also establishes contact points in New Zealand and the UK to facilitate communication on matters covered under the chapter and sets out the functions of the Inclusive Trade Sub-Committee, established under the Agreement, as these relate to the chapter on Trade and Gender Equality.

4.27.2 Disadvantages

There are no evident disadvantages to this chapter for New Zealand. Its objectives correspond to the object and purpose of New Zealand's existing legislation and practice to promote women's economic empowerment.

4.28 Chapter 26: Māori Trade and Economic Cooperation

This is a dedicated chapter focused on enhancing Māori trade and economic cooperation. It recognises the unique relationship between Māori and the British Crown as the original signatories to Te Tiriti o Waitangi/The Treaty of Waitangi and the special circumstances arising from this. The chapter recognises the value that Māori leadership and a Te Ao Māori perspective contribute to protecting and promoting Maori economic aspirations, including in the realisation of opportunities created by the Agreement and enhancing cultural and people-to-people links between the UK and Māori.

The primary purpose of the chapter is to promote cooperation between the Parties to enable and advance Māori economic and wellbeing aspirations.

At the same time, the chapter records and complements a range of other areas across the Agreement to enhance Māori participation in trade and investment opportunities. These include: General Exceptions (the Treaty of Waitangi exception clause), Government Procurement, Digital Trade, Intellectual Property, Trade and Gender Equality, Trade and Environment, and Small and Medium-Sized Enterprises.

Specific areas of focus for potential cooperation highlighted in the chapter include: collaboration to enhance the ability for Māori-owned enterprises to access and benefit from the trade and investment opportunities created under the Agreement; collaboration to develop links between UK and Māori-owned enterprises, including with Māori-owned SMEs and strengthening e-commerce opportunities; and efforts to continue to support science, research and innovation links between the UK and Māori communities.

The Māori Trade and Economic Cooperation chapter was informed by extensive and comprehensive engagement with Māori, government agency Māori networks, and Māori entities with existing cooperative relationships with the UK. It included close engagement with Treaty Partner representative groups – Ngā Toki Whakarururanga, Te Taumata, Federation of Māori Authorities and the National Iwi Chairs Forum.

A specific engagement mechanism (the 'Indigenous Trade Reference Group') comprising representatives from these Treaty Partners, was established to discuss the content and scope of the Māori Trade and Economic Cooperation chapter. Engagement with this Reference Group ensured that

Māori interests and expectations informed and were reflected in the negotiations. The Māori Trade and Economic Cooperation chapter reflects the Reference Group's input.

4.28.1 Advantages

Including a dedicated chapter focused on Māori Trade and Economic Cooperation highlights the importance New Zealand places on Tiriti/Treaty partnerships and ensuring that Māori are able to benefit more fully from the trade, investment, innovation and wider economic opportunities in the NZ-UK FTA. This is consistent with New Zealand's Trade for All policy agenda, which seeks to ensure that trade benefits are more accessible across society as a whole, including for Māori, women and SMEs.

The chapter puts in place a framework that recognises the particular challenges that Māori face, including Māori-led enterprises (many of which are also small or medium sized enterprises), in seeking to access the trade and economic benefits under the Agreement. It also highlights the important contribution increased Māori engagement and a Te Ao Māori perspective can bring to enhancing trade, investment, innovation, cultural and people-to-people links between New Zealand and the UK.

The chapter also recognises the central importance of the Treaty of Waitangi for New Zealand and Māori. It underlines, too, the importance of ensuring that the chapter is implemented in a manner that is consistent with Te Tiriti/the Treaty and its principles. In New Zealand's case, it provides for a particular focus on Māori participation and respect for Māori approaches (including a Te Ao Māori viewpoint, Mātauranga Māori and tikanga Māori) in the implementation of the chapter.

In one specific case – the Haka Ka Mate – the chapter also contains an acknowledgement by the UK of the significance of this haka to Ngāti Toa Rangatira, as well as a commitment to work with New Zealand to identify appropriate ways to recognise and protect Ka Mate.

The provisions in the chapter, including acknowledging the value of cooperation to promote and advance Māori trade interests, help to set new standards for trade agreements, including for Indigenous Peoples internationally.

4.28.2 Disadvantages

There are no evident disadvantages to New Zealand from this chapter. Indeed, securing a dedicated chapter recognising the importance of Māori interests was a major priority for New Zealand and an outcome that Māori attached particular importance.

An important challenge in making the most of the benefits of the chapter, however, will be in resourcing the follow up needed to maximise the outcomes for Māori. This will not only be the case in regard to government resourcing, but will also potentially present some challenges for Māori, including Māori-led small and medium enterprises, wāhine Māori and smaller and more remote Māori communities. In recognition of this, the chapter provides for full Māori participation in decisions on whether and to what extent they have an interest in engaging in the potential cooperation activities referenced in the chapter.

4.29 Chapter 27: Trade and Development

A dedicated chapter on trade and development is included in the NZ-UK FTA for the first time. This recognises the important contribution that sustainable trade and investment can make towards economic development and inclusive economic growth. It acknowledges that sustainable growth encompasses economic and social development, climate resilience and environmental protection and recognises the importance of effective coordination of trade, investment, climate change and development policies towards achieving sustainable growth.

4.29.1 Advantages

The chapter underlines the fundamental importance New Zealand and the UK attach to a stable, open and rules-based multilateral trading system, including for developing countries, and notes the contribution the WTO makes to trade and development. It also contains a reaffirmation by the UK and New Zealand of their commitment to promote and strengthen an open trade and investment environment with the objective of improving livelihoods, reducing poverty and raising living standards.

Further, the chapter recognises the role of transparency, good governance and accountability in the effectiveness of trade and development policies and producing sustainable development outcomes.

This is important to New Zealand given our strong commitment to development in our neighbouring Pacific region and particularly with regard to the small island developing countries of the Pacific. By emphasising these important principles, the chapter sends a valuable signal to our developing country partners and other trade partners of the importance New Zealand and the UK attach to supporting and establishing the conditions for sustainable and inclusive growth.

The chapter goes on to put in place practical arrangements for cooperation between New Zealand and the UK to advance trade and development issues. This includes providing for the exchange of information and sharing of best practices on trade and development policies and programmes, as well as working together in multilateral and regional bodies to this end, with a focus on least developed countries and small island developing states.

As part of this cooperation, New Zealand and the UK also undertake to monitor, either jointly or individually, the impact of the NZ-UK FTA on developing countries and, where appropriate, to share information regarding such monitoring. Both sides will also benefit from the undertaking in the chapter to share information on best practice, including quantitative and qualitative methodologies, to help each other further develop their monitoring and analysis of trade agreements and their effects on developing countries.

In addition to the chapter on Trade and Development, the NZ-UK FTA also contains commitments in a range of other areas, including provisions in the chapters on Rules of Origin, Technical Barriers to Trade, Cross-Border Trade in Services, Digital Trade and Trade and Gender Equality, aimed at enhancing cooperation between New Zealand and the UK on trade and development issues or with the objective of benefitting developing country partners.

4.29.2 Disadvantages

There may be some additional resourcing requirements arising from the commitments in the chapter to closer cooperation with the UK on trade and development issues. This could include efforts to support closer cooperation on trade and development in multilateral organisations and through further work New Zealand may undertake on monitoring and analysis of the trade and development impacts of this and other trade agreements on developing countries.

This is, however, work to which New Zealand already attaches importance as part of its Trade for All policy and as a committed development partner, particularly with regard to New Zealand's Pacific Island Country neighbours and other small island developing states. Moreover, the opportunities created by the chapter to exchange information with the UK on recent experience and best practice approaches to policies, practices and monitoring of trade and development outcomes and effects will help support New Zealand's efforts in this area.

4.30 Chapters 28 and 29: Anti-Corruption; Transparency

The chapters on Anti-Corruption and on Transparency in the development and implementation of laws, regulations and administrative procedures affecting trade and investment, are consistent with and support New Zealand objectives of good governance and an open-rules based environment for the promotion of trade and investment. These chapters contain commitments similar to those already undertaken by New Zealand in the CPTPP.

The Anti-Corruption chapter has the objective of supporting efforts to prevent and combat bribery and corruption in matters affecting international trade and investment; as well as to support work to build integrity in both the public and private sectors in addressing these issues. To this end, the chapter contains commitments by the Parties to ensure that certain conduct or activities constituting means of bribery or corruption are made criminal offences in their jurisdiction, as well as to uphold their commitments in relevant international agreements to combat bribery and corruption, including the Anti-Bribery Convention and the UN Convention Against Corruption.

The Transparency chapter focusses on best practice requirements for the development and implementation of a Party's laws, regulations, procedures and administrative rulings of general application affecting the trade or investment matters covered under the Agreement. It contains obligations concerning the publication of such measures, and their administration in a consistent, impartial and reasonable manner. These include opportunities for those interested in such measures to seek information, as well as mechanisms for review and appeal of administrative decisions or actions in relation to such measures.

4.30.1 Advantages

New Zealand's own regulatory system sets high standards of transparency, probity and good government. For a number of years now, New Zealand has consistently ranked at the top of international indices for transparent, open and non-corrupt government.

This ability to rely on objective and impartial rules and their administration is important for New Zealand business. It is also an important enabler of more inclusive growth and development.

It is similarly important for New Zealand business to be assured that the environment they are trading and investing into observes similar high standards of transparency and good governance. This is especially the case for New Zealand's small and medium sized enterprises, whose resources to challenge regulatory decisions or poor practice by foreign government officials or to sustain any losses resulting from such practices are more limited.

Provisions in the NZ-UK FTA reinforcing the importance of these important anti-corruption and transparency and good government principles sets a valuable precedent for future New Zealand FTAs with other important trading partners. It also sends a useful signal in support of the work in other international bodies, including the WTO, the UN and the OECD, in pursuit of these objectives.

4.30.2 Disadvantages

It is possible that the commitments in the Transparency chapter, including those in relation to the provision of information at the request of the other Party, may have some additional resourcing implications. Any such impact would likely be very limited, however, as the obligations under the chapter are consistent with existing policy and practice already being observed by New Zealand.

Similarly, the commitments in the Anti-Corruption chapter are consistent with current New Zealand law, policy and practice, so are not expected to involve any additional steps. They are similar to those in the CPTPP and are based on existing international obligations including the OECD Convention on Bribery and the UN Convention Against Corruption.

Given this, there would be no disadvantage to New Zealand committing to the provisions in these chapters.

4.31 Chapters 30-33: Legal and Institutional issues

The NZ-UK FTA includes typical legal and institutional provisions covering matters such as how and when the Agreement will enter into force, how it will relate to other international agreements already in place, how Parties should resolve issues in the case of a dispute, and what exceptions are allowed. In the NZ-UK FTA, these are found in the Preamble, Initial Provisions, Institutional Provisions, Dispute Settlement, General Exceptions and General Provisions, and Final Provisions chapters.

4.31.1 Advantages

The NZ-UK FTA's Initial Provisions establish that the advantages from the Agreement for New Zealand exporters are in addition to existing trade agreements (i.e. the FTA is intended to co-exist with the Parties existing international agreements) and reaffirm the Parties' rights and obligations to each other under existing international agreements to which both are Party, including the WTO Agreement.

In the Institutional Provisions chapter, a framework for ongoing consultations between the Parties is established. This comprises a Joint Committee, six subsidiary sub-committees and six working groups, tasked with overseeing the implementation of the Agreement.

The chapter also contains general provisions outlining the Parties' intention to undertake periodic general reviews of the Agreement, to establish an overall contact point to facilitate communication on matters concerning the Agreement, and to cooperate in the exchange of information to support the effective functioning of the Agreement. Such institutional arrangements are common practice in FTAs, and provide a mechanism for New Zealand to engage in follow up to ensure the Agreement is delivering the benefits intended and remains fit for purpose in the future.

The importance of domestic engagement also features in the Institutional Provisions chapter. This supplements specific engagement provisions in other chapters and recognises the value of promoting greater engagement and participation from a cross-section of society in the development and implementation of trade policy. This aligns with New Zealand's Trade for All approach and objectives.

Under the Dispute Settlement chapter, the New Zealand Government would be able to pursue a matter to formal dispute resolution should the UK fail to act consistently with its obligations under the Agreement. This helps to ensure the advantages gained across the Agreement are accessible to New Zealand goods and services exporters.

The General Exceptions chapter sets out a series of exceptions to ensure that the Government is able to make policy and undertake measures to give effect to that policy in the areas covered by these exceptions. The advantage of these exceptions is broad-ranging, given the variety of important policy areas covered by the exception provisions, including health, environment, security, taxation, and the Treaty of Waitangi. Key aspects of the General Exceptions chapter are:

- the incorporation of the GATT and GATS general exceptions, including those concerning measures necessary to protect public morals, human, animal or plant life or health, and those related to the conservation of exhaustible natural resources. The NZ-UK FTA also makes clear that the two governments' rights to take measures necessary to protect human, animal and plant life or health extends to any such measures necessary to mitigate climate change or relating to the conservation of natural resources;
- a specific provision recalling the range of exclusions and exceptions across the Agreement that apply to the UK's National Health Service and New Zealand's health and disability system;
- a security exception that allows either Party to take any action which it considered necessary for the protection of its essential security interests;
- a temporary safeguard measures exception providing for a situation of serious balance of payments and external financial difficulties;
- taxation exceptions that set out the scope of those taxation measures where the Agreement's obligations do apply and those where they do not;
- a Treaty of Waitangi exception which enables the New Zealand Government to take measures it deems necessary to accord more favourable treatment to Māori regarding matters covered under the Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.

This also states that the interpretation of the Treaty of Waitangi is not subject to dispute settlement; and

- extension of the General Exception applying to measures necessary for the protection of national treasures of artistic, historic or archaeological value to also cover measures to support creative arts of national value. This exception does not apply to the Intellectual Property chapter.

4.31.2 Disadvantages

The legal and institutional provisions in the NZ-UK FTA do not present any disadvantages to New Zealand. It should be noted though that these legal and institutional provisions are reciprocal in nature. This means that policy measures taken by the New Zealand Government would be subject to the same dispute settlement procedures as those available to New Zealand. Historically, New Zealand has been subject to only one complaint by a trading partner. This was under the GATT. New Zealand has not been subject to any complaints under its FTAs.

5. Legal Obligations for New Zealand of the Treaty Action, Reservations to the Treaty, Dispute Settlement Mechanisms

This section sets out, chapter by chapter, the legal obligations that would apply to New Zealand under the NZ-UK FTA. The reservations to the treaty are discussed in the respective chapters where they are found in the Agreement.

5.1 Chapter 1: Initial Provisions and General Definitions

The Initial Provisions and General Definitions chapter sets out how the NZ-UK FTA will interact with other international agreements. Article 1.2 makes clear that the Parties intend the FTA to co-exist with their existing international agreements and records the Parties' affirmation of their rights and obligations to each other under existing international agreements to which both countries are party, including the WTO Agreement. Article 1.2.2 further provides that, in the event of any inconsistency between this Agreement and other agreements to which both are party, the UK and New Zealand will immediately consult with a view to finding a mutually satisfactory solution. Article 1.2.3 states that for as long as the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement of the UK from the EU is in force, nothing in this Agreement shall preclude the UK from adopting or maintaining measures further to that Protocol provided that such measures are not used as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade. Article 1.2.4 provides a consultation mechanism to discuss the effects of any measure pursuant to the Protocol, to seek a mutually acceptable solution.

The General Definitions section covers cross-cutting definitions that apply across the FTA. The key definitions include:

- **National** – which for New Zealand means a citizen of New Zealand under its laws or a natural person who has the right of permanent residence in New Zealand; and for the UK, a British Citizen in accordance with its applicable laws and regulations, or a permanent resident.
- **Territory** – which means:
 - for New Zealand, the territory of New Zealand and the exclusive economic zone, seabed and subsoil over which it exercises sovereign rights with respect to natural resources in accordance with international law, but does not include Tokelau;
 - in respect of the UK:
 - (i) the territory of the United Kingdom of Great Britain and Northern Ireland including its territorial sea and airspace;
 - (ii) all the areas beyond the territorial sea of the United Kingdom, including the sea-bed and subsoil of those areas, over which the UK may exercise sovereign rights or jurisdiction in accordance with international law;
 - (iii) the Bailiwicks of Guernsey and Jersey and the Isle of Man (including their airspace and the territorial sea adjacent to them), territories for whose

international relations the UK is responsible, as regards the following provisions in their entirety, unless otherwise provided in this Agreement:

- (A) Chapter 2 (National Treatment and Market Access for Goods, including Annex 2A (Schedule of Tariff Commitments for Goods));
- (B) Chapter 3 (Rules of Origin and Origin Procedures);
- (C) Chapter 4 (Customs Procedures and Trade Facilitation);
- (D) Chapter 5 (Sanitary and Phytosanitary Measures);
- (E) Chapter 6 (Animal Welfare)
- (iv) any territory for whose international relations the UK is responsible and to which this Agreement is extended or further extended in accordance with Article 33.6 (Territorial Extension) in the Final Provisions chapter.

- **regional level of government** – which means:

- (i) for New Zealand: the term regional level of government is not applicable;
- (ii) for the United Kingdom:
 - (A) England, Northern Ireland, Scotland or Wales; or
 - (B) Her Majesty's Government of the United Kingdom of Great Britain and Northern Ireland in respect of England, Northern Ireland, Scotland or Wales but not the UK as a whole.

5.2 Chapter 2: National Treatment and Market Access for Goods

The National Treatment and Market Access for Goods chapter contains the following obligations:

5.2.1 Scope

Article 2.2 states that unless otherwise provided in this agreement, this chapter applies to trade in goods between the Parties.

5.2.2 National Treatment

The National Treatment obligation in Article 2.3 requires each Party to accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994, including its interpretative notes.

Article 2.11.1 requires both Parties to treat remanufactured goods of the other Party no less favourably than the treatment accorded to a like good in new condition, provided that the remanufactured good enjoys a similar warranty to a like good in new condition. Each Party may require that a remanufactured good is identified as such for distribution or sale.

5.2.3 Classification of Goods

Each Party must classify goods in trade between the Parties on the basis of each Party's tariff nomenclature and in conformity with the Harmonized System (Article 2.4).

5.2.4 Elimination of Customs Duties

Unless the Agreement states otherwise, both Parties are prohibited from:

- increasing any customs duty on an originating good of the other Party above the base rates established for each good in each Party's tariff schedule; or
- adopting a new customs duty on an originating good of the other Party (Article 2.5.1).

If a Party's MFN customs duty is lower than the FTA rate of duty, that Party must apply the MFN rate of duty to originating goods (Article 2.5.4).

In addition, and unless otherwise stated in the Agreement, each Party is obligated to eliminate its customs duties on originating goods in accordance with its Tariff Schedule (Article 2.5.2).

For each good, the base rate of customs duty to which reductions are to be applied shall be specified in Annex 2A (Schedule of Tariff Commitments for Goods) (Article 2.5.3).

5.2.5 Accelerated Duty Elimination

Either Party may request consultations to consider accelerating the elimination of customs duties set out in the Tariff Schedules. Both Parties must enter into consultations if such a request is made (Article 2.6.1). An Agreement by the Parties to accelerate customs duty elimination shall supersede any duty rate for such good under the FTA and shall enter into force on such date or dates as mutually agreed between the Parties (Article 2.6.2).

A decision to accelerate the elimination of customs duties on originating goods of the other Party can be made unilaterally or by both Parties. If one Party unilaterally accelerates duty elimination, it must inform the other Party as early as practicable before the new rate of customs duty takes effect (Article 2.6.3).

5.2.6 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 the other Party's territory for repair or alteration (Article 2.7.1);
- a good is imported temporarily from the customs territory of a Party into the other Party's territory for repair or alteration (Article 2.7.3); and
- the import is of commercial samples of negligible value or printed advertising materials (Article 2.8).

Article 2.9 requires that each Party grant duty free temporary admission for the following kinds of goods (regardless of origin):

- goods intended for display or use at exhibitions, fairs, meetings, demonstrations or similar events;
- professional equipment;
- containers, commercial samples, advertising films and recordings;

- goods imported for sports purposes;
- goods imported for humanitarian purposes; and
- animals imported for specific purposes.

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

Each Party is required to adopt procedures providing for the expeditious release of goods admitted under Article 2.9.5.

In instances where a good is temporarily admitted under Article 2.9, each Party must permit the good to be re-exported through a customs point of departure other than that through which it was admitted (Article 2.9.6). In addition, each Party is required to provide that the importer or other person responsible for goods admitted under Article 2.9 will not be liable for failure to export the goods within the period provided for temporary admission (including any lawful extensions to that period), provided they can demonstrate to the importing Party that the goods in question were totally destroyed (Article 2.9.7).

5.2.7 Import and export restrictions

Article 2.10.1 prohibits both Parties from adopting or maintaining import or export prohibitions or restrictions with respect to bilateral trade, unless such prohibitions are consistent with Article XI of the GATT. This obligation also applies to remanufactured goods. In situations where a Party adopts or maintains import or export controls on used goods on the basis that they are used goods, that Party shall not apply the same measures to remanufactured goods (Article 2.11.2).

In addition, neither Party is permitted to adopt or maintain:

- export and import price requirements (unless it is for enforcing countervailing or antidumping duties);
- import licensing conditioned on the fulfilment of performance requirements; or
- voluntary export restraints inconsistent with Article VI of GATT 1994 (Article 2.10.2).

Article 2.12 sets out a range of obligations for import licensing procedures. Each Party must:

- ensure that import licensing procedures are implemented transparently and predictably, and applied in accordance with the WTO Import Licensing Agreement (Article 2.12.1);
- notify the other Party of new import licensing procedures or modifications within the timeframes set out in Article 2.12.2;
- publish on an official government website any new or modified import licensing procedure, including any information requirements set out in 1.4(a) of the Import Licensing Agreement, within the timeframe set out in Article 2.12.4;

- when requested by the other Party, promptly provide any relevant information pertaining to any import licensing procedure it has adopted or maintained (Article 2.12.5); and
- respond within 60 days to enquiries from the other Party or traders regarding the criteria employed in granting or denying import licenses (Article 2.12.6).

Article 2.13 sets out a range of obligations for export licensing procedures. Each Party must:

- consider using other measures to achieve an administrative purpose when seeking to adopt or review an export licensing procedure (Article 2.13.1);
- publish any new export licensing procedure or any modification to an existing export licensing procedure and where practicable within 45 days before the measure takes effect (Article 2.13.2);
- notify the other Party of:
 - its existing export licensing procedures within 30 days after entry into force; and
 - any new export licensing procedures and any modifications to existing export licensing within 60 days of its publication, including references to source material (Article 2.31.3); and
- ensure that the publication of any export licensing procedure includes all the information required under Article 2.13.4.

Article 2.14 requires each Party to ensure that all fees and charges (other than customs duties, charges equivalent to an internal tax or other internal charge are applied consistently with GATT Article III:2 and antidumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports and exports for fiscal purposes (Article 2.14.1). Parties must make available online all such fees and charges (including any updates or changes) and fees and charges shall not be applied until the relevant information has been published (Article 2.14.2). Parties are also prohibited from requiring consular transactions in connection with the import of any goods of the other Party (Article 2.14.3), and neither Party is to levy such fees and charges on an *ad valorem* basis.

Article 2.15 prohibits either Party from applying duties, taxes, or other charges on the export of goods to the other Party except where such fees are applied to goods domestically.

5.2.8 Data exchange on preference utilisation

Article 2.16 requires the Parties to exchange import data on bilateral trade for a 15 year period following entry into force (and thereafter at the direction of the Goods Committee) for the purpose of monitoring the functioning of the FTA and calculating preference utilisation rates. (Article 2.16.1). The scope of the data required to be exchanged between the Parties is described in Article 2.16.2.

5.2.9 Institutional provisions for goods trade

Article 2.17 establishes a Goods Sub-Committee, comprising government representatives of each Party. The Sub-Committee is to meet at the request of either Party or at the request of the Joint

Committee and shall be co-chaired, with meetings hosted alternately (Article 2.17.2). The functions of the Goods Sub-Committee include:

- promoting trade between the Parties;
- reviewing and monitoring the implementation of the Goods chapter, Trade Remedies chapter, Rules of Origin chapter, Customs and Trade Facilitation chapter, and Technical Barriers to Trade chapter;
- addressing tariff and non-tariff barriers relating to goods trade between the Parties;
- obligations relating to the Harmonised System and classification of goods;
- monitoring preference utilisation rates;
- working with other institutional groups established under the Agreement; and
- undertaking any other work that the Joint Committee may designate.

Decisions of the Sub-Committee are required to be made by mutual agreement (Article 2.17.5) and the Committee is required to report to the Joint Committee with respect to its activities (Article 2.17.7).

Article 2.18 establishes consultation mechanisms for the chapter. Where a Party considers that any non-tariff measure of the other Party adversely affects bilateral goods trade, that Party may request information or consultations on the measure with a view to resolving any concerns. The other Party must respond promptly to such requests (Article 2.18.1). Any consultation is to be conducted within 60 days of the request, unless mutually determined otherwise (Article 2.18.4). If a request is urgent or is related to perishable goods, the responding Party shall give prompt and reasonable consideration to any request to hold consultations within a shorter timeframe (Article 2.18.5). Any consultation taken under the article is without prejudice to the rights and obligations of either Party regarding dispute settlement procedures (Article 2.18.6).

5.2.10 Annex 2A (Schedule of Tariff Commitments for Goods)

This Annex sets out each Party's tariff schedules and information pertaining to their to the tariff schedules.

For New Zealand, Part 2A-1 sets out the Notes for Schedule of New Zealand.

For the United Kingdom:

- Part 2B-1 contains the Notes to its tariff schedule, setting out the applicable tariff elimination categories;
- Part 2B-2 contains provisions related to the Tariff Rate Quotas established as part of the agreement, including with regards to quota administration and transparency, and the specific tariff line coverage and treatment of each product subject to a Tariff Rate Quota including quota volumes on a year-by-year basis;
- Part 2B-3 contains provisions related to the Product Specific Safeguard for Beef that applies from Year 11-15 following entry into force of the FTA, including with regards to transparency, applicable tariff, and trigger quantity on a year-by-year basis;

- Part 2B-4 provides the tariff-line specific conversion factors for calculating carcass weight equivalent (CWE) volumes for the Sheep Meat quota (TRQ-2) from the product weight.
- Part 2B-5 is the Schedule of Tariff Commitments of the United Kingdom, on a tariff-line basis, with explanatory information on the Base Rate, Tariff Staging Category and Notes provided for in Parts 2B-1 through to 2B-4.

5.3 Chapter 3: Rules of Origin and Origin Procedures

The Rules of Origin (ROO) chapter establishes the rules for determining whether goods traded between New Zealand and the UK are considered to 'originate' in one of the Parties. Goods must qualify as 'originating' in order to qualify for tariff preferences under the NZ-UK FTA.

5.3.1 Section A: Definitions and General Provisions

Each Party is required to provide three avenues through which goods can qualify as '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 both of the Parties (such as fruits, plants or animals);
- produced entirely in the territory of one or both of the Parties, exclusively from originating materials; or
- produced entirely in the territory of one or both of the Parties using non-originating materials, provided that the good meets the criteria set out in the Product Specific Rules (PSR) Annex.

The methods set out in the PSR Annex 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 materials not originating in NZ or the UK that are used in its production of that good, have undergone a specified change of tariff classification at either the chapter, heading or subheading level of the HS system.
- regional value content (RVC): this approach, which is provided as an alternative option for industrial products, is based on the value added by New Zealand or UK producers.
- process rule: under this approach, a good will qualify as originating if it has completed a specific production process identified in the Annex (for example, refining of oil).

In addition, when a recovered material 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 considered to be originating (Article 3.15). "Recovered material" and "remanufactured good" are both defined in the Goods chapter of the Agreement.

Article 3.4 sets out the two methods to be used to determine the RVC of a good.

Articles 3.5 to 3.7 set out how to value the materials used in the production process when calculating the RVC of a good. These include:

- the value of processing materials;

- the costs of freight, insurance, and packing incurred in transporting materials to where the good is produced;
- duties, taxes, and customs brokerage fees on materials; and
- value of any originating material used in the production of the non-originating material.

It is a requirement that the production process take place in the territory of one or both of the Parties.

Article 3.8 requires each Party to provide for the cumulation of materials, including non-originating materials that are further produced in a Party, even if that production is not sufficient to confer originating status (known as full cumulation). This means any processing undertaken in either Party can count towards achieving originating status for a good. In addition, the cumulation provisions allow New Zealand and the UK to explore extending the scope of cumulation to developing countries and mutual FTA partners in the future.

Under Article 3.9, each Party will allow a small tolerance for a good (15 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 tolerance (or 'de minimis' as it is known in some New Zealand FTAs) only applies under a CTC rule. This means that if the CTC rule does not allow manufacture from non-originating parts for a certain good, this provision softens that requirement by allowing the good to still be originating provided the value of the non-originating materials does not exceed 15 percent of the value of the good.

In addition, for goods in chapters 1-24 and 50-63 of the Harmonised System, there is an optional weight based tolerance, which is 15% of the net weight of the good can be non-originating.

Under Article 3.10, a good must either be transported directly from the exporting Party to the importing Party, or if the good is transported through the territory of a non-Party, it must not undergo further production or be released into free circulation in the territory of a non-Party.

Articles 3.11 to 3.16 set out in more detail specific conditions in relation to determining the origin status of a good, specifically:

- Article 3.11 provides that an indirect material (such as fuels, solvents and lubricants) is considered to be originating regardless of where it is produced. The Article provides an indicative list of indirect materials.
- Article 3.12 establishes that accessories, spare parts, tools, and instructional and other information that is normally provided with a good (for example, a spare tyre) will be considered as part of the good and have the same originating status as the good with which they are delivered.
- Article 3.13 states that if goods are classified as a set (in accordance with the General Rules of Interpretation of the Harmonised System) in order to be originating either all the components in the set need to be originating or where the set contains non-originating components, at least one component needs to be originating and the total value of the non-originating components does not exceed 20 percent of the value of the set.
- Article 3.14 establishes that packaging materials and containers for which a good is packaged for retail sale, and are classified together with the good, will not be taken into account when determining origin if the good is wholly obtained or produced entirely in a

Party, or gains origin through a CTC rule in the PSR schedule. Where a good gains origin status through an RVC requirement in the PSR schedule, packing materials and containers must be taken into account as originating or non-originating, as the case may be, in calculating the regional value content of the good. In addition, the article establishes that packing materials and containers used to transport or ship a good will not be taken into account when determining origin of the good.

- Article 3.16 provides that a fungible good or material be treated as originating based on physical segregation, or, where commingled, by the use of an accepted inventory management method provided that the inventory management method is used throughout the fiscal year.

Article 3.16 establishes a Working Group on Rules of Origin and Trade Facilitation to ensure the effective implementation and operation of the Rules of Origin and Customs and Trade Facilitation chapters.

5.3.2 Section B: Origin Procedures

Section B of the chapter sets out certain procedures which each Party must apply, as summarised below.

Each Party must allow an importer to make a claim for preferential tariff treatment based on an origin declaration completed by the producer or exporter of the good, or based on the 'importer's knowledge' that the good is originating (Article 3.16). The rules governing a declaration are provided in Article 3.17 and Annex 3.2 (Origin Declarations – Guidance).

In addition, a Party is not able to reject an origin declaration solely due to minor errors in a document, or discrepancies between documents, provided those errors or discrepancies do not create doubt about the origin of the goods (Article 3.22). Moreover, where there is an error or discrepancy, each Party shall provide that a corrected document may be submitted within 30 days.

The Agreement (Article 3.18) requires each Party to waive the requirement to present an origin declaration on importation where either:

- the customs value of the goods being imported does not exceed UK £1,000 for goods being imported into the UK, or NZ\$2,000 for goods being imported into NZ; or
- it is a good for which the importing Party has waived the requirement or does not require the importer to present an origin declaration.

This waiver does not apply if the importation is considered to be part of a series of importations undertaken for the purpose of avoiding the requirement for an origin declaration.

Recognising that a claim under the Agreement for a preferential tariff rate may not always be made at the time of importation, Article 3.20 requires Parties to allow an importer to apply for preferential tariff treatment up to one year after the importation, and seek a refund of any excess duties paid, provided the good would have qualified for preferential tariff treatment when it was imported and adequate supporting documentation can be provided.

Article 3.21 sets out actions a producer, exporter or importer must take if they become aware that an origin declaration they completed, or a claim made, is based on incorrect information, or there has

been a change that affects the origin status of a good. In order to encourage voluntary notification of an error or change in circumstances, the Article encourages a customs authority to consider voluntary notification when considering the application of any penalty.

Each Party is required to ensure that a producer, exporter or importer who hold records relating to a proof of origin are required to hold those records for four years or longer in accordance with a Party's relevant laws and regulations. These records can be held in any form as long as they can be promptly retrieved, and must be provided on request to a customs authority (Article 3.24).

Article 3.24 details the means a Party may use to verify whether a good qualifies for origin status under the chapter. The article establishes a staged verification process, details the information that can be sought, the timelines for actions to be undertaken in, and requires a written notification of the result of the verification activity.

Article 3.26 provides for the confidentiality of information, referring to a substantive article on confidentiality contained in the Customs Procedures and Trade Facilitation chapter.

Article 3.29 allows for documents that support an origin declaration to be issued in a non-Party.

Recognising that some goods may either be in transit, or have not been imported, when the Agreement enters into force, Article 3.30 provides a limited period when a claim for preferential tariff treatment can be submitted for these goods.

5.4 Chapter 4: Customs Procedures and Trade Facilitation

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

- ensuring customs procedures and laws are applied in a manner that is predictable, consistent, transparent, and non-discriminatory (Article 4.3.1). This includes ensuring comprehensive information on customs laws and requirements is easily accessible and published online (Article 4.5), and the issuing of advance rulings on origin and classification (Article 4.12). There is also a commitment to establish enquiry points to answer enquiries from traders and provide access to trade documents (Article 4.5.4).
- ensuring the expeditious clearance and release of goods. Each Party is required to adopt or maintain procedures providing for advance electronic submission and processing of information before the physical arrival of imported goods to enable release of the goods on arrival (Article 4.9.1(b)). All imported goods will be released as soon as possible on or following arrival, but in any case within 48 hours of arrival at Customs, provided all requirements have been met (Article 4.9.1).
- expedited shipments (Article 4.8) and perishable goods (Article 4.10) will be released within 6 hours of arrival, provided all requirements have been met. Perishable goods will also be given appropriate priority when scheduling any required examinations (Article 4.10.3).

- encouraging cooperation between the Parties' customs agencies on customs related matters, with a view to further developing trade facilitation while ensuring compliance with respective customs laws and procedures, and improving supply chain security (Article 4.4).
- adopting or maintaining penalties for violations of customs laws, regulations and procedural requirements and ensuring that those penalties are proportionate and non-discriminatory (Article 4.18).
- ensuring the ability to seek review and appeal any decision made by customs authorities, and for the outcome of the review or appeal to be provided in writing, including the reasoning behind the outcome of the review and appeal (Article 4.17).
- adopting or maintaining a risk management system for assessment and targeting that enables respective customs administrations to focus inspection activities on high-risk consignments and expedite release of low-risk consignments, and that avoids arbitrary or unjustifiable discrimination (Article 4.11).

5.5 Chapter 5: Sanitary and Phytosanitary Measures

This chapter applies to all sanitary and phytosanitary (SPS) measures that may, directly or indirectly, affect trade while protecting human, animal and plant life and health. It also applies to cooperation on antimicrobial resistance (AMR). It does not, however, apply to a measure or good covered by the NZ-UK Sanitary Agreement (5.2). These commitments fall within current New Zealand policy settings and include:

- a commitment to recognise the equivalence of sanitary or phytosanitary measures, even if the measures differ to those established by the importing Party providing they achieve the importing Party's appropriate level of protection (5.6).
- a commitment to recognise the concepts of Pest Free Areas, Pest Free Places of Production and Pest Free Production Sites, as well as areas of low pest prevalence as specified in the International Plant Protection Convention Standards (ISPM) (5.7).
- a commitment to ensure that SPS measures are based on the relevant international standards, guidelines or recommendations, or if a Party's SPS measures are not based on international standards, guidelines, or recommendations, that they are based on a risk analysis carried out in accordance with relevant provisions, including Article 5 of the WTO SPS Agreement (5.8).
- provisions to carry out audits to verify that all or part of the regulatory control programme of the exporting Party's competent authority is functioning as intended and an obligation to ensure that any measure taken as a consequence of an audit is proportionate to the risk(s) identified. Any audit costs would be borne by the auditing Party (5.9).
- a commitment not to use SPS measures to disrupt existing trade in a commodity, except in accordance with Article 5.8 (Risk Analysis) or Article 5.11 (Emergency Measures).
- a commitment, without prejudice to Article 5.11 (Emergency Measures), Article 5.12 (Import Checks and Fees), and Article 5.9 (Audit and Verification), to accept the inspection and official

controls applied by the exporting Party for trade and to accept, without subsequent processes, those establishments or facilities that are approved by the exporting Party for trade (5.10).

- an obligation to provide the objective and rationale for an emergency SPS measure and commence a science-based review of the measure as soon as possible (5.11).
- a commitment to carry out, without undue delay and with minimum trade disrupting effects, import checks based on the sanitary and phytosanitary risks associated with imports (5.12).
- a commitment to promote the implementation of electronic certification to facilitate trade and deter fraud and recognition that low risk food commodities should not require health certification, unless justified by a risk assessment (5.13).
- recognition that antimicrobial resistance (AMR) is a serious threat to human and animal health and acknowledgment that the two country's strategies and policies are designed to deliver comparable outcomes in reducing the development and spread of AMR (5.14).
- a commitment to cooperate in and follow, where practical and economically feasible, existing and future AMR guidelines, standards, recommendations, and actions developed in relevant international organisations, that aim to promote the prudent and responsible use of antimicrobial agents (5.14).
- a commitment to notify any significant change to pest status or food safety issue related to a product traded between the Parties (5.15).
- a commitment to conduct technical consultations as soon as possible, and in any case within 30 days, if either side considers that a measure or draft measure within the scope of the chapter, or its implementation, is inconsistent with the chapter (5.17).
- acknowledgement that neither side has recourse under Chapter 31 (Dispute Settlement) for a matter arising under this chapter.

5.6 Chapter 6: Animal Welfare

The objective of the Animal Welfare chapter is to promote cooperation between the UK and New Zealand on animal welfare of farmed animals. It recognises the two Parties' commitment to high standards of animal welfare and recognises that, although the systems for delivering this differ between New Zealand and the UK, these provide comparable outcomes.

As well as providing for enhanced bilateral cooperation on animal welfare and the promotion of closer understanding of each other's regulatory systems and approaches in this area; the chapter also includes an undertaking to cooperate more closely together in international bodies on the development and promotion of animal welfare.

As befits the cooperation focus of this chapter, Article 6.6 makes clear that the dispute settlement mechanism provided for in the Agreement does not apply to the chapter on Animal Welfare.

5.6.1 Coverage and Key Principles

The chapter records the understanding the two Parties have that animals are sentient beings and notes the interest both sides have in animal welfare. The specific focus for the chapter is in respect of animal welfare for domestic farmed animals.

Articles 6.3 makes clear that each Party will set its own policies and practices for the protection of animal welfare, taking into account its international commitments. As with other important regulatory concerns, such as those aimed at protecting the environment, this article goes on to indicate that the Parties recognise that it is inappropriate to weaken or reduce their standards of animal welfare in order to attract bilateral trade or investment. Consistent with this, the Parties have undertaken not to waive or derogate from their domestic animal welfare standards in a way that would materially affect trade or investment between them and to use their best endeavours not to weaken or reduce their domestic levels of animal welfare protection.

An important key principle underpinning this chapter is the recognition in Article 6.3.5 that, although the farming practices in each Party differ substantively, each Party accords high priority to animal welfare in their farming practices and that the Parties' respective standards and official control systems supporting them provide comparable outcomes across multiple fronts.

5.6.2 Cooperation

Under Article 6.4, the Parties have agreed to undertake further cooperation on animal welfare. In particular, they undertake to exchange information, expertise and experience in the animal welfare field, with the objectives of improving their understanding of each other's regulatory systems, policies and strategic approaches to animal welfare, and enhancing animal welfare standards. To this end, the Parties have indicated an intention to build on their existing cooperation on animal welfare, including through encouraging cooperation on research in this field, as well as encouraging dialogue and exchange of information between non-governmental organisations in the UK and New Zealand with an interest in animal welfare issues.

This article also includes an undertaking to work together in international fora to promote the development of science-based animal welfare standards. In that regard, specific mention is made of work in the World Animal Health Organisation (OIE) with a focus on animal welfare standards for farmed animals

A Joint Working Group (JWG) is to be set up under Article 6.5 to provide a forum for the cooperation envisaged under the chapter, with this JWG on Animal Welfare to meet within one year of the NZ-UK FTA entering into force.

5.7 Chapter 7: Technical Barriers to Trade

The Technical Barriers to Trade (TBT) chapter builds on New Zealand's existing rights and obligations under the WTO Agreement on Technical Barriers to Trade (TBT Agreement) (Article 7.3).

Certain key provisions of the TBT Agreement are incorporated into this Agreement, which means that those provisions may be relied on for the purposes of dispute settlement (Article 7.4).

5.7.1 International Standards, Guides, and Recommendations

Article 7.6 sets out understandings and obligations in respect to the application of international standards, guides, and recommendations to its technical regulations and conformity assessment procedures.

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 relevant definitions referred to in Annex 1 of the TBT Agreement, and follow the principles and procedures set out in the TBT Committee Decision on International Standards.

Where a Party does not use relevant international standards, guides, or recommendations as the basis for its technical regulations and conformity assessment procedures, the Party must, on the request of the other Party:

- identify any substantial deviation from the relevant international standard, guide, or recommendation;
- explain the reasons why such standards, guides, and recommendations have been considered inappropriate or ineffective for the aim pursued; and
- provide the evidence on which this assessment is based, where available.

The Parties are required to encourage national standardising bodies within their territories to cooperate in appropriate circumstances, with a view to encouraging the development of international standards, guides, and recommendations, which are likely to become a basis for technical regulation and conformity assessment procedures that do not create unnecessary obstacles to trade (Article 7.6.4).

5.7.2 Equivalency of Technical Regulation

Article 7.7 sets out obligations concerning the concept of equivalence. A Party must, on the request of the other Party, give positive consideration to accepting technical regulations of the other Party as equivalent, even if they differ, so long as they adequately fulfil the objectives of its own technical regulations. In a case where equivalence is not recognised, it must, at the request of the other Party, explain the reasons for its decision (Article 7.7.1).

Article 7.7 also requires a Party to give positive consideration to a request by the other Party to develop general or further arrangements or to negotiate and conclude agreements, for achieving the equivalence of technical regulations. In a case where the request is declined, it must, on the request of the other Party, explain the reason for its decision (Article 7.7.2).

5.7.3 Conformity Assessment Procedures

Article 7.8 sets out understanding and obligations concerning the acceptance of conformity assessment procedure results and associated review processes, to include provisions that require Parties to treat conformity assessment bodies in the territory of another Party on a non-discriminatory basis.

Parties are required to undertake a review of this Article within 12 months of the entry into force of this Agreement, or such longer period as agreed to by the Parties (Article 7.8.4), with a view to:

- amending the Agreement to include a requirement that reflects the CPTPP obligation that each Party must recognise conformity assessment bodies located in the territory of the other Party and accord treatment no less favourable than its own, if by the date of the review, the CPTPP has entered into force for the UK; or
- exploring an amendment to the NZ-UK FTA to include a requirement in line with the above CPTPP provision, if by the date of the review, the CPTPP has not entered into force for the UK.

The article also contains requirements for situations in which a Party requires conformity assessment as positive assurance that a product conforms with a technical regulation (Article 7.8.5). These are that a Party must:

- select conformity assessment procedures that are proportionate to the risks involved, as determined based on a risk assessment;
- consider as proof of compliance with technical regulations the use of a supplier's declaration of conformity, i.e. a declaration of conformity issued by the manufacturer on the sole responsibility of the manufacturer, without a mandatory third-party assessment, as an assurance of conformity among the options for showing compliance with technical regulations; and
- where requested by the other Party, provide information on the criteria used to select the conformity assessment procedures for specific products.

Furthermore, the article sets out certain requirements that each Party must adhere to when a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation, and the task is not reserved to a government authority (Article 7.8.6):

- use accreditation, when appropriate, as a means to demonstrate technical competence to qualify conformity assessment bodies. Without prejudice to its rights to establish requirements for conformity assessment bodies. Each Party recognises the valuable role that accreditation operated with authority derived from government, and on a non-commercial basis, can play in the qualification of conformity assessment bodies;
- use relevant international standards for accreditation and conformity assessment;
- encourage accreditation bodies and conformity assessment bodies located within its territory to join any relevant functioning international agreements or arrangements, for the harmonisation of, or facilitation of acceptance of conformity assessment results, and where appropriate, consider using such agreements and arrangements in approving conformity assessment bodies;
- ensure that conformity assessment bodies carry out their activities in a manner that prevents conflict of interests affecting the outcome of the assessment;

- allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to conformity assessment, including subcontractors located in the territory of the other Party. Subcontractors may be required to meet the same requirements the conformity assessment body must meet to perform such testing or inspection itself; and
- ensure the details, including the scope of designation, of the bodies that have been allowed to perform such conformity assessments, are published by digital means.

Article 7.8.7 also stipulates that the Article does not preclude a Party from requiring that conformity assessment, concerning specific products, is performed by its specified government authorities. If a Party requires that conformity assessment is performed by its specified government authorities, it must:

- limit the conformity assessment fees to the approximate cost of the services rendered and, at the request of an applicant for conformity assessment, explain how any fees it imposes for that conformity assessment are limited to the approximate cost of services rendered; and
- make publicly available the conformity assessment fees.

5.7.4 Transparency

Article 7.9 sets out some transparency requirements that apply in addition to the general transparency obligations in the WTO, as well as Article 7.3.2 (Scope).

Notifications of proposed technical regulations or conformity assessment procedures published pursuant to the TBT chapter, or the WTO TBT Agreement, must include an explanation of the objectives and rationale for the approach the Party is proposing. They must be transmitted electronically to other Parties through their enquiry points established under the WTO TBT Agreement. A Party is required to consider allowing at least 60 days from the date of notification, for written comments from another Party or interested persons from those Parties and to consider any reasonable requests for extending this comment period.

Under Article 7.9.3, when a Party makes a notification under Article 2.10 or Article 5.7 of the WTO TBT Agreement, it must at the same time notify the other Party, electronically through the enquiry point.

Parties are required to take reasonable measures available to ensure that regional levels of government publish the following documents (Article 7.9.6):

- all proposals for new technical regulations and conformity assessment procedures;
- proposals for amendments to existing technical regulations and conformity assessment procedures;
- all final technical regulations and conformity assessment procedures; and
- final amendments to existing technical regulations and conformity assessment procedures.

Parties are required to ensure that all final technical regulations and conformity assessment procedures, and to the extent practicable, all proposals for technical regulations and conformity assessment procedures, of the regional level of government are accessible through official websites or journals (Article 7.9.7).

5.7.5 Cooperation and information exchange

The Parties are required to strengthen cooperation and intensify joint work in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating market access (Article 7.5.1). In particular, Article 7.5.2 requires Parties to identify and promote trade facilitative initiatives of mutual interest. Article 7.5.3 requires the Parties to give positive consideration to any sector-specific proposal that the requesting party makes for further cooperation under this chapter.

Under Article 7.5.4, the Parties are also required to explore opportunities to promote cooperation and the exchange of information between themselves and between their respective standards development and conformance organisations, public or private, on how those organisations may support the participation of developing countries in relevant international fora and in overcoming barriers to trade.

5.7.6 Technical Discussions

A Party may request technical discussions with another Party to resolve any matter that arises under the TBT chapter. The matter must be discussed within 60 days of the request, by any method, and Parties must endeavour to resolve the matter as expeditiously as possible (Article 7.11.2). Concerning technical regulations and conformity assessment procedures at the regional level of government that may have a significant effect on trade, a Party may request technical discussions under this article (Article 7.11.3). The discussions and information exchanged in the course of technical discussions is subject to Article 32.8 (Confidentiality – General Exceptions and General Provisions). Unless otherwise agreed, such discussions are without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement, or any other agreement to which both are party.

5.7.7 Marking and Labelling

Article 7.14 sets out requirements that each Party must ensure that its technical regulations concerning product marking and labelling comply with Article 2.1 and 2.2 of the WTO TBT Agreement. In particular, Article 7.14.2 lists requirements where the importing Party requires marking or labelling of a product in the form of a technical regulation. These are that:

- the importing Party must accept that labelling and corrections to labelling take place within its territory but prior to offering the product for sale in the importing Party's territory, subject to its relevant applicable laws, regulations, and customs procedures, as an alternative to labelling in the exporting Party, unless such labelling is required for reasons of public health or safety;
- the importing Party must, unless it considers that legitimate objectives under the TBT Agreement are compromised, endeavour to accept supplementary, non-permanent, or

detachable labels, marking or labelling in the accompanying documentation rather than physically attached to the product; and

- provided that it is not misleading, contradictory, inconsistent, or confusing, or that the Party's legitimate objectives are not compromised, the Party must permit the following in relation to the information required: information in other languages in addition to the language required in the importing Party; internationally accepted nomenclatures, pictograms, symbols or graphics in addition to those required in the importing Party; and additional information to that required by the importing Party.

5.7.8 Sector-specific Provisions: Cosmetic Products

Section B of the chapter includes several sector-specific provisions, including Article 7.15 on cosmetic products. Article 7.15.1 requires each Party to maintain its prohibition on animal testing in its cosmetic products laws and regulations. Neither Party can require that a cosmetic product or ingredient be tested on animals for the purposes of determining safety, efficacy or to comply with the respective laws and regulations governing the placing on the market of cosmetic products. Each Party is required to support the research, development, validation, and regulatory acceptance of alternative methods to animal testing for cosmetic ingredients and products. Article 7.16 and 7.17 cover Medicinal Products and Medical Devices respectively.

5.7.9 Sector-specific Annex: Wine and Distilled Spirits Annex

The Annex applies to bilateral trade in wine and distilled spirits. The Annex states that unless otherwise specified, the importing Party's rules will apply with respect to trade in wine and distilled spirits (Annex 7A, Section A (1) and Annex 7A, Section B (1)).

The Annex sets out a number of commitments which apply to both wine and distilled spirits. The following commitments are designed to improve certainty and flexibility for exporters by clarifying existing best practice and locking in existing rules where it is sensible to do so, to ensure that more restrictive rules are not able to be introduced by either Party in future. These are commitments to:

- make information on relevant laws and regulations publicly available (Annex 7A, Section A (4) and Annex 7A, Section B (4));
- confirm that a supplier may be required to ensure that statements on a label are truthful, not misleading, legible, and firmly affixed to the container (Annex 7A, Section A (5) and Annex 7A, Section B (5));
- require the placement of a lot identification code on containers for sale (Annex 7A, Section A (10) and Annex 7A, Section B (8)), except in specific circumstances consistent with New Zealand's regulatory framework;
- confirm that information can be displayed on a supplementary label provided it is displayed accurately (Annex 7A, Section A (17) and Annex 7A, Section B (6)); and
- confirm that alcohol content can be displayed up to a maximum of one decimal point (Annex 7A, Section A (12) and Annex 7A, Section B (7)).

The Annex also puts in place a forward-looking commitment to convene a Wine and Distilled Spirits Working Group once the Agreement enters into force (Annex 7A, Section C). The group will monitor the implementation of the commitments under the Annex and relevant side letters, provide an avenue to modify the list in the Appendix to the Annex as needed, and undertake a work programme to account for the emerging product category of dealcoholised and partially dealcoholised wines (not currently covered under the scope of the Annex).

5.7.9.1 Wine Commitments

The following commitments are aimed at locking in best practice for wine labelling, to provide flexibility for exporters in label design. This is particularly important for producers exporting to a number of different markets each of which may have different requirements. Where the commitments reflect current laws and regulations, commitments are designed to ensure that more restrictive rules are not able to be put in place unnecessarily in future. These commitments are to:

- allow mandatory information (information required to be on a label) to be repeated on a container if it is consistent with the Party's laws and regulations (Annex 7A, Section A (6));
- confirm that suppliers (a producer, importer, exporter, bottler or wholesaler) will not be required to disclose the winemaking practices used in production unless there is a legitimate health and safety objective (Annex 7A, Section A (7));
- confirm that country of origin can be presented in a variety of different forms (Annex 7A, Section A (8));
- confirm that supplier can use the term "wine" as a product name, and confirmation that a Party may also require a supplier to indicate additional information on a wine label in line with its requirements, for example relating to its product category. The use of the terms "wine of overripe grapes" and "wine based drink" will not be required where the product falls within the scope of the Annex (Annex 7A, Section A (9));
- confirm that net contents can be expressed in a variety of different ways (e.g. litres, or mL) Annex 7A, Section A (11));
- confirm that a Party's requirements for the percentage of the varietal composition shall be satisfied if a wine produced in other Party is labelled as being of single grape variety and at least 85% of the wine is obtained from the named variety Annex 7A, Section A (13));
- confirm that a Party's requirements for the percentage of the varietal composition shall be satisfied if a wine produced in the other Party is labelled as being of multiple grape varieties and at least 95% of the wine is obtained from the named varieties Annex 7A, Section A (14));
- confirm that a Party's percentage composition requirement for vintage labelling shall be satisfied if a wine produced in the other Party is labelled as being of a vintage year and at least 85% of the wine is obtained from grapes of that vintage year Annex 7A, Section A (15)); and
- confirm that a supplier will not be required to translate a trademark on a label Annex 7A, Section A (16)).

The Annex also provides a commitment to confirm that the UK will not require VI-1 certification for wine produced in New Zealand and imported into Great Britain, nor will it require future certification that is equivalent to those requirements (Annex 7A, Section A (19)).

A list of oenological practices is appended to the Annex, listing the practices authorised in New Zealand which the UK has agreed to recognise through the FTA. This, along with Annex 7A, Section A (18) means that New Zealand producers will have flexibility to produce wine either in line with the existing UK rules, or in line with the practices set out in the Annex (the majority of which are practices the UK allows other third countries access to via international agreements). This will help to level the playing field for New Zealand exporters, and increase the tools they have available for making wine intended to be exported to the UK.

5.7.9.2 Distilled Spirits Commitments

The following commitments are aimed at locking in best practice for spirits labelling, to provide flexibility for exporters in label design. This is particularly important for producers exporting to a number of different markets each of which may have different requirements. Where the commitments reflect current laws and regulations, these are designed to ensure that more restrictive rules are not able to be put in place unnecessarily in future. These commitments are to:

- make the removal or deliberate defacement of lot codes liable to penalties at the point of sale (Annex 7A, Section B (9));
- confirm that suppliers will not be required to indicate a variety of expressions of date markings on the packaging of a distilled spirit, unless the product in question has a shorter shelf life than would reasonably be expected (Annex 7A, Section B (10)); and
- confirm that a conformity assessment (or equivalent process/procedure) need not be undertaken for a product placed on the market prior to the date the process/procedure comes into force, unless problems of human health and safety occur (Annex 7A, Section B (11)).

The Annex also provides a specific commitment for whisky/whiskey (Annex 7A, Section B (12)). This commitment requires New Zealand to support any application from the UK to secure a standard for whisky/whiskey in the Australia New Zealand Joint Food Standard Code, in line with the specifications agreed for the definition. The commitment also confirms that this will not preclude New Zealand from making its own submission into the process with the same specifications (Annex 7A, Section B (13)).

5.8 Chapter 8: Trade Remedies

This chapter preserves the ability of either Party to take anti-dumping, countervailing, and global safeguard actions under WTO rules. It also establishes a Bilateral Safeguard mechanism (BSM), available to both New Zealand and the United Kingdom. The legal obligations are noted below.

5.8.1 Antidumping and Countervailing investigations

Section B of the chapter provides for transparency rules concerning anti-dumping and countervailing investigations, including (Article 8.4):

- notification for when an antidumping or countervailing duty investigation has been launched;
- opportunities for consultation before a countervailing investigation is initiated;
- rights of interested parties to express their views during an antidumping or countervailing investigation;
- opportunities for interested parties to provide information during investigations and remedy or explain a deficiency in information provided; and
- written disclosure of the essential facts of an investigation.

This chapter also builds on WTO rules by providing for the application of the “lesser duty rule” when imposing antidumping and countervailing duties, and consideration of the “public interest” during antidumping and countervailing investigations. These obligations reflect New Zealand’s current practice in trade remedy investigations and would not require a change to policy settings.

5.8.2 Global Safeguards

Section C of the chapter covers Global Safeguards, and requires that a Party that initiates a safeguard investigatory process under Article XIX of GATT 1994 and the WTO Safeguards Agreement must provide the other Party with an electronic copy of any notification given to the WTO Committee on Safeguards under Article 12.1 of the WTO Safeguards Agreement (Article 8.8). This obligation reflects New Zealand’s current practice in trade remedy investigations and would not require a change to policy settings.

5.8.3 Bilateral Safeguards

Section D of the chapter covers the Agreement’s Bilateral Safeguard mechanism (BSM), available to both New Zealand and the UK. Through this mechanism, either country can temporarily suspend customs duties reductions or increase the duty rate if there have been increased imports as a result of the customs duties reductions under the FTA and such increased imports have caused or threatened to cause serious injury to a domestic industry.

The mechanism may only apply for a limited period of up to two years, and may be extended by two years. At the end of the period during which the bilateral safeguard applies, the customs duty returns to the rate that would have applied had the safeguard measure not been put in place. The BSM is able to be applied from entry into force of the agreement until five years after tariff elimination is completed on the particular good in question.

A full investigation is required to prove whether serious injury has occurred, or is threatened, before a final BSM can be applied. A provisional safeguard measure (for up to 200 days) may also apply in limited circumstances before an investigation has been completed (Article 8.13). This article sets out that if, however, it is found after the investigation that the measure is not warranted, the country that applied the measure on a provisional basis must promptly refund the duties collected under the provisional measure.

Article 8.15 specifies that Parties may not apply, in respect of the same good and at the same time, the following:

- a bilateral transitional safeguard measure under the Trade Remedies chapter (including one adopted on a provisional basis);
- a safeguard measure under Article XIX of the GATT 1994, the Safeguards Agreement or Article 5 of the Agriculture Agreement; or
- a product specific safeguard as agreed in market access negotiations between the Parties.

These obligations reflect New Zealand's current practice in trade remedy investigations, so would not require any change to policy settings.

5.9 Chapter 9: Cross-Border Trade in Services

The obligations in the Cross-Border Trade in Services chapter apply to a wide range of measures that affect cross-border trade in services by service suppliers from the other Party, including measures that affect the production, distribution, marketing, sale, or delivery of a service, the purchase, use of or payment for a service and the access to and use of services offered to the public generally, in connection with the provision of a service (Article 9.3).

5.9.1 Reservable Obligations

Four of the obligations are subject to reservations:

- **market access:** under Article 9.4, neither Party may impose the type of quantitative limitations specified in the article, including economic needs tests, on services or services suppliers of the other Party or require a specific type of legal form through which service suppliers of the other Party must supply a service.
- **national treatment:** Article 9.5 provides that each Party must afford services and services suppliers of the other Party treatment no less favourable than the treatment it gives its own services and service suppliers in like circumstances.
- **most-favoured-nation:** under Article 9.6, each Party must afford services and services suppliers of the other Party treatment no less favourable than the treatment it gives like services and services suppliers from any other country. This obligation means that service suppliers from the UK would receive the benefits of any additional liberalisation that New Zealand might provide to third countries in future agreements.
- **local presence:** under Article 9.7, neither Party is to require that a service supplier of the other Party establish or maintain a representative office or any form of enterprise, or be resident in its territory to supply a service.

5.9.2 Non-reservable Obligations

Some other obligations cannot be reserved against, including those on:

- **payments and transfers:** Article 9.9 contains similar obligations to the GATS to permit transfers and payments relating to the supply of a service to be made freely and in a freely convertible currency. At the same time, the article recognises payments or transfers may be

prevented or delayed for purposes of law enforcement, including in relation to bankruptcy and insolvency, financial reporting, and ensuring compliance with judicial orders.

- **recognition:** Article 9.12 is also similar to the corresponding GATS provisions. It acknowledges that a Party may recognise the education or experience obtained, requirements met or licenses or certification granted by a non-Party as meeting the standards it requires for authorisation, licensing or certification of a services supplier and that this recognition can be conferred in a variety of ways, including unilateral recognition, mutual recognition or harmonisation. In such cases, the recognition available to the non-Party is not automatically extended to the other Party, but the Party extending recognition must provide adequate opportunity to the other Party to either accede to or negotiate comparable recognition arrangements.

5.9.3 Exclusions

There are a number of areas that are explicitly excluded from coverage of the chapter. These are government procurement, services supplied in the exercise of government authority, subsidies or grants, financial services as defined in the Financial Services chapter, audio-visual services and some air services (Article 9.3).

Article 9.11 also permits either Party to deny the benefits of the chapter to a service supplier of the other Party if the enterprise concerned is owned or controlled by a non-Party or a person of a non-Party or if either Party maintains a measure prohibiting transactions with the enterprise, or which would otherwise be circumvented, if the enterprise was to benefit from the chapter.

5.9.4 Reservations

As noted above, the Parties can enter reservations (Non-Conforming Measures (NCMs)) to the market access, national treatment, most favoured nation, and local presence obligations in accordance with Article 9.8.

Each Party's list of reservations (**Cross-Border Trade in Services and Investment Non-Conforming Measures**) has two parts, Annex I and Annex II:

- **Annex I** sets out existing measures (laws, regulations, decisions, practices and procedures) that the listing Party retains the right to maintain in their present form – but not make more restrictive. Measures in Annex I:
 - may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors;
 - are subject to a so-called 'standstill' commitment meaning that the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed in Annex I; and
 - are subject to a so-called 'ratchet' mechanism meaning that each Party commits that, if it autonomously liberalises a listed measure, such liberalisation will be automatically 'locked' in to the FTA.

- **Annex II** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain measures that would breach any one or more of the reservable discipline obligations. For those measures in Annex II:

- the listing Party retains the full right to regulate in a restrictive or discriminatory way, as it deems necessary;
- the so-called 'standstill commitment does not apply; and
- the so-called 'ratchet' mechanism does not apply.

New Zealand's services reservations are detailed below:

5.9.4.1 Services reservations – Annex I

Below is a summary of the non-conforming measures under this chapter that New Zealand has listed in Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures):

- Certain provisions in the *Dairy Industry Restructuring Act 2001* that provide for management of a national database for herd testing data.
- Provisions under the *Radiocommunications Act 1989* that require written approval of the Chief Executive of the Ministry of Business, Innovation and Employment for the acquisition by foreign governments or their agents of licences or management rights to use the radio frequency spectrum, or any interest therein.

5.9.4.2 Services reservations – Annex II

The reservations listed in New Zealand's Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures) allow the government to take any measure that accords differential treatment to countries under any existing bilateral or multilateral agreements and any measures under any existing or future international agreement relating to aviation, fisheries and maritime matters.

Other listed reservations in Annex II would allow New Zealand to take non-conforming measures in respect of:⁵²

- social services established for a public purpose, including health, income security and insurance, public education, public housing and social welfare.
- water, including the allocation, collection, treatment and distribution of drinking water.
- the devolution of a service that is provided in the exercise of governmental authority at the time the Agreement enters into force (where the measure is taken solely as part of the devolution).
- the sale of any shares in an enterprise, or any assets of an enterprise, where the enterprise is wholly owned or under the effective control of the New Zealand Government.
- the control, management or use of protected areas or species owned or protected under enactments by the Crown.
- measures in relation to animal welfare and the preservation of plant, animal and human life and health.

- the foreshore and seabed, internal waters as defined in international law, territorial sea, the Exclusive Economic Zone and the continental shelf.
- the provision of fire-fighting services (excluding aerial fire-fighting services).
- research and development services carried out by State funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; and certain research and experimental development services.
- composition and purity testing and analysis services; technical inspection services; other technical testing and analysis services; geological, geophysical, and other scientific prospecting services; and drug testing services.
- control of the activities of foreign fishing consistent with the provisions of the United Nations Convention on the Law of the Sea.
- the production, use, distribution or retail of nuclear energy.
- preferential co-production arrangements for film and television productions.
- the promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films.
- the export marketing of fresh kiwifruit to all markets other than Australia.
- specification of the terms and conditions for the establishment and operation of any government endorsed allocation scheme for the rights to the distribution of export products falling within the HS categories covered by the WTO Agreement on Agriculture to markets where tariff quotas, country-specific preferences or other measures of similar effect are in force; and the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.
- adoption services.
- gambling, betting and prostitution services.
- cultural heritage of national value, public archives, library and museum services, and services for the preservation of historical or sacred sites or historical buildings.
- maritime cabotage, the establishment of registered companies for the purpose of operating a fleet under the New Zealand flag, and the registration of vessels in New Zealand.
- public health or social policy purposes with respect to wholesale and retail trade services of tobacco products and alcoholic beverages.
- the supply of compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury.
- the supply of disaster insurance for residential property for replacement cover up to a defined statutory minimum.

New Zealand's Annex II also lists certain sectors or sub-sectors on which New Zealand has not made commitments under the Agreement. These include certain business and professional services, certain sub-sectors of computer services, some environmental services sub-sectors (apart from consultancy), some health services, some transport services, some sub-sectors of recreational, cultural and sporting services.

The chapter includes a cooperative article recognising the role that trade in services can play in economic development and poverty reduction (Article 9.13 – Development Cooperation). This encourages the Parties to engage in cooperative activities to support the participation of developing countries in trade in services and may include sharing information, experience and identifying best practices, and participating actively in international fora to this end.

5.9.5 Annex 9A:– Professional Services and Recognition of Professional Qualifications

This Annex recognises the essential role professional services play in facilitating trade and investment across both goods and services sectors, and in promoting economic growth and business confidence.

The Annex refers to the formation of a Professional Services Working Group (established under Article 30.10 – Institutional Provisions) and outlines the functions and work programme for this working group in Article 9A.9. The working group is to meet within one year of the entry into force of the NZ-UK FTA and, thereafter, as agreed by the Parties, with the aim of encouraging further recognition of professional qualifications, licensing or registration, including by facilitating the exchange of information between relevant professional bodies and making recommendations on best practices with regard to recognition.

As part of this work programme, the two sides undertake, in Article 9A.5, to consult with their relevant authorities in different professional services sectors to identify where there is mutual interest in dialogue on recognition of professional qualifications, licensing or registration, and to encourage them to establish dialogues with the relevant bodies of the other Party aimed at promoting further recognition of qualifications.

Under Article 9A.4, the Parties indicate that they may consider, if feasible, taking steps to provide for temporary recognition or project-specific licensing or registration to enable professional service suppliers visiting the host jurisdiction on a temporary basis to supply professional services. Such a temporary licensing system should not preclude a foreign supplier from gaining a local license to supply professional services once they have satisfied applicable local licensing requirements.

On architectural services, if a dialogue is established between the relevant regulatory bodies to promote recognition between them, paragraph 12 commits the Parties to encourage those regulatory bodies to include discussion of the potential inclusion of sustainability skills as a requirement for qualifications recognition.

Article 9A.7 covers the area of legal services. Under this section, the Parties agree to allow professionally qualified persons of the other Party to provide legal advisory services and legal arbitration, conciliation and mediation services concerning their home country law, other foreign law to the extent the lawyer is professionally qualified to practise that law or international law, without re-qualification. This does not, however, include legal representation services before the courts of either Party or authorisation, documentation or certification services only able to be provided by

notaries public or others with similar public functions. The two Parties also agree not to impose disproportionately complex or burdensome administrative or regulatory conditions on the supply of home, foreign or international law services by persons of the other Party.

In situations in which a Party regulates foreign lawyers or transnational legal practice, the two Parties agree to encourage their relevant bodies to take into consideration practical matters to enable foreign lawyers to still provide the services referred to in the Annex.

To further advance discussions in this area, Article 9A.8 establishes a Legal Services Regulatory Dialogue, composed of representatives from the legal professions of each Party. The objectives of the dialogue are to consider any matters affecting the re-qualification of lawyers in one jurisdiction in order to practice in the other. This should include looking at ways to reduce additional practical legal training and post-qualification supervision, particularly for experienced lawyers, as well as timeframes for re-qualification and admission to practice law. The dialogue will also share information and expertise on forms of business structure for the supply of legal services and other regulatory matters affecting the legal profession.

5.9.6 Annex 9B: Express Delivery Services

This Annex covers ‘express delivery services’, which are defined as services concerning the collection, sorting, transport and delivery of items, including documents, parcels and goods, on an expedited and tracked basis. It does not include mail services designated by the two governments or air or maritime transport services per se.

In order to ensure fair competition, each Party has undertaken not to permit a supplier of a service covered by a postal monopoly or universal service obligation to cross-subsidise their own or another supplier of ‘express delivery services’ from revenue derived from these monopoly privileges or universal service obligations (Article 9B.3.1). Nor will either Party permit a supplier of services covered by a postal monopoly to abuse its monopoly position to act counter to the market access or national treatment obligations in the Services and Investment chapters in relation to ‘express delivery services’ (Article 9B.3.2).

The Parties have committed not to set the provision of a universal service as a requirement for the authorisation or licensing of an ‘express delivery services’ supplier or to assess fees or other charges on an ‘express delivery services’ supplier in order to fund another delivery service (Article 9B.3.3).

Article 9B.3.4 of the Annex obliges the Parties to ensure that any authority responsible for regulating ‘express delivery services’ is independent (“not accountable to any supplier of express delivery services”) and adopts decisions and procedures that are impartial, non-discriminatory and transparent with respect to all express delivery service suppliers in its territory.

Annex 9C: International Maritime Transport Services

This Annex covers services providing for the transport of passengers or cargo by sea, as well as a range of auxiliary services, including container station and depot services, maritime cargo handling services, freight forwarding services and storage and warehousing services.

It contains obligations that require each Party to provide non-discriminatory access to and use of a range of services needed to provide international maritime transport and related auxiliary services,

including in respect of related fees and charges (Article 9C.3.1(a)). These include access to ports; use of port infrastructure and services; use of maritime auxiliary services; access to customs facilities; and the assignment of berths and facilities for loading and unloading.

Subject to limitations set out in their non-conforming measures, the two Parties also undertake to permit the flagged vessels of the other Party to reposition owned or leased containers between the ports in each other's territory (Article 9C.3.1(b)).

The Annex precludes either Party adopting or maintaining a cargo-sharing arrangement concerning maritime transport services with a non-Party or any measures that require all or part of international cargoes to be transported exclusively by its own registered vessels or vessels controlled by its nationals (Article 9C.3.3).

5.10 Chapter 10: Domestic Regulation

The Domestic Regulation chapter sets out requirements relating to the administration of measures affecting trade in services. The areas covered are licensing and qualification requirements and procedures, as well as technical standards, affecting trade in services. These requirements complement and build on those concerning the administration of all measures of general application (as addressed in the Transparency chapter (Article 29.2)) as these relate to trade in services.

As in the chapter on Cross-Border Trade in Services, Article 10.2.4 of this chapter explicitly reaffirms the right of both Parties to regulate and introduce new regulations in order to meet government policy objectives.

5.10.1 Main requirements

The overarching requirement in the chapter (Article 10.3) is for each Party to ensure that its measures affecting trade in services or the pursuit of a related economic activity are administered in a reasonable, objective and impartial manner.

To that end, Article 10.4 requires that the development of such measures is based on objective and transparent criteria, impartial, clearly expressed and publicly available in advance. It also requires that such measures not discriminate on the basis of gender.

As well as the measures themselves, Article 10.4 requires that the procedures in relation to such measures must be impartial, accessible to all applicants, and not in themselves a barrier to fulfilment of the requirements. Similarly, where a Party adopts or maintains a measure relating to authorisation to supply a service (e.g. a licence), this must be processed and administered by the relevant competent authority in an objective, impartial and independent manner (Article 10.11).

The Parties are obliged to ensure that review procedures are in place for administrative decisions affecting the supply of a service or a related economic activity (Article 10.13). These can take the form of judicial, arbitral or administrative tribunals or procedures. Where the review procedures are not independent from the competent authority taking the administrative decision, they must nevertheless provide for an objective and impartial review.

Under Article 10.12, the two Parties undertake to ensure that where an authorisation is required for the supply of a service, detailed information is made publicly available on what is needed to meet the requirements of that authorisation, including contact information for the relevant competent authorities, the requirements and procedures for authorisation, fees, and technical standards.

Additional specific requirements apply to situations where an authorisation is required to supply a service:

- Article 10.4 specifies that the competent authority making the decision must not do so arbitrarily;
- Article 10.5 requires the Parties to avoid the need for an applicant to approach multiple authorities in respect of a single application;
- Article 10.6 stipulates that, to the extent possible, competent authorities should permit applications to be made at any time through the year; but that where a specific time period is set, this must allow a reasonable period of time for applications;
- provision should be made for applications to be made electronically (Article 10.7) and for authenticated copies of documents to be accepted, apart from in specific circumstances;
- the processing of applications for an authorisation should include publication of an indicative timeframe for processing, confirmation of receipt of an application, information on the status of the application, processing of completed applications within a reasonable period of time, advising applicants of incomplete applications and of information required to complete these and information on the reasons for rejection of an application, as well as allowing resubmission of a rejected application (Article 10.8.1); within a reasonable period of time;
- where an applicant meets the criteria and is granted an authorisation, this enters into effect without undue delay (Article 10.8.2);
- Article 10.9 requires that any fees charged for an authorisation are reasonable, transparent, publicly available in advance and not such as to restrict supply of the service; and
- where examinations are required for the authorisation of a service, these are held reasonably frequently, with enough notice for applicants and the opportunity, where practicable, to be taken electronically (Article 10.10).

In cases where the number of licences for a particular activity are limited by natural resources or technical capacity, Article 10.15 provides that each Party will nevertheless apply an impartial and transparent selection procedure, including adequate publicity about the launch and conduct of the selection procedure.

Article 10.14 concerns technical standards and requires each Party to encourage its competent authorities, as well as other relevant bodies (including international organisations), to use open and transparent processes when developing and adopting technical standards affecting services supply.

Under Article 10.17, the two Parties are obliged to maintain or establish appropriate enquiry mechanisms to respond to queries from services suppliers or those pursuing related economic activities covered by the chapter.

5.11 Chapter 11: Financial Services

This chapter contains a range of obligations relating to trade in financial services. For the purposes of the chapter, and consistent with the WTO, the term “financial services” means any service of a financial nature, and includes insurance and insurance-related services, banking and other financial services (excluding insurance), as well as services incidental or auxiliary to a financial service.

Article 11.2 sets out the scope of the chapter. It applies to measures affecting trade in financial services relating to: (i) a financial services supplier of the other Party established in the territory of the Party; (ii) an investor of the other Party and their investments in a financial service supplier established in the Party’s territory; and (iii) cross-border trade in financial services. In addition, the chapter incorporates certain obligations from Chapter 14 (Investment), including expropriation and compensation, and transfers obligations; and, where applicable, the payments and transfers obligation from Chapter 9 (Cross-Border Trade in Services).

The chapter does not apply to measures adopted or maintained by either Party relating to activities or services forming part of a public retirement plan or statutory system of social security; or conducted for the account, or with the guarantee, or using the financial resources of, the relevant Party, including its public entities (unless such activities are conducted by the Party’s established financial services suppliers in competition with a public entity or an established financial services supplier).

Government procurement is also outside the scope of the chapter, as are subsidies or grants with respect to cross-border supply of financial services, including government-supported loans, guarantees and insurance. Nor does the chapter impose any obligations on the Parties in relation to nationals of the other Party seeking access to their employment market or employed on a permanent basis in their territory.

Among the new areas covered in the chapter is an article recognising the value of a diverse, including gender-balanced, financial services industry (Article 11.13 (Diversity in Finance)). To this end, the Parties will endeavour to share best practices to promote diversity in financial services, including with regard to gender, ethnicity, professional and educational background.

Another first is the Sustainable Finance article (Article 11.14). In this, the two governments recognise the importance of international cooperation in facilitating and promoting consideration of environmental, social and governance factors in investment decision-making and other business activities. They undertake to cooperate together on these issues in relevant international fora. The article draws particular attention to the importance of the identification, pricing and disclosure of climate-related risks by financial services suppliers and investment decision-makers.

Similarly to the Cross-Border Trade in Services and the Investment chapters, there are two types of obligations under the Financial Services chapter: those against which Parties may enter reservations; and those not subject to reservations. The key obligations of each kind are described below.

5.11.1 Reservable obligations

Non-Discrimination / National Treatment (Article 11.5): Each Party is required to give established financial services suppliers, investors and investments in established financial services suppliers and specified financial services suppliers or cross-border financial service suppliers of the other Party treatment no less favourable than it gives to its own like services suppliers and investors. This can be done either through according formally identical treatment to the relevant services suppliers and/or investors; or through formally different treatment, as long as the latter is not less favourable (Articles 11.5.2 and 11.5.3). Article 11.19.4 clarifies the relationship between the national treatment obligation and relevant articles in the Intellectual Property chapter and the TRIPS Agreement.

Market Access (Article 11.6): The market access obligation prohibits either Party from putting in place certain types of quantitative limitations on established financial services suppliers, cross-border financial services suppliers or investors and investments in an established financial services supplier of the other Party. For example, neither Party can impose limitations on the number of financial services suppliers, or the number of people that may be employed in a financial service sector. It also prohibits measures that restrict or require specific types of legal entity or joint venture through which an established or cross-border financial services supplier may supply a service (Article 11.6.1).

Senior Management and Boards of Directors (Article 11.10): This article prohibits either Party from doing two things: (i) requiring established financial services suppliers of the other Party to engage individuals of any particular nationality as members of the board, senior managerial or other essential personnel; and (ii) requiring that more than a simple majority of the board of directors of an established financial services supplier of the other Party be composed of persons resident in the Party.

5.11.2 Financial Services reservations

Similar to the Investment and Cross-Border Trade in Services chapters, the Financial Services chapter allows the two Parties to enter reservations to the national treatment, market access, and senior management and boards of directors' obligations (the reservable obligations).

Each Party's Schedules of Non-Conforming Measures for Financial Services are set out in **Annex III (Financial Services Non-Conforming Measures)**, in two sections, Section A and Section B:

- **Section A** sets out existing measures (laws, regulations, decisions, practices and procedures) that a Party retains the right to maintain in their present form – but not make more restrictive. Measures in Section A:
 - may restrict the access of foreign financial service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors.
 - are subject to a so-called 'standstill' commitment meaning that the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed;
 - are subject to a so-called 'ratchet' mechanism. This means that the listing Party commits that, if it autonomously liberalises a listed measure, such liberalisation will be automatically 'locked in' to the FTA.

- are also subject to a so-called ‘ratchet’ clause, requiring the listing Party to automatically extend the benefits of any future liberalisation of these measures to the other Party.
- **Section B** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain measures that would breach any one or more of the reservable discipline obligations. For those measures in Section B:
 - the listing Party retains the full right to regulate in a way that breaches the listed reservable disciplines, as it deems necessary;
 - the so-called ‘standstill commitment does not apply; and
 - the so-called ‘ratchet’ mechanism not apply.

In addition, where a Party has set out a non-conforming measure under the Cross-Border Trade in Services or Investment chapters, then those measures will be treated as non-conforming for the purposes of the Financial Services chapter and therefore not subject to the corresponding obligations in the Financial Services chapter, to the extent that the entry is covered by the Financial Services chapter.

New Zealand’s reservations specific to the Financial Services chapter are set out in New Zealand’s schedule in **Annex III (Financial Services Non-Conforming Measures)**.

New Zealand’s Section A reservations cover:

- in regard to insurance and insurance mediation services: (i) the provision of crop insurance for wheat can be restricted in accordance with the Commodity Levies Amendment Act 1995, (ii) the provision of insurance intermediation services related to the export of kiwifruit can be restricted in accordance with the Kiwifruit Industry Restructuring Act 1999 and related regulations.
- banking and other financial services: at least one director of a corporate trustee and one director of a fund manager of a registered KiwiSaver scheme must be a New Zealand resident under the KiwiSaver Act 2006.

New Zealand’s Section B reservations cover:

- with respect to insurance and insurance related services: the supply of compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury (the Accident Compensation Act 2001 refers); and disaster insurance for residential property for replacement cover up to a defined statutory maximum (the Earthquake Commission Act 1993 refers).
- in regard to banking and other financial services: the establishment or operation of any unit trust, market or other facility established for the trade in, or allotment or management of, securities in the co-operative dairy company arising from the amalgamation authorised under the Dairy Industry Restructuring Act 2001 (DIRA) (or any successor body).
- provision of insurance and insurance-related services for industry marketing boards established for products under specified CPC codes.

- all financial services (as with all other sectors): all companies to have one or more directors, of whom at least one must live in New Zealand; or live in a country that has an agreement with New Zealand allowing for the recognition and enforcement in that country of New Zealand judgments imposing regulatory regime criminal fines, and be a director of a company that is registered in that country.
- all financial services (as with all other sectors): social services established for a public purpose, including health, income security and insurance, public education, public housing, social security and insurance and social welfare.
- all financial services: any measures providing a subsidy or grant to an entity controlled or owned (either wholly or in part) by the government that may conduct financial operations, including any measures relating to privatisation of such entities.
- all financial services: provision of a subsidy or grant to an entity that is systemically important to the infrastructure of the financial market, including: exchanges; clearing and settlement facilities; and market operators.
- banking and other financial services: any measure concerning the establishment or operation of exchanges, securities markets, or futures markets.

New Zealand has also made the following specific National Treatment commitments in respect of the provision of cross border financial services in the Schedule of New Zealand in **Annex 11A (Cross-Border Trade in Financial Services)**:

- (i) on insurance and insurance related services:
 - maritime transport, commercial aviation and space launching and freight (including satellites);
 - goods in international transit;
 - credit and suretyship;
 - land vehicles including motor vehicles;
 - fire and natural forces;
 - other damage to property;
 - general liability;
 - miscellaneous financial loss;
 - difference in conditions and difference in limits, where the difference in conditions or difference in limits cover is provided under a master policy issued by an insurer to cover risks across multiple jurisdictions;
 - reinsurance and retrocession, as referred to in Article 11.1 (Definitions);
 - services auxiliary to insurance, as referred to in Article 11.1 (Definitions); and

- insurance intermediation, such as brokerages and agency, as referred to in Article 11.1 (Definitions).
- (ii) on banking and other financial services:
- provision and transfer of financial information and financial data processing and related software, as referred to in Article 11.1 (Definitions). (This commitment does not prevent New Zealand from adopting or maintaining measures to protect personal data, personal privacy and the confidentiality of individual records and accounts;
 - advisory and other auxiliary services, excluding intermediation, related to banking and other financial services, as referred to in Article 11.1 (Definitions).
 - portfolio management services by a financial services supplier of the United Kingdom to (i) a registered scheme and (ii) insurance companies.

5.11.3 Non-reservable Obligations

Recognition of Prudential Measures: A Party may recognise prudential measures taken by any other country (Article 11.18) in the application of measures covered by the Financial Services chapter, in a variety of ways (e.g. unilateral recognition, harmonisation, or by agreement or arrangement). In such circumstances, the Party must satisfy the other Party that there is equivalent regulation, oversight and implementation of regulation in place and adequate procedures concerning the sharing of information. It must also provide the other Party with the opportunity either to accede to any agreement or arrangement of this nature, or to negotiate a comparable agreement or arrangement.

Financial Data and Information: Under Article 11.7, the Parties agree not to impose any requirements that financial data and information be stored locally. This is subject to a number of protections including the 'legitimate public policy objective exception', the prudential exception and other general exceptions, and a New Zealand specific footnote that excludes New Zealand's overseas investment approval framework, the Accident Compensation Act 2001 and the Earthquake Commission Act 1993. The Article also preserves each Party's right to adopt or maintain measures to protect personal data, personal privacy and the confidentiality of individual records and accounts and to allow regulators the ability to require data be stored locally where regulators cannot ensure access to that data for regulation and supervision.

Transparency: Under Article 11.11, the two Parties commit to promote regulatory transparency in financial services and to ensure that measures governed by this chapter are administered in a reasonable, objective and impartial manner. The two Parties also undertake to ensure certain requirements on publication and consultation of financial services regulation, similar to those provided for in the Transparency chapter, are observed to the extent practicable. Where either Party requires an authorisation to supply a particular financial service, it must ensure that decisions on authorisation are taken independently, are based on objective and transparent criteria and that the procedures are impartial, including that they do not discriminate between men and women. In circumstances where an authorisation may be required, the Party must also ensure that all the necessary information to apply for an authorisation is publicly available, including fees, procedures, technical standards and indicative timeframes for a decision on authorisation (Article 11.11.3 and 11.11.4).

Payment and Clearing Systems: Article 11.8 requires each Party to give established financial services suppliers of the other Party access to payment and clearing systems operated by public entities, and to official funding and refinancing facilities available in the normal course of ordinary business. This access must be provided in accordance with national treatment.

New Financial Services (Article 11.12): This article obliges each Party to permit financial services suppliers from the other Party to supply any new financial services that it would permit its own financial services suppliers, in like circumstances, to provide. In the case of cross-border supply of financial services, however, this obligation only applies to those financial services specified in the annex on cross-border trade in financial services. At the same time, each Party may determine the form for the supply of the new financial service and may require an authorisation for the supply of the service. The article also clarifies that a financial services supplier from either Party can apply to the other Party to supply a new financial service not supplied in either Party, but this will be subject to the laws of the Party concerned and is not captured by the obligations in Article 11.12.

Provision of Back-Office Functions (Article 11.20): the two Parties recognise the importance of avoiding the imposition of arbitrary requirements on back-office functions of an established financial services supplier in its territory (although they may require these established financial services suppliers to ensure compliance with any domestic requirements applicable to those functions).

5.11.4 Exceptions

In addition to the reservations noted above, there are a number of exceptions set out in the Financial Services chapter that apply to both Parties. These exceptions ensure that:

- similar to the GATS, it is recognised that Parties may adopt or maintain measures for prudential reasons (Article 11.4), including to protect investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.
- public entities, including Central Banks and other monetary authorities, may take measures in pursuit of monetary and related credit policies or exchange rate policies (Article 11.3.1).

In addition, nothing in the Financial Services chapter requires a Party to provide or allow access to information related to individual consumers or financial services suppliers, or to confidential information where disclosure would interfere with regulatory, supervisory or law enforcement matters or otherwise be contrary to the public interest or prejudice legitimate commercial interests (Article 11.3.2).

5.11.5 Consultations and Dispute Settlement

Article 11.17 of the chapter sets up a consultation mechanism whereby either Party may request consultations with the other Party regarding any matter under the Agreement that affects financial services and provides for the inclusion of officials with relevant expertise in financial services in any such consultations.

5.12 Chapter 12: Telecommunications

The Telecommunications chapter sets out regulatory disciplines to underpin the availability of high quality telecommunications services capable of enabling businesses and other interested persons to access the benefits of trade and support competitive telecommunications markets in the UK and New Zealand.

5.12.1 Scope

Article 12.3 makes clear that the chapter applies to all measures that affect trade in telecommunications services. The chapter does not apply to services providing content transmitted over telecommunications networks and services, audio-visual services or measures concerning the broadcast and distribution of radio and television programming, apart from the provisions concerning access and use for service suppliers to public telecommunications networks and services.

5.12.2 Approaches to Regulation

In Article 12.4, the Parties recognise that regulatory approaches and needs may differ from market to market. Accordingly, each Party may determine how best to implement its obligations under the chapter. This could take the form of regulating directly (either in anticipation of an issue that a Party expects may arise or to resolve an issue that has already arisen in the market), reliance on market forces, or use of any other appropriate means that benefit the long term interests of end users.

5.12.3 Access to and use of public telecommunications networks and services

Article 12.5 requires each Party to ensure that service suppliers of the other Party have access to and use of any public telecommunications network or service offered in its territory, on reasonable and non-discriminatory terms and conditions.

Each Party is required to permit service suppliers of the other Party to:

- purchase or lease, and attach terminal or other equipment that interfaces with a public telecommunications network.
- provide services to individual or multiple end-users over leased or owned circuits.
- connect owned or leased circuits with public telecommunications networks and services with circuits leased or owned by another service supplier.
- use operating protocols of their choice.
- perform switching, signalling, processing, and conversion.

Article 12.5.3 also requires each Party to ensure that service suppliers from the other Party can use public telecommunications networks and services to move information, both in its territory and across its borders, including for intra-corporate communications and access to information in data-bases stored in either Party's territory. Measures to protect the security and confidentiality of communications and the privacy of the personal data of users can be imposed, provided these do not discriminate in an arbitrary or unjustifiable manner or act as a disguised restriction on trade (Article 12.5.4).

Conditions on access to and use of public telecommunications networks or services can only be imposed where necessary to safeguard public service responsibilities of suppliers of public telecommunications networks and services, or to protect the technical integrity of public telecommunications networks or services (Article 12.5.5).

5.12.4 Access to Essential Facilities

Under Article 12.6, the Parties are required to ensure that major suppliers of telecommunications services in their territory provide access to their essential facilities for suppliers of public telecommunications networks and services of the other Party, on reasonable, transparent and non-discriminatory terms and conditions, unless the telecommunications regulator determines this is not necessary based on the state of competition in the market. It is up to the individual Party, however, to determine which essential facilities a major supplier must provide access to and to what extent these essential facilities need to be ‘unbundled’, in order to achieve effective competition in the market and benefit the long-term interests of end-users.

5.12.5 Interconnection

The Parties must also ensure that suppliers of public telecommunications services in their territory provide interconnection or enters into negotiations to provide interconnection with suppliers of telecommunications services from the other Party, recognising that – in principle – interconnection should be agreed through negotiation between suppliers (Article 12.7).

For major suppliers of telecommunications networks or services (Article 12.8), each Party must ensure that they provide interconnection for the suppliers of public telecommunications services of the other Party and sets out the conditions on which this must occur. These include that:

- interconnection should be provided at any technically feasible point in the major supplier’s network and at additional network termination points requested by the other supplier, subject to charges reflecting the cost of construction of necessary additional facilities;
- interconnection must be provided under non-discriminatory terms and conditions, and of a quality no less favourable than that provided to the major supplier’s own like services or its affiliates;
- interconnection should be provided in a timely manner and on transparent and reasonable terms and conditions. The facilities or services to which interconnection is provided should be sufficiently unbundled that other telecommunications suppliers do not need to pay for network elements or services that they do not need; and
- to assist interconnection negotiations, either a reference or standard interconnection offer or the terms and conditions of an interconnection agreement in effect need to be made publicly available (as appropriate), together with the applicable procedures for the negotiation of interconnection agreements with major suppliers in the Party’s territory.

5.12.6 Number Portability

Article 12.9 requires that each Party ensure that suppliers of public telecommunications services in its territory provide number portability, without impairment to quality and reliability, on a timely basis, and on reasonable and non-discriminatory terms and conditions.

5.12.7 Scarce Resources

Each Party is required to ensure it uses procedures for the allocation and grant of use of scarce telecommunications resources (including frequencies, numbers and rights-of-way) that are objective, timely, transparent, and non-discriminatory and to endeavour to take into account the public interest, including the promotion of competition, in their operation (Article 12.10).

Each Party must make public the current state of frequency bands allocated and assigned to suppliers (although it does not have to provide detailed identification of frequencies allocated or assigned for government uses) (Article 12.10.2). The Article also makes clear that the Parties may rely on market-based approaches, such as bidding procedures, to assign radio spectrum and frequencies for commercial use (Article 12.10.3).

5.12.8 Competitive Safeguards

The Parties are required to maintain appropriate measures to prevent major suppliers of public telecommunications services, which alone or together constitute “major suppliers”, from engaging in or continuing anti-competitive practices – for example, anti-competitive cross-subsidisation, using information obtained from competitors with anti-competitive effect or failing to make available timely technical information about essential facilities or other commercially relevant information necessary to provide services (Article 12.11).

5.12.9 Regulatory Principles

Article 12.13 sets out key principles necessary to ensure the independent operation of the telecommunications regulator(s) and right of appeal by those affected by the decisions of the telecommunications regulator(s). These include:

- that the Party’s telecommunications regulatory body must be legally distinct and functionally independent from any supplier of public telecommunications services;
- that the regulatory procedures and decisions of its telecommunications regulatory body or other competent authority are impartial with respect to all market participants;
- that its telecommunications regulatory body acts independently, by not taking instructions from anyone outside the body when discharging its legal functions;
- that its telecommunications regulatory body is sufficiently empowered to properly discharge its functions and that it does so in a timely and transparent manner;
- that its telecommunications regulatory body has the authority to require telecommunications suppliers to provide it with all necessary information, including financial information, to discharge its responsibilities;
- that a telecommunications supplier affected by a regulatory decision has the right to appeal that decision to an independent body; and
- that its telecommunications regulatory body reports regularly on the state of the electronic communications market and makes these reports public.

5.12.10 Authorisation to Provide Services

If either Party requires that an authorisation (i.e. a license) be granted to provide a public telecommunications network or service, it will make public the types of services requiring authorisation, together with the criteria, procedures, terms and conditions associated with the authorisation. The two Parties have agreed to endeavour to authorise the provision of services without a formal procedure and to allow a supplier of networks or services to commence operation while a decision is being sought. If a formal authorisation is required, then the Party must provide information on the length of time usually required to take a decision and to endeavour to complete the process within this timeframe (Article 12.14).

Where an authorisation is required, each Party must ensure that the criteria and any procedures, together with any obligations or conditions imposed on the grant of an authorisation, are objective, transparent, non-discriminatory and not more burdensome than necessary. Each Party is required to provide in writing the reasons for denial or revocation of an authorisation and to provide a right of appeal. Any administrative costs associated with an authorisation to provide a telecommunications network or service must also be objective, transparent, non-discriminatory and commensurate with the administrative costs involved (Articles 12.14.3, 12.14.4 and 12.14.5).

5.12.11 Universal service

The chapter makes clear that each Party may define the kind of universal service obligation it wants (Article 12.16), but that the Party is obliged to ensure that it is not more burdensome than necessary for the kind of universal service defined, and to administer the obligation in a transparent, non-discriminatory, and competitively neutral manner.

Where a Party designates a universal service supplier, this must be done in an efficient, transparent and non-discriminatory manner and the opportunity must be open to all suppliers of public telecommunications networks or services. If a Party decides to compensate a universal service supplier, such compensation must be determined through a competitive process or based on net costs.

5.12.12 International Mobile Roaming

Under Article 12.17, the Parties agree to endeavour to cooperate in promoting transparent and reasonable rates for international mobile roaming to help promote the growth of trade and enhance consumer welfare. They have undertaken to consider steps to enhance transparency and competition in international mobile roaming rates, such as through making information on retail rates easily accessible to consumers and minimising impediments to the use of international mobile roaming and technological alternatives.

5.12.13 Dispute Resolution

Article 12.18 requires that the telecommunications regulatory authority takes binding decisions, in a timely manner, to resolve any disputes that may arise between suppliers of telecommunications services on the rights and obligations under the chapter. Any such decision made by the telecommunications regulatory authority is to be made public (subject to commercial confidentiality requirements). It will also provide an explanation of the reasons for the decision taken, as well as for

the possibility of appeal of the decision. Where a telecommunications regulatory body declines to take a decision on a request to resolve a dispute, it will provide reasons for doing so, if requested.

5.12.14 Flexibility in the choice of technology

The Parties have agreed that they will not prevent suppliers of public telecommunications services from choosing the technologies they wish to use to supply their services, except in regard to measures a Party might take to protect a legitimate public policy interest. Any measure restricting that choice must not create unnecessary obstacles to trade (Article 12.20).

5.12.15 Cooperation

The two sides have agreed to adopt or maintain measures to encourage a diverse and competitive market for telecommunications services and networks in their territories and to protect the security, resilience and integrity of their telecommunications infrastructure. They will also endeavour to exchange information on the opportunities and challenges associated with telecommunications networks, infrastructure and technologies; as well as to work together in international fora to promote a shared approach to these opportunities and challenges (Article 12.21).

5.13 Chapter 13: Temporary Entry of Business Persons

The Temporary Entry chapter aims to facilitate temporary entry for people visiting the UK or New Zealand for business purposes and to ensure transparent and efficient visa processing procedures for this temporary entry. It does not apply to people seeking access to the employment market of either Party, nor does it apply to measures regarding citizenship, nationality, residence or employment on a permanent basis.

Both Parties have agreed to accord certain rights to an applicant for an immigration formality, including making a decision expeditiously after receiving a completed application (usually within 15 days, but in any case within 40 days) and informing the applicant of the decision. Where an applicant requests it, a Party must promptly provide information on the status of an application. Fees charged for processing an application for an immigration formality must be reasonable and based on the approximate cost of the services rendered (Article 13.4).

Each Party is required under Article 13.5 to set out in Annex 13A its commitments in respect of the different categories of temporary entry for business persons. This Annex includes any conditions and limitations for the entry and temporary stay under these categories. The two Parties have agreed not to adopt or maintain numerical limitations on the total number of business persons under each category or to require an economic needs test, unless this is specified in their annexed commitments.

A business person seeking temporary entry under these categories must still follow the prescribed application procedures for the relevant type of immigration formality and meet all relevant eligibility criteria for the grant of temporary entry or an extension of temporary stay under the category concerned. They must also meet any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession or otherwise engage in business activities relevant to their temporary entry for business purposes.

5.13.1 Temporary Entry Commitments

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

Table 5.13.1: Temporary Entry Commitments

Category	Description of Category	Conditions and Limitations
Business Visitors	A business person seeking temporary entry for the purposes specified, ³² who is not seeking to enter the labour market and whose principal place of business, actual place of remuneration and predominant place of accrual of profits remains outside New Zealand.	Entry for a period not exceeding in aggregate three months in any calendar year.
Intra Corporate Transferees	An executive, manager or specialist as defined and who is an employee of a goods supplier, service supplier or investor of a Party with a commercial presence in NZ and whose salary and any related payments are paid entirely by the service supplier or enterprise that employs them.	Entry for an initial stay of up to a maximum of three years. Entry for the same period for the partner and any dependent children accompanying the intra-corporate transferee.
Contractual Services Suppliers	A Contractual Services Supplier ³³ is a business person employed by an enterprise in the UK (other than a personnel agency or an enterprise established in New Zealand), that has a contract to supply services which requires	Entry for a cumulative period of not more than six months in any 12 month period or for the duration of the contact (whichever is less) and subject to an economic needs test, in designated services sectors. ³⁴

³² The purposes specified are: (i) attending meetings or conferences or business consultations, (ii) for training seminars, (iii) to attend trade fairs or exhibitions, (iv) to negotiate, take orders and agree contracts for sale of goods or services, (v) to purchase goods or services, (vi) for commercial transactions on behalf of an enterprise of the other Party, and (vii) for business consultations or negotiations concerning the establishment, expansion or winding up of a business enterprise or investment.

³³ Contractual Services Suppliers must have a minimum three-year tertiary degree and at least six years of experience relevant to the field of the service contract.

³⁴ Legal advisory services (public international law and foreign law), accounting, auditing, bookkeeping and taxation advisory services, urban planning and landscape architecture, medical, dental, midwives, nurses, physiotherapists and paramedical services, research and development, advertising, market research and opinion polling, management consulting and related services, technical testing and analysis, related scientific and technical consulting services, mining advisory and consulting, translation and interpretation services,

	the UK enterprise's employees to be present in New Zealand on a temporary basis.	
Installers and Servicers	A business person who is an installer or servicer of machinery or equipment, if installation or servicing by the supplying company is a condition of the machinery or equipment purchase.	Entry for periods not exceeding three months in any twelve-month period.
Independent Professionals	A self-employed business person with advanced technical or professional skills, without the requirement for a commercial presence, working under a valid contract in New Zealand. The Schedule sets out criteria for such persons ³⁵ and specifies that the commitment is only in respect of the services sectors in New Zealand's GATS commitments, together with some additional business and professional, education and environmental services. ³⁶	Entry for a period of stay up to a maximum of twelve months and subject to economic needs tests.

5.13.2 Provision of information

Each Party is required to promptly publish online, or otherwise make publicly available, information on the requirements for temporary entry under the chapter as well as the typical timeframe for the processing of any application for an immigration formality. Each Party is also required to have

telecommunications services, postal and courier advisory and consulting services, insurance and insurance-related advisory and consulting services, other financial advisory and consulting services, transport advisory and consulting services, and manufacturing advisory and consulting services.

³⁵ An Independent Professional must have a recognised degree or diploma qualification (resulting from at least three years of formal tertiary education) and at least six years of experience in the field in which the services are to be supplied.

³⁶ These additional service sectors are legal services (international and foreign law), integrated engineering services, consultancy relating to urban planning and landscape architecture, maintenance and repair of office machinery and equipment, including computers, other computer services, management consultancy and related services, services incidental to animal husbandry, personnel services, photographic and convention services, other business services, including credit reporting and interior design services, language training and other tuition provided in private specialist institutions, waste and waste water management, sanitation services, consultancy services on air and climate protection, noise abatement, protection of biodiversity and other environmental services.

appropriate mechanisms to respond to enquiries from interested persons regarding measures related to temporary entry.

5.13.3 Dispute settlement

The Agreement's Dispute Settlement mechanism in chapter 31 does not apply to the Temporary Entry chapter unless the matter involves a pattern of practice and the business persons affected have exhausted all available administrative remedies regarding the matter.

5.14 Chapter 14: Investment

The obligations in the Investment chapter should be read in the context of the broader Agreement, including the preambular language noting the Parties' recognition of their inherent right to regulate and their resolve to preserve flexibility to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives.

5.14.1 Reservable obligations

The obligations that the New Zealand Government owes to investors and investments under the NZ-UK FTA are of two kinds: those in respect of which Parties may enter reservations; and those that are derived from obligations owed at customary international law and in respect of which Parties may not enter reservations. Reservable obligations include:

- **Market Access:** Under Article 14.5 neither Party may impose the type of quantitative limitations specified in the article, including economic needs tests, on investments or investors of the other Party.
- **National Treatment:** Article 14.6 provides that each Party must afford investments and investors of the other Party treatment no less favourable than the treatment it gives its own investors and investments in like circumstances.
- **Most-Favoured-Nation Treatment:** Under Article 14.7, each Party must afford investments and investors of the other Party treatment no less favourable than the treatment it gives like investments and investors from any other country. This obligation means that investors from the UK would receive the benefits of any additional liberalisation that New Zealand might provide to third countries in future agreements.
- **Performance Requirements;** Under Article 14.8 parties commit to not impose discriminatory conditions on foreign investors, such as local content requirements, requirements to generate local employment, export sales or technology transfer requirements, locate production in certain place or export a given level of production. Performance requirements commitments build on WTO commitments and apply to all investments.

There are a number of exceptions to the performance requirements obligation which preserve policy flexibility for governments, including for measures necessary to protect health and the environment. In particular, certain performance requirements are not prohibited if:

- They are consistent with the TRIPS Agreement;

- They are imposed or enforced by a court, tribunal or competition authority to remedy a practice that has been determined anticompetitive;
 - They are imposed or enforced by a tribunal as equitable remuneration under copyright laws;
 - The Party adopts or maintains measures that are legitimate public welfare objectives, provided that those measures are not applied in an arbitrary or unjustified manner, or in a manner that constitutes a disguised restriction on international trade or investment.
 - They are qualification requirements for goods and services with respect to export promotion and foreign aid programs;
 - They relate to government procurement; or
 - They are imposed by an importing Party relating to the content of goods as necessary to qualify for preferential tariffs or preferential quotas (Article 14.8.9).
- Senior Management and Boards of Directors: Under Article 14.9, parties commit to not require the appointment to senior management or board of director positions persons of particular nationality or who are resident in a particular territory. New Zealand protects relevant policy space through our non-conforming measures.

5.14.2 Exclusions

There are a number of areas that are explicitly excluded from coverage of the chapter. These are activities performed in the exercise of government authority, financial services as defined in the Financial Services chapter, audio-visual services and some air services.

5.14.3 Reservations

Article 14.10 (Non-Conforming Measures) allows the Parties to maintain or adopt measures that are inconsistent with the core obligations listed above (i.e. “non-conforming measures”). Both Parties have identified their non-conforming measures in individual Schedules that are contained in two Annexes to the Agreement, in a ‘negative list’ format (Annex I and Annex II, Cross-Border Trade in Services and Investment Non-Conforming Measures):

- **Annex I** sets out existing measures (laws, regulations, decisions, practices and procedures) that the listing Party retains the right to maintain in their present form – but not make more restrictive. Measures in Annex I:
 - may restrict the access of foreign service suppliers or investors, or may discriminate in favour of domestic service suppliers or investors;
 - are subject to a so-called ‘standstill’ commitment meaning that the listing Party cannot adopt a new non-conforming measure that is more restrictive than the one already listed in Annex I; and
 - are subject to a so-called ‘ratchet’ mechanism meaning that each Party commits that, if it autonomously liberalises a listed measure, such liberalisation will be automatically ‘locked’ in to the FTA.
- **Annex II** sets out sectors or sub-sectors where the listing Party reserves the right to adopt or maintain measures that would breach any one or more of the reservable discipline obligations. For those measures in Annex II:

- the listing Party retains the full right to regulate in a restrictive or discriminatory way, as it deems necessary;
- the so-called 'standstill commitment does not apply; and
- the so-called 'ratchet' mechanism does not apply.

Finally, Article 14.10 (Non-Conforming Measures) also includes a number of carve-outs to Articles 14.6 (National Treatment), 14.7 (Most-Favoured-Nation Treatment) and 14.9 (Senior Management and Board of Directors) that need not be included in Parties' Annexes. In particular, these relate to the interaction of the national treatment and most-favoured-nation treatment obligations with intellectual property rights under the NZ UK FTA Chapter and the TRIPS Agreement. In addition, the national treatment, most-favoured-nation treatment and senior management and board of directors obligations do not apply to government procurement or subsidies or grants provided by a Party.

5.14.4 Investment reservations – Annex I

Reservations set out in New Zealand's Schedule in Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures) include:

- Requirements under New Zealand's financial reporting regime for certain overseas non-issuer companies to file audited financial statements with the Registrar of Companies.
- Provisions in the Dairy Industry Restructuring Act 2001 relating to management of a national database for herd testing data.
- Requirements in the Constitution of Chorus Limited for government approval for the shareholding of any single overseas entity to exceed 49.9 percent and that at least half of Board directors are New Zealand citizens.
- Provisions in the Primary Products Marketing Act 1953 that give the Government the ability to impose regulations enabling the establishment of statutory marketing authorities with monopoly marketing and acquisition powers for products derived from beekeeping; fruit growing; hop growing; deer farming or game deer; or goats. Such regulations may, among other things, require that board members or personnel be nationals of or resident in New Zealand.
- The requirement that only a licensed air transport enterprise may provide international scheduled air services as a New Zealand international airline. Licenses are subject to conditions to ensure compliance with New Zealand's air services agreements and may include requirements that an airline is substantially owned and effectively controlled by New Zealand nationals, has its principal place of business in New Zealand and/or is subject to the effective regulatory control of the New Zealand Civil Aviation Authority.
- The restriction that no one foreign national may hold more than 10 percent of shares that confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder. In addition, at least three members of the Board of Directors must be ordinarily resident in New Zealand, and more than half of the Board of Directors must be New Zealand citizens.

- The fact that certain foreign investment activities are subject to New Zealand's overseas investment regime as set out in relevant provisions of the Overseas Investment Act 2005, the Fisheries Act 1996 and the Overseas Investment Regulations 2005. These activities are:
 - Acquisition or control by non-government sources of 25 percent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$200 million.
 - Commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditure to be incurred in setting up or acquiring that business or those assets exceeds NZ\$200 million.
 - Acquisition or control by government sources of 25 percent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ\$100 million.
 - Commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditure to be incurred in setting up or acquiring that business or those assets exceeds NZ\$100 million.
 - Acquisition or control, regardless of dollar value, of certain categories of land that are regarded as sensitive or require specific approval according to New Zealand's Overseas Investment legislation.
 - Any transaction, regardless of dollar value, that would result in an overseas investment in fishing quota. This reservation reflects a commitment to a screening threshold for UK non-governmental investors which is higher than existing policy. No changes would be required to the way in which investments in sensitive land or fishing quota are screened. It should also be noted that that New Zealand has a reservation (noted below under Annex II) that preserves the Government's ability to alter the Overseas Investment Act approval criteria.
 - Any existing non-conforming tax measures, which are exempt from the performance requirements obligation.

5.14.5 Investment reservations – Annex II

New Zealand's schedule of reservations in Annex II (Cross-Border Trade in Services and Investment Non-Conforming Measures) allows New Zealand to take any measure that sets out the approval criteria to be applied to the categories of overseas investment requiring approval under New Zealand's overseas investment regime. (Note that the combination of Annex I and Annex II reservations in respect of New Zealand's overseas investment regime means that New Zealand can change the approval criteria against which investment activities are screened, but cannot amend the activities subject to the screening regime.)

In Annex II, New Zealand has reserved the right to adopt or maintain any measure with respect to the provision of public law enforcement and correctional services as well as the following, to the extent that they are social services established for a public purpose: child care; health; income security and insurance; public education; public housing; public training; public transport; public utilities; refuse

disposal, sanitation, waste water management, sewage, waste management, social security and insurance; and social welfare.

New Zealand has also reserved the right to accord differential treatment to countries under any existing bilateral or multilateral agreements and any measures under any existing or future international agreement relating to aviation, fisheries and maritime matters. Further, New Zealand has expressly reserved the right to adopt or maintain measures that accord differential treatment to a Party or non-party that are taken as part of the wider process of economic integration or trade liberalisation between the parties to the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) or the Pacific Agreement on Closer Economic Relations (PACER).

Other listed reservations in Annex II allowing New Zealand to take non-conforming measures include:

- Water, including the allocation, collection, treatment and distribution of drinking water. This reservation does not cover the wholesale trade and retail of bottled water.
- Compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury or disaster insurance for residential property for replacement cover up to a defined statutory maximum.
- The devolution of a service that is provided in the exercise of governmental authority at the time the Agreement enters into force (where the measure is taken solely as part of the devolution).
- The sale of any shares in an enterprise, or any assets of an enterprise, where the enterprise is wholly owned or under the effective control of the New Zealand Government.
- The control, management or use of protected areas or species owned or protected under enactments by the Crown.
- Nationality or residency in relation to animal welfare and the preservation of plant, animal and human life and health.
- The foreshore and seabed, internal waters as defined in international law, territorial sea, the Exclusive Economic Zone and the continental shelf.
- The provision of fire-fighting services (excluding aerial fire-fighting services).
- Research and development services carried out by State funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; and certain research and experimental development services.
- Composition and purity testing and analysis services; technical inspection services; other technical testing and analysis services; geological, geophysical, and other scientific prospecting services; and drug testing services.
- Controlling of the activities of foreign fishing consistent with the provisions of the United Nations Convention on the Law of the Sea.
- The production, use, distribution or retail of nuclear energy.
- Preferential co-production arrangements for film and television productions.

- The promotion of film and television production in New Zealand and the promotion of local content on public radio and television, and in films.
- The holding of shares in the co-operative dairy company arising from the amalgamation authorised under the Dairy Industry Restructuring Act 2001 (DIRA) (or any successor body); and the disposition of assets of that company or its successor bodies.
- The export marketing of fresh kiwifruit to all markets other than Australia.
- Specification of the terms and conditions for the establishment and operation of any government endorsed allocation scheme for the rights to the distribution of export products falling within the HS categories covered by the WTO Agreement on Agriculture to markets where tariff quotas, country-specific preferences or other measures of similar effect are in force; and the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.
- The establishment or implementation of mandatory marketing plans for the export marketing of products derived from agriculture, beekeeping, horticulture, arboriculture, arable farming, and the farming of animals, where there is support within the relevant industry for such a plan.
- All services suppliers and investors for the supply of adoption services.
- Gambling, betting and prostitution services.
- Cultural heritage of national value, public archives, library and museum services, and services for the preservation of historical or sacred sites or historical buildings.
- Maritime cabotage, the establishment of registered companies for the purpose of operating a fleet under the New Zealand flag, and the registration of vessels in New Zealand.
- Wholesale and retail trade services of tobacco products and alcoholic beverages for public health or social policy purposes.
- Any taxation measure with respect to the sale, purchase or transfer of residential property.
- Any measure that requires a member of the senior management to be resident in New Zealand, specifically, one member of the Board of Directors to be a New Zealand national or resident in New Zealand and a minority of the Board of Directors to be New Zealand national or resident in New Zealand where that requirement would not materially impair the ability of the investor to exercise control over the investment.

New Zealand has made specific commitments under GATS (as set out its Schedule of Specific Commitments). These commitments are reproduced in Annex II with respect to Market Access obligations only.

In Annex II New Zealand reserves the right to adopt or maintain any measures with respect to the provision of new services other than those classified in the CPC. New Zealand also reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons, subject to the provisions of Chapter X (Temporary Entry of Business Persons), that is not inconsistent with New Zealand's obligations under the GATS.

5.14.6 Non-reservable obligations

5.14.6.1 Minimum Standard of Treatment

The minimum standard of treatment obligation in Article 14.11 requires New Zealand to treat covered investments in accordance with all customary international law principles that protect the investments of aliens, including fair and equitable treatment and full protection and security. This customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation. “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 UK FTA 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).

5.14.6.2 Transfers

Under Article 14.13, each Party is obliged to permit transfers relating to covered investments to be made freely and without delay into and out of their territories, and in a freely useable currency at the market rate of exchange prevailing at the time of the transfer. 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; ensuring compliance with orders or judgements in judicial or administrative proceedings and social security, public retirement or compulsory savings schemes. Nothing in the Transfers article shall be construed to prevent a Party from applying its law relating to the imposition of economic sanctions provided that doing so does not constitute a disguised restriction on transfers.

5.14.6.3 Expropriation

The expropriation obligation in Article 14.14 and Annex 14B obliges a Party to comply with four conditions if it wishes to expropriate or nationalise a covered investment. These conditions are that the expropriation or nationalisation must be:

- For a “public purpose”.
- Made in a non-discriminatory manner.

- Accompanied by payment of prompt, adequate, and effective compensation in accordance (further details are set out in the Article as to how compensation is to be paid).
- In accordance with due process of law.

This obligation does not apply to certain actions that comply with chapter 17 (Intellectual Property) and the TRIPS Agreement. The Article also clarifies that certain actions taken by Parties in respect of subsidies or grants do not constitute an expropriation.

Annex 14B 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. It explains that determination of whether there is indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- The economic impact of the government action (although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred).
- The extent to which the government action interferes with distinct, reasonable investment-backed expectations.
- The character of the government action.

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, except in rare circumstances. For example, regulatory actions to protect public health include measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.

5.14.6.4 Denial of Benefits

Article 14.17 allows Parties to deny the benefits of the Investment Chapter to an investor of another Party that is an enterprise (and to its investments) if the enterprise is owned or controlled either by persons of a non-Party or of the denying Party and the enterprise has no substantial business activities in the territory of any Party other than the denying Party.

5.14.6.5 Investment and Environmental, Health and other Regulatory Objectives

Article 14.18 confirms that nothing in the Chapter should be read as preventing New Zealand from taking any measure that is otherwise consistent with the chapter and that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.

5.15 Chapter 15: Digital Trade

The Digital Trade chapter's objectives recognise the economic growth and opportunities that digital trade can deliver. In support of this, these objectives underline the importance of promoting consumer confidence in digital trade, advancing the interoperability of regulatory frameworks and avoiding unnecessary barriers to digital trade and supporting digital inclusion, including for Māori, women, persons with disabilities, rural populations, and lower socio-economic groups.

On scope, the chapter applies to measures the two Parties take affecting trade enabled by digital means.

The chapter does not apply to audio-visual services, or government procurement (apart from the provisions covering e-contracts, e-authentication and e-invoicing). Nor do the obligations on cross-border transfer of information by electronic means, and location of computing facilities, apply to government information or to the non-conforming measures that either Party has listed under the Cross-Border Trade in Services, or Investment chapters. The exclusion of government information also applies to Article 15.12 (Commercial Information and Communication Technology Products that Use Cryptography).

Under Article 15.4, the two Parties have agreed not to apply customs duties to electronic transmissions between them, or to content transferred electronically. This does not, however, preclude either Party from levying internal taxes, fees or other charges on electronic transmissions, including content transmitted electronically. In addition, the two Parties have committed to cooperate together in relevant international bodies to also achieve commitments by non-Parties not to levy customs duties on electronic transmissions.

Article 15.5 concerns electronic contracts and obligates the Parties not to maintain measures that would deprive an electronic contract of its legal effect simply because it is concluded electronically, or to create other obstacles to the use of e-contracts.

The Parties have agreed to maintain legal frameworks governing electronic transactions consistent with the major international instruments in this area. Moreover, they will endeavour to avoid unnecessary regulatory burdens and to facilitate input by interested persons in the development of their legal frameworks for electronic transactions. This article also recognises the importance of facilitating the use of electronic transferable records, with the Parties to take into account the UNCITRAL Model Law on Electronic Transferable Records of 2017 in doing so (Article 15.6).

Provisions on electronic authentication (Article 15.7) require that, except where the respective Party's laws or regulations specifically provide for it, neither Party will deny legal effect to, or the admissibility as evidence of, an electronic document, electronic signature, or other form of electronic authentication just because it is in electronic form.

This article also supports parties to an electronic transaction being able to mutually determine the appropriate method of electronic authentication (as well as to demonstrate to the relevant authorities that the method chosen meets their legal requirements). This does not, though, preclude either Party from requiring that the electronic authentication methods used for certain transactions should be certified or meet objective, transparent and non-discriminatory performance standards.

To the extent provided in their regimes, the Parties have also agreed to apply the same disciplines to processes that support electronic authentication, including electronic time stamps and electronic registered delivery services.

Article 15.7 encourages the use of interoperable electronic authentication and recognise the benefits of working towards mutual recognition of electronic authentication.

The provisions on digital identities (Article 15.8) recognise the ability for cooperation in this area to contribute to increased regional and global connectivity, while acknowledging that each Party will have its own different approaches to legal requirements and implementation in respect of digital identities. Given this, the Parties have agreed to strengthen cooperation on digital identities and to facilitate initiatives to promote comparability and interoperability between their regimes in this area. In this regard, cooperation between the Parties may include working together on their mutual frameworks to increase interoperability, identifying areas for exploring mutual recognition, and sharing information on best practices and working together in the development of international frameworks. At the same time, the article recognises the Parties have the right to adopt measures different to those outlined above, which may not support interoperability, in pursuit of a legitimate public policy objective.

Article 15.9 (Electronic Invoicing) attests to the ability of e-invoicing to increase efficiency, accuracy and reliability of commercial transactions and the importance of interoperability in e-invoicing systems, to support digital trade for transactions amongst governments, businesses and consumers. To this end, the Parties have agreed that the implementation of measures relating to e-invoicing should be designed to support cross border interoperability and to take into account available international frameworks, guidelines and recommendations. They have also undertaken to share best practice experience on e-invoicing systems.

Article 15.10 (Paperless Trading) complements similar efforts in the chapter on Customs Procedures and Trade Facilitation. It requires that trade administration documents be available to the public electronically and that Parties endeavour to accept submission of such documents electronically. New Zealand and the UK will also cooperate bilaterally and in international bodies on initiatives in support of paperless trading and take into account these bodies' guidelines and recommendations.

Provisions to enable recipients to address the problem of unsolicited commercial electronic messages are found in Article 15.11. As well as having in place measures to enable recipients to prevent or otherwise minimise receipt of unsolicited commercial electronic messages, the Parties have agreed to ensure that such messages are clearly identifiable, disclose who is sending the messages, enable recipients to have them stopped (at any time, without cost) and that recipients have access to redress or recourse against the suppliers of unsolicited electronic messages.

Article 15.12 (Commercial Information and Communication Technology Products That Use Cryptography) seeks to prevent the forced transfer of or access to proprietorial cryptography for the purpose of technical regulations or conformity assessment procedures as a condition of market entry.

For cryptographic products, the two sides have also agreed not to impose a requirement to partner or cooperate with a business in the other Party or to have to use a particular cipher or cryptographic

algorithm in order to manufacture, import, distribute or use such commercial ICT products in the territory of the other Party (Article 15.12.1).

Article 15.12.2 makes clear that Article 15.12 only applies to commercial ICT products that use cryptography, and does not apply to a Party's law enforcement authorities seeking access to encrypted or unencrypted communications pursuant to legal procedures; to the regulation of financial institutions; to supervisory or investigatory measures concerning financial services suppliers or financial markets; or to the manufacture or distribution of a commercial ICT product by either Party.

Protection of the personal information of users of digital trade is an important priority for both Parties and is encapsulated in Article 15.13 (Personal Information Protection). Under this article, the two Parties have committed to have a legal framework providing for the protection of personal information of users of digital trade and to take into account the principles and guidelines of relevant international bodies in that framework. Article 15.13.3 outlines a set of important principles that both sides consider should underpin a robust personal information protection framework, which are based on OECD principles.

The Parties have also undertaken to adopt a non-discriminatory approach in protecting users of digital trade from violations occurring in their jurisdictions, as well as to publish information on the personal information protections applying in each Party, including on how users can pursue remedies. They have acknowledged the importance of mechanisms to promote comparability and interoperability between different regimes for protecting personal information and have agreed to further explore arrangements to promote such comparability and interoperability.

Articles 15.14 (Cross Border Transfer of Information by Electronic Means) and 15.15 (Location of Computing Facilities) both recognise that each Party will have its own regulatory requirements in relation to these matters. Under these articles, the two Parties agree to allow the cross-border transfer of information, including personal information, for the conduct of the business of services suppliers, investors and investments covered under the Agreement; as well as not to require the establishment or use of computing facilities in their territories in order to conduct such business.

At the same time, these articles explicitly permit the Parties to take measures to prevent the cross-border transfer of information or to require establishment or use of local computing facilities in order to fulfil a legitimate public policy objective. In doing so, they need to ensure that such measures are not applied in a way that constitutes arbitrary or unjustifiable discrimination or a disguised restriction on trade. Nor should such measures be greater than required to achieve the public policy objective.

The importance of open internet access is recognised in Article 15.16, which contains some key principles the two sides consider of benefit to users of digital trade. These are similar to the principles contained in equivalent CPTPP provisions.

Article 15.17 covers open government data. The article applies to non-proprietary data and information held at central government level, and – where provided for under a Party's laws – at other levels of government too. It recognises that facilitating public access to government data and information can contribute to economic and social development, competitiveness and innovation. To that end, each Party is encouraged to expand the government data and information for public use that

it makes available digitally, based on consultation and engagement with interested stakeholders, including Māori.

Where such data is made available, the Parties will endeavour to do so in a machine-readable and open format, and for the data to be able to be searched, retrieved, used, reused and redistributed. The two sides have also agreed to cooperate and identify ways they can each expand access and use of publicly available government data and information in order to enhance opportunities for their businesses, particularly small and medium-sized enterprises.

Article 15.18 (Cooperation on Cyber Security Matters) builds on similar provisions in the CPTPP e-commerce chapter, including by encouraging cooperation in the areas of: workforce development relating to cybersecurity (such as mutual recognition and promoting diversity and equality) and encouraging use of risk-based approaches to manage cybersecurity risks and improve the cybersecurity resilience of businesses.

Article 15.19 is aimed at supporting digital innovation and emerging technologies, whereby the Parties recognise the social and economic importance of digital innovation and emerging technologies and the need to foster public trust.

To this end, the Parties commit to working towards developing frameworks that support the trusted, safe and responsible use of emerging technologies, including taking into account guidance from international bodies, risk-based or outcome-based approaches to regulation and having regard to technological interoperability and neutrality. The Parties have also committed to working together on these issues, including on developments regarding ethical use, industry led standards and algorithmic transparency, to address issues such as unintended biases and exacerbation of existing divides, by ensuring human diversity is recognised in the development of technologies.

Article 15.20 (Digital Inclusion) builds upon similar provisions in DEPA, and recognises the importance of removing barriers to participation in digital trade. This may require tailored approaches for enterprises, individuals and other groups that disproportionately face such barriers. The Parties have committed to work together on digital inclusion, including in respect of Māori, women, persons with disabilities, rural populations, and low socio-economic groups, as well as other individuals and groups that disproportionately face barriers to digital trade. Such cooperation may include enhancing cultural and people-to-people links, including for Māori, through promotion of business links, identifying and addressing barriers to accessing digital trade opportunities and improving digital skills.

Challenges for small and medium-sized enterprises (SMEs), including Māori and women-led SMEs, is the focus of Article 15.20.3, with the two Parties undertaking to support SMEs to work together and participate in platforms that link them to potential business partners and by sharing best practices that help SMEs adapt to digital trade, including improving SME digital skills.

There is also a commitment to addressing the digital divide between developed and developing countries (Article 15.20.4), by working together to promote the participation of developing countries in digital trade.

Article 15.21 (Cooperation) contains commitments to work together in the development of international frameworks for digital trade and to share information and best practice on regulatory matters. This is to ensure there is space for the Parties to discuss future developments in digital trade.

The article also contains a commitment to promote and facilitate collaboration amongst public and private entities on digital technologies and services through trade, investment, and research and development opportunities that may arise.

The Chapter also includes a review clause (Article 15.22) which recognises the fast changing nature of the digital economy and the need to ensure that domestic laws, regulations and policy settings can address challenges that may arise. There is a commitment to conduct an early review of the chapter within two years from implementation of the Agreement. Article 15.22.2 notes that In the context of that review, and following the release of the Waitangi Tribunal's Report Wai 2522 dated 19 November 2021, New Zealand reaffirms its ability to support and promote Māori interests under the Agreement, and commits to engaging with Māori to ensure the review takes into account Māori rights, interests and the government's responsibilities under the Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

5.16 Chapter 16: Government Procurement

The obligations in the Government Procurement chapter apply to any measure regarding "covered procurement". For each Party, "covered procurement" is defined by the commitments that they have set out in their schedules to the annex to the chapter. These schedules set out the government entities whose procurement practices are covered, the goods and services (including construction services) covered by the chapter, the value threshold at which the obligations take effect and general notes that relate to coverage.

In addition, the Scope provision (Article 16.2) excludes various activities from the application of the obligations. These excluded activities include acquisition or rental of land; non-contractual agreements or assistance provided by a Party; procurement or acquisition related to government banking, public debt, and liquidation or management services for regulated financial institutions; public employment contracts; procurement done for development aid, funded by an international organization or in accordance with particular international agreements on the stationing of troops or joint implementation of a project.

The chapter requires each Party to ensure that its procuring entities comply with the obligations when they conduct "covered procurements" (i.e. procurements by listed entities of covered goods and services that meet or exceed the listed thresholds and are not otherwise excluded from coverage under the Agreement).

Article 16.3 (General Exceptions) sets out exceptions to the obligations, which allow the Parties to take or enforce otherwise non-conforming measures for certain legitimate public policy purposes, so long as the measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail, or a disguised restriction on international trade between the Parties.

Article 16.4 (General Principles) sets out a number of general principles that apply to government procurement, including:

- *Non-discrimination:* Parties are required to treat goods, services and suppliers of the other Party no less favourably than domestic goods, services and suppliers with respect to any measure regarding covered procurement. With respect to such measures, a Party may not treat one locally established supplier less favourably than another on the basis of foreign affiliation or ownership; or discriminate against a locally established supplier on the basis that the goods or services of that supplier are goods or services of the other Party.
- *Use of electronic means:* Procuring entities must use electronic means for publishing notices and to the widest extent practicable, for information exchange, communications, the publication of tender documents and the submission of tenders. When undertaking procurement by electronic means, procuring entities must use generally available technology systems that are interoperable with other such systems and software and ensure the integrity of participation and information.
- *Conduct of procurement:* Procuring entities must conduct covered procurement in a transparent and impartial manner that is consistent with the chapter, avoids conflicts of interest and prevents corrupt practices.
- *Rules of origin:* Each Party must apply to covered procurement of goods the rules of origin that it applies to those goods in the normal course of trade.
- *Offsets:* Parties must not seek, take account of, impose or enforce any offset at any stage of a procurement.

Article 16.5 requires Parties to promptly publish any measure of general application relating to covered procurements, as well as any changes or additions. The Parties are also required to respond to inquiries relating to that information.

Other obligations are:

- *Electronic publication of procurement notices:* Article 16.6.1 requires notices of intended procurement and notices of planned procurement to be published electronically in a single point of access and be available free of charge.
- *Notice of intended procurement:* Article 16.6.2 requires procuring entities to publish a notice of intended procurement for each covered procurement except in specified circumstances where limited tendering is permitted. It also sets out the information that is to be included in the notice of intended procurement.
- *Conditions for Participation:* As per Article 16.7, Parties may only impose certain conditions on participation in a covered procurement. These conditions must be limited to those that ensure a supplier has the legal and financial capacities and the commercial and technical abilities to fulfil the requirements of that procurement. In establishing the conditions for participation, a procuring entity must not require the supplier to have previously been awarded one or more contracts by a procuring entity, or had prior work experience in the territory of a given Party; but it may require relevant prior experience where essential to meet the requirements of the procurement. In assessing whether a supplier satisfies the conditions for participation, a procuring entity is required to evaluate suppliers based on their business activities both inside and outside the territory of the Party of the procuring entity. In addition, the procuring entity

must base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation. Where there is supporting evidence, suppliers may be excluded on grounds such as bankruptcy, false declarations, and human rights violations.

- *Qualification of Suppliers:* Article 16.8 provides that Parties (including procuring entities) may maintain a supplier registration system, but stipulates that the system must not create unnecessary obstacles to the participation of the other Party's suppliers in its procurement. This Article also sets out rules that must be met if a Party's measures authorise the use of selective tendering, and if a Party establishes or maintains a multi-use list. The Article also imposes obligations requiring a procuring entity or other entity of a Party to promptly inform suppliers of a decision with respect to a request for participation in a procurement or application for inclusion on a multi-use list; as well as any decision, and on request of a supplier, a written explanation of the reasons for the decision, to reject a supplier's request for participation or application for inclusion on a multi-use list, cease to recognise a supplier as qualified, or remove a supplier from a multi-use list.
- *Technical Specifications:* Pursuant to Article 16.9, technical specifications or any conformity assessment procedures must not be set with the purpose or the effect of creating an unnecessary obstacle to trade between the Parties. Procuring entities must, where appropriate, set out any technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and base the technical specification on applicable international standards (or, if they do not exist, on national technical regulations, recognised national standards, or building codes). A procuring entity must not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer or supplier, unless that is the only way to describe the procurement requirements, in which case the entity must include words such as "or equivalent" in the tender documentation. The article specifically acknowledges that procuring entities may use technical specifications to promote the conservation of natural resources or protect the environment.
- *Tender Documentation:* Article 16.9 requires procuring entities to promptly make available to suppliers tender documentation that includes all information necessary for suppliers to prepare and submit responsive tenders. The article sets out a list of information to be included in the tender documentation unless already provided in the notice of intended procurement. Procuring entities are required to take into account factors such as the complexity of the procurement in establishing any date for the delivery of goods or the supply of services being procured. Procuring entities must promptly reply to any reasonable request for relevant information by any interested or participating supplier, as long as doing so does not give that supplier an advantage over other suppliers. Changes to the criteria for selection or the requirements set out in the notice of intended procurement or tender documentation must be notified to participating suppliers in adequate time to allow suppliers to modify and re-submit amended tenders. The article also makes it clear that early engagement with the market is permitted but that procuring entities must take steps to ensure that this does not result in unfair advantage over other suppliers.

- *Environmental, Social and Labour Considerations:* Article 16.10 permits Parties, including their procuring entities to take account of environmental, social and labour considerations provided they are non-discriminatory and transparent. The article also permits the use of procurement to promote compliance with environmental, social and labour laws and international obligations as well as standards of conduct, ethics and integrity.
- *Facilitation of Participation by SMEs:* To facilitate participation by SMEs in covered procurement, each Party must, to the extent possible and if appropriate, seek opportunities to simplify administrative procedures, make all tender documentation available free of charge; require prompt payment, including in subcontracting; and consider the size, design and structure of the procurement, including dividing procurement opportunities into smaller lots and promoting the use of joint bidding and subcontracting by SMEs (Article 16.11).
- *Time Periods:* Article 16.12 requires the procuring entity to provide sufficient time for suppliers to obtain the tender documentation and to prepare and submit requests for participation and responsive tenders, taking into account relevant factors and consistent with its own reasonable needs. The Article sets out rules for setting the deadlines for the submission of tenders.
- *Negotiation:* Pursuant to Article 16.13, a Party may provide for its procuring entities to conduct negotiations in the context of covered procurement if its intention to do so was indicated in the notice of intended procurement or if no tender is obviously the most advantageous in terms of the evaluation criteria set out in that notice or the tender documentation. A procuring entity must ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria; and provide a common deadline for the remaining participating suppliers to submit any new or revised tenders following the conclusion of negotiations.
- *Limited Tendering:* Article 16.14 allows a procuring entity to use limited tendering³⁷ procedures provided that it does not do so for the purpose of avoiding competition among suppliers, to protect domestic suppliers, or in a manner that discriminates against suppliers of the other Party. The Article sets out the specific circumstances in which a procuring entity may use limited tendering.
- *Electronic Auctions:* Article 16.15 sets out information requirements to be provided to participants before an electronic auction commences.
- *Treatment of Tenders and Awarding of Contracts:* Article 16.16 requires procuring entities to receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process and the confidentiality of tenders. It requires a procuring entity to award the contract to the supplier that it has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted: the most advantageous tender, or, where price is

³⁷ A Limited Tendering process is one whereby the procuring entity contracts a supplier or suppliers of its choice, without an open, competitive process.

the sole criterion, the lowest price, unless the procuring entity determines that it is not in the public interest to award a contract.

- *Transparency of Procurement Information:* Article 16.17 sets out obligations in relation to post-award information. It requires procuring entities to promptly inform suppliers that have submitted a tender of the contract award decision. If an unsuccessful supplier makes a request, the procuring entity must give the reasons it was unsuccessful and the relative advantages of the successful supplier's tender. It also requires procuring entities to publish a notice containing information about the goods or services procured, the contact details of the procuring entity and the successful supplier, and the value of the contract. This information is to be made available to the public annually in an accessible and a format able to be manipulated (open data). Procuring entities are required to keep documentation relating to tenders and awards for covered procurement for at least three years after the award of a contract.
- *Ensuring Integrity in Procurement Practices:* Under Article 16.18, Parties are required to ensure that measures exist to address corruption in their government procurement, and that they have in place policies and procedures to eliminate, to the extent possible, or manage any potential conflicts of interest in a procurement. It also allows for rendering suppliers ineligible for participation and sets rules when such procedures are used.
- *Disclosure of Information:* Article 16.19 requires a Party to promptly provide information to the other Party to determine whether a procurement was conducted fairly, impartially and in accordance with the chapter. A Party, including its procuring entities must not disclose information to a supplier that might prejudice fair competition between suppliers. Nothing in the chapter is to be construed as requiring a Party, its procuring entities, authorities and review bodies to disclose confidential information.
- *Domestic Review Procedures:* Article 16.20 sets out obligations requiring the Parties to have at least one independent, impartial administrative body or judicial authority that can review challenges or complaints by a supplier in certain specified situations. The article includes procedural requirements.
- *Modification and Rectification of Annex:* Article 16.21 states that Parties may modify or rectify their Schedules to Annex 16A (Government Procurement Schedules), but must notify the other Party if they intend to do so. There is provision for raising objections to a proposed modification and to resolving objections through the provisions in the Dispute Settlement chapter.
- *Working Group on Government Procurement:* Article 16.22 establishes a working group on government procurement that will meet by agreement and may meet virtually to address matters related to the implementation and operation of the chapter. This could include facilitating participation in government procurement by SMEs and women, and information exchange on procurement opportunities and best practices.
- *Further Negotiations:* In Article 16.23, the Parties agree to enter into further negotiations on market access with a view to making improvements to coverage of sub-central and other entities, if triggered upon certain categories of entity either being covered by New Zealand in

another trade agreement or becoming required to follow the New Zealand *Government Procurement Rules*.

Annex 16A (Government Procurement Schedules) set out New Zealand's and the United Kingdom's market access commitments for government procurement.

Section A to the Schedule of New Zealand lists the central government entities for which procurement is subject to the obligations in the chapter. The thresholds for procurement by these entities are: Goods SDR130,000, Services SDR130,000, Construction Services SDR5,000,000.³⁸

The covered entities in Section A are:

1. Ministry for Primary Industries;
2. Department of Conservation;
3. Department of Corrections;
4. Crown Law Office;
5. Ministry of Business, Innovation and Employment;
6. Ministry for Culture and Heritage;
7. Ministry of Defence;
8. Ministry of Education;
9. Education Review Office;
10. Ministry for the Environment;
11. Ministry of Foreign Affairs and Trade;
12. Government Communications Security Bureau;
13. Ministry of Health;
14. Inland Revenue Department;
15. Department of Internal Affairs;
16. Ministry of Justice;
17. Land Information New Zealand;
18. Te Puni Kōkiri Ministry of Māori Development;
19. New Zealand Customs Service;
20. Ministry for Pacific Peoples;
21. Department of the Prime Minister and Cabinet;
22. Serious Fraud Office;
23. Ministry of Social Development;
24. Public Service Commission;
25. Statistics New Zealand;
26. Ministry of Transport;
27. The Treasury;
28. Oranga Tamariki – Ministry for Children;
29. Ministry for Women;

³⁸ The threshold is expressed in International Monetary Fund Special Drawing Rights (SDRs), a unit of account used by the International Monetary Fund and based on a basket of international currencies. The conversion from SDRs to New Zealand dollars changes periodically with currency fluctuations. These thresholds in New Zealand dollars are approximately: Goods \$250,000, Services \$250,000 and Construction Services \$10,000,000.

30. New Zealand Defence Force;
31. New Zealand Police;
32. Ministry of Housing and Urban Development
33. Pike River Recovery Agency

Section B of New Zealand's schedule covers Sub-Central Government Entities. Listed entities' procurement is covered by the obligations. The thresholds for procurement by these entities are: Goods SDR200,000, Services SDR200,000, Construction Services SDR5,000,000.³⁹ Note 2 to Section B underlines that coverage of the entities listed in Section B, set out below, is limited to the procurement of goods, services and construction services relating to transport projects funded, in whole or in part, by the New Zealand Transport Agency, for which the value of the procurement equals or exceeds the applicable threshold specified above – i.e. the Chapter shall not apply to any other procurement by these entities:

1. Auckland District Health Board;
2. Canterbury District Health Board;
3. Capital and Coast District Health Board;
4. Counties Manukau District Health Board;
5. Hutt District Health Board;
6. Mid-Central District Health Board;
7. South Canterbury District Health Board;
8. Waikato District Health Board;
9. Waitemata District Health Board;
10. Bay of Plenty District Health Board;
11. Southern District Health Board;
12. Auckland Council;
13. Wellington City Council;
14. Christchurch City Council;
15. Waikato Regional Council;
16. Bay of Plenty Regional Council;
17. Greater Wellington Regional Council;
18. Canterbury Regional Council;
19. Nelson Marlborough District Health Board;
20. Northland District Health Board;
21. Hawkes Bay District Health Board;
22. Lakes District Health Board;
23. Tairāwhiti District Health Board;
24. Taranaki District Health Board;
25. Wairarapa District Health Board;
26. West Coast District Health Board;
27. Whanganui District Health Board.

³⁹ These thresholds in New Zealand dollars are approximately: Goods \$400,000, Services \$400,000 and Construction Services \$10,000,000.

Section C of New Zealand's schedule covers Other Entities. Listed entities' procurement is also covered by the obligations. The thresholds for procurement by these entities are: Goods SDR400,000, Services SDR400,000, Construction Services SDR5,000,000.⁴⁰ Notes to Section C specifies relevant caveats in relation to procurement by Other Entities listed in Section C. The listed entities are:

1. Accident Compensation Corporation;
2. Civil Aviation Authority of New Zealand;
3. Energy Efficiency and Conservation Authority;
4. Kāinga Ora – Homes and Communities;
5. Maritime New Zealand;
6. New Zealand Antarctic Institute;
7. Fire and Emergency New Zealand;
8. New Zealand Qualifications Authority;
9. New Zealand Tourism Board;
10. New Zealand Trade and Enterprise;
11. New Zealand Transport Agency;
12. Ōtākaro Limited;
13. Sport and Recreation New Zealand;
14. Tertiary Education Commission;
15. Education New Zealand;
16. Callaghan Innovation;
17. Earthquake Commission;
18. Environmental Protection Authority;
19. Health Promotion Agency;
20. Health Quality and Safety Commission;
21. Health Research Council of New Zealand;
22. New Zealand Blood Service;
23. New Zealand Walking Access Commission;
24. Real Estate Authority;
25. Social Workers Registration Board;
26. WorkSafe New Zealand;
27. Guardians of New Zealand Superannuation;
28. New Zealand Infrastructure Commission;
29. New Zealand Lotteries Commission;
30. Climate Change Commission;
31. Electoral Commission;
32. Financial Markets Authority;
33. Education Payroll Limited;
34. Research and Education Advanced Network New Zealand Limited;
35. Tāmaki Redevelopment Company Limited;

⁴⁰ These thresholds in New Zealand dollars are approximately: Goods \$800,000, Services \$800,000 and Construction Services \$10,000,000.

36. Airways Corporation of New Zealand Limited;
37. Meteorological Service of New Zealand Limited;
38. KiwiRail Holdings Limited;
39. Transpower New Zealand Limited;
40. Government Superannuation Fund Authority;
41. New Zealand Artificial Limb Service;
42. Public Trust;
43. Commerce Commission;
44. External Reporting Board;
45. Health and Disability Commissioner;
46. Human Rights Commission;
47. New Zealand Productivity Commission;
48. Takeovers Panel;
49. Crown Irrigation Investments Limited;
50. New Zealand Growth Capital Partners Limited;
51. Television New Zealand Limited;
52. City Rail Link Limited;
53. Crown Infrastructure Partners Limited;
54. New Zealand Green Investment Finance Limited.

Coverage of goods, services and construction services is comprehensive (as set out in Sections D, E and F). The exceptions for New Zealand in respect of services are set out in Section E, and cover the procurement of research and development services and public health, education and welfare services.

In addition, Section G states that the following are excluded from application of the obligations:

- any procurement by one entity listed in the Schedule from another entity listed in the Schedule;
- procurement in respect of the construction, refurbishment or furnishing of chanceries abroad;
- procurement outside New Zealand for consumption outside of New Zealand;
- procurement by a covered entity on behalf of an entity or organisation that is not covered.
- procurement related to developing, protecting or preserving national treasures.

5.17 Chapter 17: Intellectual Property

The Intellectual Property (IP) chapter includes a number of provisions that are modelled off or build on provisions in the Trade Related Aspects of Intellectual Property (TRIPS) Agreement, international IP agreements administered by the World Intellectual Property Organization (WIPO) and other FTAs, such as CPTPP. Most of the obligations in the chapter are consistent with New Zealand law. However, some obligations would require New Zealand to amend aspects of its intellectual property laws. The key areas that would require amendments are the term of protection for copyright and related rights,

performers' rights in relation to playing sound recordings of their performance in public and implementation of a visual artist resale rights regime.

The IP chapter includes the following sections:

- (a) General Provisions;
- (b) Cooperation;
- (c) Intellectual Property and issues related to Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions;
- (d) Trade Marks;
- (e) Geographical Indications;
- (f) Designs;
- (g) Copyright and Related Rights;
- (h) Patents;
- (i) Undisclosed Test or Other Data;
- (j) Trade Secrets; and
- (k) Enforcement.

5.17.1 Section A: General Provisions

5.17.1.1 Objectives, Principles, Nature, Scope and Understandings in respect of the chapter

Section A of the chapter covers its general provisions. Articles 17.2 and 17.3 set out agreed objectives and principles relating to the protection and enforcement of intellectual property rights and the ability of each Party to adopt appropriate domestic measures in the implementation of domestic law. These Articles mirror Articles 7 and 8 of TRIPS.

Article 17.4 provides a general statement in which the Parties recognise the need to promote innovation, facilitate the diffusion of information and culture, and to foster competition and open and efficient markets through their respective intellectual property systems. This is noted as being subject to the need to respect transparency and due process, and interests of relevant stakeholders.

Article 17.5 affirms obligations under the TRIPS Agreement and confirms that the chapter will complement and further specify the rights and obligations in that, and other, international IP agreements. The article also confirms that the Parties are free to determine how they implement the requirements of the chapter in their domestic law, and confirms that the Parties are able to provide more extensive protection of intellectual property rights than is required by the IP chapter.

Under Article 17.6, each Party affirms its commitment to the WTO Declaration on the TRIPS Agreement and Public Health, which was adopted by WTO Members in 2001 (Declaration on TRIPS and Public Health). The Declaration on TRIPS and Public Health clarifies how the TRIPS Agreement should be interpreted to enable Parties to take measures to protect public health, including in relation to COVID-19.

Article 17.7 requires each Party to accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights. This

obligation is known as “national treatment”. In other words, the intellectual property protection that New Zealand provides to domestic rights holders must also be provided to nationals of the other Party. The Article provides the limited carve outs from this general rule that exist in TRIPS and other international agreements including the Paris Convention, the Berne Convention, the Rome Convention, the World Intellectual Property Organisation Performance and Phonograms Treaty and the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. Note that article 17.7 only applies to performers, producers of phonograms and broadcasting organisations, in respect of the rights provided under the Agreement and, in respect of performer and producer rights under Article 17.45, only to the extent both Parties provide the same type of right under that Article.

In Article 17.8, each Party affirms that it has acceded to the following international intellectual property agreements:

- WTO TRIPS Agreement;
- Paris Convention for the Protection of Industrial Property;
- Berne Convention for the Protection of Literary and Artistic Works;
- World Intellectual Property Organization Copyright Treaty (WCT);
- World Intellectual Property Organization Performances and Phonograms Treaty (WPPT);
- Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled;
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks;
- Singapore Treaty on the Law of Trademarks;
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure; and
- Patent Cooperation Treaty.

New Zealand has acceded to all of these treaties.

Article 17.9 requires each Party to endeavour to make laws, regulations, procedures and court rulings concerning the protection and enforcement of intellectual property rights available on the Internet. It similarly requires each Party to endeavour to make available applications for trademarks, geographical indications, designs, patents and plant variety rights. This is to enable the public to become acquainted with the registration or grant of such rights.

Article 17.10 requires each Party to apply the obligations of the IP chapter to all subject matter that is protected by an intellectual property right in its territory at the date of entry into force of the Agreement. This means, for example, that if an artistic or literary work is still protected by copyright at that date, it must receive the protection set out in the IP chapter.

Article 17.11 provides that a Party is not prevented from determining whether and under what conditions intellectual property rights would be exhausted under its legal system. A common example of exhaustion is where the original owner of IP rights in a product cannot continue to enforce those rights in relation to that product after it has been sold to a third party (known as exhaustion after first sale). New Zealand's current policy settings relating to exhaustion allow for the parallel importation of goods protected by intellectual property rights. The article clarifies that none of the obligations in the IP chapter prevent New Zealand from continuing to provide for the parallel importation of such goods.

5.17.2 Section B: Cooperation

Section B of the chapter covers cooperation. Article 17.12 provides for the exchange of contact points and Article 17.13 requires the Parties to endeavour to cooperate among relevant intellectual property institutions, such as the respective intellectual property offices of the Parties. The provision includes a list of issues for possible cooperation, such as developments in domestic and international intellectual property policy, or education and awareness relating to intellectual property.

Article 17.14 provides arrangements for the operation of the Intellectual Property Working Group, including for the participation of Māori in the Working Group. The Working group is to meet as required including for the purpose of reviews arising in relation to the Geographical Indications section and the Intellectual Property and issues related to Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions section.

Article 17.15 requires the Parties to endeavour to cooperate specifically on the issue of patent work sharing, for example by making search and examination results available to the other Party, or by exchanging information on quality assurance systems and quality standards relating to patent examination. Each Party is also required to endeavour to cooperate to reduce differences in procedures and processes of their patent offices in order to reduce the cost and complexity of obtaining patents.

Article 17.16 confirms that cooperation activities will be subject to availability of resources, on request, on mutually agreed terms and are without prejudice to other cooperation activities between the parties that may occur outside of the Agreement.

5.17.3 Section C: Intellectual Property and issues related to Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions

Section C of the chapter covers intellectual property and issues related to genetic resources, traditional knowledge, and traditional cultural expressions. Article 17.17 recognises the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other. The Parties will endeavour to cooperate, including with participation of Māori, to enhance understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources in their own right. This article is relevant to the examination of patent applications for technologies that make use of genetic resources, and traditional knowledge related to those genetic resources.

Article 17.17 also provides for cooperation to raise awareness of broader matters of interest to Māori relating to intellectual property and issues relating to genetic resources, traditional knowledge and traditional cultural expressions.

Building on the requirements of Article 17.17 and mirroring requirements included in CPTPP, Article 17.18 requires each Party to endeavour to pursue quality patent examination in relation to traditional knowledge issues, which may include:

- taking account of publicly available information related to traditional knowledge when determining prior art;
- giving third parties an opportunity to cite prior art disclosures related to traditional knowledge to the patent examining authority;
- using databases or libraries containing traditional knowledge where appropriate; and
- training of patent examiners in the examination of applications that are related to traditional knowledge associated with genetic resources.

Article 17.19 requires that both Parties work towards a multilateral outcome in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC). The Article also provides for the Parties to cooperate by sharing information and engaging in dialogue in working towards that outcome. The WIPO IGC is the focus for a multilateral agreement to address concerns of indigenous peoples in relation to the protection and control of genetic resources, traditional knowledge and traditional cultural expressions. New Zealand is interested in working with the UK to advance discussions within the WIPO IGC.

Building on Article 17.19, Article 17.20 provides for a review of Section C of the chapter following any outcome in the WIPO IGC. This will provide an opportunity to discuss amending the Agreement to reflect that WIPO IGC outcome. The Article also provides for a review after two years from entry into force of the Agreement, if no outcome has been achieved in the WIPO IGC process.

5.17.4 Section D: Trade Marks

Section D of the chapter covers trade marks. Article 17.21 prohibits a Party from requiring that a registered trade mark be ‘visually perceptible’. Such a requirement would prevent the registration of sounds or smells as trade marks.

Article 17.22 sets out the basic right of the owner of a registered trade mark to prevent third parties from using in trade an identical or similar sign as the registered trade mark if the use would be likely to result in confusion and was not authorised by the owner. Confusion is presumed to occur if the sign is the same as the sign protected by the trade mark registration and used on identical goods or services.

Article 17.23 allows the Parties to provide reasonable exceptions to trade mark protections, provided that those exceptions take account of the legitimate interest of the trade mark owner and of third parties.

Article 17.24 recognises the importance of protecting well-known trade marks, in accordance with the *WIPO Joint Recommendation Concerning the Provisions on the Protection of Well-Known Marks*.

Articles 17.25, 17.26 and 17.27 set out procedural requirements relating to the application for and maintenance of trade mark registrations, including confirmation that relevant authorities can refuse an application or cancel a registration where applied for in bad faith, and requires that Parties provide an electronic system for the application for and maintenance of trade mark registrations.

Article 17.28 requires that the initial term of registration for a trade mark and each subsequent renewal of registration period must not be less than ten years.

Article 17.29 recognises the importance of harmonisation of their trade mark systems and the Parties agree to endeavour to cooperation in international fora, where appropriate and as resources permit, to harmonise standards of, and procedures for protection. This obligation needs to be considered in light of the general provision that acknowledges the flexibilities the Parties have in implementing obligations in accordance with domestic requirements.

Under Article 17.30, the Parties recognise the benefits of appropriate remedies in their systems for the management of their country-code top-level domain names (cc-TLDs) being available in cases in which a person registers or holds, with a bad faith intention to profit, a domain name that is identical or confusingly similar to a trade mark. The article does not impose any obligation on the Government to specifically regulate New Zealand's cc-TLDs.

5.17.5 Section E: Geographical Indications

Section E of the chapter covers geographical indications. Article 17.31 defines the scope of this section and states that it will apply to geographic indications (GI) for wines, spirits, agricultural products and foodstuffs.

In Article 17.32 the Parties confirm that they recognise that GIs can be protected through a trade mark, a *sui generis* system or other legal means.

Article 17.33 details requirements for the Parties to review the GI section if: New Zealand introduces a bespoke, *sui generis* scheme for protecting foodstuff or agricultural product GIs or otherwise makes a substantive changes to its existing GI regime for wine and spirits; or signs an international agreement with a non-Party that requires New Zealand to make such changes. Any such a review will be undertaken with a view to amending this section of the Agreement so that treatment no less favourable is applied to the UK.

In Article 17.34 the Parties have agreed that, if after two years following entry into force of this Agreement the Section has not been amended as the result of a review under Article 17.33, then the Parties will review the section. Further reviews under this Article may also arise, but only if agreed.

If the Parties agree an amendment to allow the protection of their respective GIs in each other's territory, Article 17.35 sets out a procedure for the notification to the other Party of lists of GIs for which they are seeking protection. The article confirms that the Party notified of the list of GIs will examine them in light of their domestic requirements as soon as practical. Once GIs are protected in a Party under this agreement, they will be added as an annex to the NZ-UK FTA Agreement. The article does not limit what other procedures may be agreed in a review.

5.17.6 Section F: Registered Designs

Section F of the chapter covers registered designs. Article 17.36 requires that the Parties provide adequate and effective protection of new or original industrial designs. This includes ensuring owners have at least the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a copy, or substantial copy, of the protected design, when such acts are undertaken for commercial purposes. The article is subject to limitations and exceptions

equivalent to those provided in Article 26 of TRIPS.

Article 17.37 requires Parties to ensure that the term of protection available is not less than 15 years.

Under Article 17.38 the Parties are required to provide an electronic system for industrial design applications and registrations and a publically available database for registered industrial designs.

Article 17.39 confirms that the Parties may allow the subject matter of designs, whether registered or not, to be protected by copyright, as is already the case in New Zealand. Where this applies the Parties can independently establish the conditions under which this is possible.

Article 17.40 requires that each Party shall make all reasonable efforts to accede to *the Hague Agreement Concerning the International Registration of Industrial Designs* which provides an international system that allows industrial designs to be protected in multiple countries and regions with minimal formalities. New Zealand is not currently a Party to this Agreement.

5.17.7 Section G: Copyright and Related Rights

Section G of the chapter covers copyright and related rights. Articles 17.41, 17.42, 17.43 and 17.44 set out the rights the Parties will provide for authors, performers, producers and broadcasters in relation to their works, performances, phonograms and broadcasts including the right to authorise or prohibit all rental, reproduction, communication to the public and distribution of their works, performances or phonograms in any manner. This includes the requirement for Parties to provide for performers and broadcasters the ability to authorise or prohibit the fixation of their unfixed performances and broadcasts.

Article 17.45 requires that for sound recordings (phonograms) which are used for commercial broadcasts or communication to the public,⁴¹ the Parties will provide the relevant performers and producers either:

- a single equitable remuneration; or
- the exclusive right to authorise or prohibit such use.

These two alternatives recognise that the UK provides a single equitable remuneration right and New Zealand provides an exclusive right to performers and producers. However, New Zealand does not currently provide exclusive rights in relation to the playing of sound recordings in public (such as the playing of a recording at a public event or within a public space for commercial purposes). Therefore, the inclusion of ‘communication to the public’ will require amendment to New Zealand’s Copyright Act to provide a new exclusive right for performers in relation to such uses of sound recordings. The parties also agree to discuss remuneration of performers and producers or phonograms.

Article 17.46 requires that each Party provide an artist’s resale right regime that provides creators of original artworks a royalty on any qualifying resale of their artwork in the secondary art market. The UK and New Zealand schemes will operate on a reciprocal basis so that artists in each country may benefit from the resale of their artwork within the other country. The Parties may determine the

⁴¹ “Communication to the public” in this context includes playing sound recordings in public.

procedure for collection of the royalty, its amount and the criteria for the works, resales and authors eligible, but are also required to provide this right on a reciprocal basis. These are new obligations for New Zealand and the obligations are to be implemented within two years of entry into force of the Agreement. This would require New Zealand to implement the regime through the creation of standalone legislation.

Article 17.47 allows Parties to provide for limitations and exceptions to the rights covered in this section in certain special circumstances. The article also confirms that the scope of applicability of the limitations and exceptions are consistent with those offered in other international agreements, such as TRIPS, the Berne Convention, the Rome Convention, the WCT and the WPPT.

Article 17.48 sets out requirements for the term of protection to be provided by each Party for copyright and related rights. Under the Agreement the term for films and sound recordings (including recorded music) expires 70 years after the end of the calendar year in which they were made or published and the copyright term for books, screenplays, music, lyrics and artistic works expires 70 years after the end of the calendar year in which the author died. This will require New Zealand to extend its current term of protection by 20 years. New Zealand will have 15 years from entry into force of the Agreement to comply with these requirements and the term extension will only apply to copyright works that are protected at that time.

Article 17.49 sets out the reciprocal treatment of collective management organisations in each of the Parties. The article requires the Parties to endeavour to promote cooperation between their respective collective management organisations, including to further the availability of works. They will also endeavour to promote financial transparency of collective management organisations with regard to their revenue.

Under Article 17.50 the Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological protection measures which are used by copyright holders to prevent and restrict acts, such as the reproduction of their works, which they have not authorised.

Article 17.51 defines rights management information as including information that identifies a copyright work, its copyright owner and, the terms and condition of the use of the work. The article requires that the Parties provide legal remedies against any person who removes or alters such information or who imports, distributes, broadcasts, communicates or makes available to the public works where they know that such information has been removed or altered.

5.17.8 Section H: Patents

Section H of the chapter covers patents. Article 17.52 requires Parties to provide patent owners exclusive rights to prevent unauthorised parties from making, using, offering for sale, selling, or importing patented products and from using patented processes, and from using, offering for sale, selling, or importing products obtained through that process. The Parties are also to provide patent owners the right to assign or transfer the patent and to conclude licensing contracts.

Article 17.53 describes patentable subject matter consistent with TRIPS, requiring the Parties to make patents available for inventions in any field of technology if the invention is new, involves an inventive step and is capable of industrial application. Also consistent with TRIPS, the article provides

for a number of exclusions from patentability, including for: inventions whose commercial exploitation must be prevented to protect public order; diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and plants and animals (other than micro-organisms) and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, the article also states that the Parties shall provide for the protection of new plant varieties by either patents or an effective standalone system or some combination thereof.

Article 17.54 allows the Parties to provide for limited exceptions to the rights of patent holders, where such exceptions are not in conflict with the normal exploitation of the patent and where their interests are balanced against the interests of third parties.

Article 17.55 requires each Party to allow persons to make or use or export a patented pharmaceutical without the permission of the patent owner for the purposes of developing or submitting information required to obtain regulatory approval for a pharmaceutical product in the territory of the Party or another country.

Article 17.56 confirms that nothing in the chapter limits a Party's rights and obligations under Article 31 of TRIPS, which allows for compulsory licensing of patents in some circumstances.

Article 17.57 prohibits the Parties from revoking or invalidating a patent without providing the owner with the opportunity to make observations on the intended revocations or invalidation and to make amendments and corrections where their laws allow.

Article 17.58 requires each Party to endeavour to publish patent applications promptly after eighteen months from the filing date – or from the earliest priority date where priority from an earlier patent application is claimed – or as soon as practicable after that. Patent applicants must be given the opportunity to request earlier publication of their applications.

Article 17.59 requires each Party to make available to the public certain information that is held by its patent office and created after the Agreement enters into force for that Party, including search and examination results, (including information related to prior art searches) certain non-confidential communications from applicants and patent and non-patent related literature citations submitted by applicants and third parties.

Article 17.60 sets out that the Parties shall require patent applicants to disclose an invention in a manner that would allow someone skilled in the art to replicate it. The article also allows Parties to require patent applicants to provide information concerning their corresponding foreign applications and grants.

5.17.9 Section I: Undisclosed Test or Other Data

Section I of the chapter covers undisclosed test or other data. Article 17.61 requires each Party to provide ten years of data protection for new agricultural chemical products. A new agricultural chemical product is defined as an agricultural chemical product that does not contain a chemical entity that has been previously approved in that Party. This means that the data provided to support an application for marketing approval of the new product cannot be used by the relevant agency to approve an application for marketing approval of a generic version of the product until ten years after the date of approval of the new product, without the consent of the original applicant.

Article 17.62 requires each Party to provide five years of data protection for new pharmaceutical products. A new pharmaceutical product is defined as a pharmaceutical product that does not contain a chemical entity or biologic that has been previously approved in that Party. This means that the data provided to support an application for marketing approval of the new product cannot be used by the relevant agency to approve an application for marketing approval of a generic version of the product until five years after the date of approval of the new product, without the consent of the original applicant.

5.17.10 Section J: Trade Secrets

Section J of the chapter covers trade secrets. Article 17.63 sets out a number of requirements in respect of trade secrets. The Parties are required to enable trade secret holders to prevent their secrets being disclosed, acquired by or used by others without their consent or in a manner contrary to honest commercial practices, for example by being in breach of a contract or confidentiality agreement. The article sets out practices that are not to be considered contrary to commercial practices, such as independent discovery or the reverse engineering of a product. The article also clarifies that the Parties may provide limited exceptions to the rights of trade secret holders, including where their interests are outweighed by those of other parties or the public.

5.17.11 Section K: Enforcement

Section K of the chapter covers enforcement, with the enforcement provisions detailed in six sub-sections covering general obligations, civil remedies, border measures, criminal remedies, digital, and intellectual property rights. These are set out below.

Sub-section K.1 (Enforcement – General Obligations)

Article 17.64 sets out that the Parties shall have effective judicial systems, and permit and promote the use of alternative dispute resolution.

Article 17.64 also requires the Parties to establish measures, procedures and remedies for the enforcement of intellectual property rights that are fair, equitable and effective, and applied in a way that avoids creating barriers to legitimate trade, and are also consistent with the Party's laws, including laws concerning freedom of expression, fair process and the right to privacy. In addition, the measures and procedures should not be unnecessarily complicated, costly or time consuming, while also being dissuasive and proportionate.

The article also confirms that the provisions do not create an obligation for the Parties to establish systems for the enforcement of intellectual property rights that are distinct from those used for the enforcement of law in general. There will also not be any effect on the capacity of the Parties to enforce the law in general or the distribution of resources between the enforcement of intellectual property rights and the enforcement of law in general.

Sub-section K.2 (Enforcement – Civil Remedies)

Article 17.65 confirms that the Parties should make these available to all right holders.

Article 17.66 requires that the Parties' judicial authorities may order prompt and effective provisional measures to preserve evidence in relation to an alleged infringement, including without the other

party having been heard, if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

Article 17.67 sets out that the Parties' judicial authorities may, at the request of an applicant, order an interlocutory injunction against either an alleged infringer or an intermediary whose services they use, aimed at preventing any imminent infringement or continued infringements of intellectual property rights. Where alleged infringement is on a commercial scale, authorities are required to also have the ability to order the seizure of the alleged infringer's property and assets, where the applicant can demonstrate that circumstances are likely to endanger the recovery of damages.

Article 68 provides that in making applications under Articles 17.66 and 17.67 the Parties must require that the applicant demonstrates to a sufficient degree that the applicant's right is being infringed or that the infringement is imminent. They must also ensure that security or other assurance is provided at a level that does not deter procedures, protects those who measures are sought against and prevents abuse. The Parties are also required to enable judicial or other authorities to order compensation where these measures are abused and persons are wrongly constrained, award costs to the defendants and impose sanctions against those who violate laws concerning the protection of confidential information produced or exchanged in that proceeding.

Article 17.69 describes the circumstances during civil proceedings where judicial authorities may order persons, including infringers, alleged infringers and those found in possession of infringing goods, to provide relevant information in that person's control or possession on the origin and distribution networks of the goods or services that infringe or allegedly infringe an intellectual property right. The article also confirms that these provisions do not prejudice other provisions in each Party's law, including those which permit competent authorities to order the infringer or alleged infringer to provide information or govern its use in proceedings.

Articles 17.70 and 17.71 require the Parties to enable their judicial authorities to:

- grant an injunction aimed at prohibiting the continuation of the infringement, these may also be granted against an intermediary whose services are used by a third party in their infringing;
- order at the request of applicants the removal from channels of commerce or destruction of goods that were found to be infringing an intellectual property right; and
- where appropriate, order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

Articles 17.72 and 17.73 concern damages and costs. Under these articles the Parties are required to provide that their judicial authorities may award damages against infringers and proportionate costs based on the expenses of successful parties in legal proceedings.

Sub-section K.3 (Enforcement – Border Measures)

Article 17.74 sets out that each Party will allow for applications and have procedures to detain and suspend the release of suspect counterfeit trade mark and pirated copyright goods under customs control and details a number of provisions related to customs procedures at the border, namely that the relevant authorities:

- provide to the rights holder information about the detained goods, including the name and address of the consignor, exporter, consignee or importer, a description of the goods, the quality of goods and, if known, the country of origin of the goods, and contact information for the owner of the goods to the rights owner once the goods have been detained (subject to the Party's laws on privacy and confidentiality of information).
- have the power to initiate border measures on its own, without complaint from a rights holder (known as ex officio powers). This obligation applies to goods that are under customs control and that are imported or destined for export.
- make decisions about accepting applications to detain or suspend the release of goods as well as decisions regarding whether they are infringing, within reasonable timeframes.

Each Party must provide its relevant authorities the ability to order the destruction or disposal of seized infringing goods. Any disposal must be outside the channels of commerce in a manner that avoids harm to the rights owner, in all but exceptional cases. Furthermore, each Party must not permit relevant authorities to simply remove an unlawfully attached trademark to counterfeit trademark goods, other than exceptional cases in order to release the goods into the channels of commerce.

The Parties must allow their customs authorities to order that the holder of an application to detain and suspend the release of suspect counterfeit or pirated goods reimburse them for costs, including for the storage, handling, destruction or disposal of the goods.

Parties are not required to apply this obligation to small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

Sub-section K.4 (Enforcement – Criminal Remedies)

Article 17.75 sets out a range of minimum obligations in relation to criminal procedures for trademark counterfeiting and copyright or related rights piracy. An overarching obligation is that criminal procedures and penalties must apply to wilful trademark counterfeiting or copyright piracy "on a commercial scale". In respect of copyright, commercial scale infringing acts are defined as:

- acts carried out for commercial advantage or financial gain; or
- acts that are not carried out for commercial advantage or financial gain that are significant, and have a substantial prejudicial impact on the rights owner in relation to the marketplace.

The article also states that the Parties will apply the criminal procedures and penalties to activities carried out on a commercial scale involving:

- wilful importation and exportation of counterfeit trademark or pirated copyright goods; or
- wilful import and domestic use in the course of trade of trade mark labels or packaging without authority of the owner of the registered trade mark, that are intended to be used on identical goods or services for which the trade mark has been registered.

Each Party must also ensure appropriate criminal remedies are available for the unauthorised copying of a film during a showing in a cinema.

Article 17.76 provides that the penalties incurred through the criminal offences described in Article 17.75 shall include imprisonment and monetary fines sufficiently high to provide a deterrent to future acts of infringement. In determining penalties, judicial authorities in each Party may take into account the seriousness of the circumstances, including whether the infringement was a threat to health and safety.

In respect of the criminal procedures set out in this sub-section, each Party is also required under Article 17.77 to provide judicial or competent authorities with the authority to do the following:

- order the seizure of suspected counterfeit trade mark or pirated copyright goods, the seizure of any material or implements used in the offence, the seizure of any documentary evidence relevant to the alleged offence, and the seizure of assets obtained as a result of the offence.
- order the forfeiture of any assets obtained as a result of the offence.
- order the forfeiture or destruction of:
 - counterfeit trade mark or pirated copyright goods.
 - materials or implements that have been predominantly used in the creation of pirated copyright goods.
 - any labels or packaging that a counterfeit trade mark has been applied to and that has been used in the offence; and
- release or provide access to goods, materials or other implements to the rights owner for the purpose of initiating civil proceedings.

If a Party requires a rights owner to identify items for seizure in the course of a criminal proceeding, it should not require the items to be described in any greater detail than is needed to identify them for seizure.

If a judicial authority orders the destruction of goods in a criminal proceeding, the Party will not compensate the defendant for that destruction.

If a judicial authority does not order the destruction of counterfeit trademark or pirated copyright goods in a proceeding, the Party must ensure the goods are disposed outside the channels of commerce in a way that avoids causing harm to the rights owner.

As an alternative to seizure or forfeiture of assets, a Party may instead provide their judicial authorities the power to order a fine that corresponds to the value of the assets.

Under Article 17.78 the Parties agree that their competent authorities may act on their own initiative without complaint by the rights owner or third party.

Article 17.79 confirms that both legal and natural persons shall be liable for the criminal offences listed in this sub-section.

Sub-section K.5 (Enforcement in the Digital Environment)

Article 17.80 confirms that the Parties will make the enforcement measures, procedures and remedies, referred to in sub-sections K.2 (Civil Enforcement) and K.4 (Criminal Enforcement) applicable to infringement in the digital environment.

Article 17.81 recognises that online service providers are increasingly used in the infringement of intellectual property rights, and are also often in the best position to bring such infringing activities to an end. The article then sets out that the Parties shall introduce or maintain limitations on the liability of online service providers for copyright and related rights infringement by users of their services, while also requiring that online service providers take action to prevent access to the materials infringing copyright or related rights, where appropriate or where ordered by a court or administrative authority of the Party.

Article 17.82 details the provisions relating to blocking orders. The article requires that injunctions, as set out in Articles 17.67 and 17.70, are available against online service providers where its services are used by third parties to infringe against an intellectual property right and include injunctions requiring them to disable access to infringing content.

Article 17.83 sets out that the Parties will encourage their domain registry to take measures to suspend cc-TLDs used to infringe intellectual property. However, this requirement is without prejudice to the independence of each Party's domain registry.

Article 17.84 allows that each Party may, in accordance with its law, order an online service provider to disclose to rights holders identifying information for subscribers who allegedly infringe their trade mark or copyright or related rights, where the information is being sought for the purpose of protecting or enforcing those rights and a legally sufficient claim has been made.

Sub-section K.6 (Enforcement Practices with Respect to Intellectual Property Rights)

Article 17.85 requires the Parties to provide that final judicial decisions and administrative rulings relating to the enforcement of intellectual property rights are preferably in writing, stating the findings, reasoning and legal basis for the rulings and decisions, and published or otherwise made available to the public.

Articles 17.86 and 17.87 set out that the Parties will endeavour to promote cooperative efforts within the business community to effectively address intellectual property infringement. As well as to promote public awareness of the importance of respecting intellectual property rights and the detrimental effect of infringement, including by cooperation with business communities, civil society organisations and the representatives of rights holders.

Article 17.88 requires each Party to encourage the development of specialised expertise in the enforcement of intellectual property rights, including in the digital environment, within their relevant authorities. As well as promoting cooperation domestically between the relevant competent authorities in their territories.

In Article 17.89 the Parties recognise the importance of having regard for environmental matters in their enforcement practices relating to the destruction and disposal of infringing goods.

5.18 Chapter 18: Competition

5.18.1 Competition Law and Authorities

Each Party must maintain or adopt laws that prohibit anticompetitive business conduct, and must endeavour to apply those laws to all commercial activities in its territory, regardless of an enterprise's nationality or ownership. Each Party must maintain an authority responsible for enforcement of its laws.

5.18.2 Procedural Fairness

Each Party must have certain practices and procedures in place in relation to the conduct of competition law investigations and enforcement proceedings. These include a right to be heard and present evidence in defence, a right to seek review in a court or other independent tribunal of any sanction or remedy to which a person is subject under a Party's laws, and protection of confidential information. These procedural fairness disciplines extend to merger reviews.

5.18.3 Private Rights of Action

Parties must provide individuals and businesses with the rights to bring private cases under competition law, both independently and following a finding of violation by a national competition authority. This allows them to seek redress from a court or other independent tribunal for injury to business or property caused by a violation of competition laws.

5.18.4 Cooperation

New Zealand and the UK may also cooperate on the application and effective enforcement of competition law, in a way that is compatible with each Party's law and interests and within its available resources.

5.18.4 Transparency

New Zealand and the UK have committed to making transparent their respective competition laws and regulations, any exemptions and immunities to their competition law, and any guidelines and rules issued related to the administration and enforcement of competition law.

5.18.5 Consultations

New Zealand and the UK must enter into consultations with the other Party if one of them makes a request for consultations. A request for consultations must indicate, if relevant, how the matter that is the subject of the request affects trade or investment between the Parties. The Party receiving the request for consultations must give consideration to the other Party's concerns.

5.18.6 Dispute Settlement

This chapter is not subject to the FTA's Dispute Settlement mechanism.

5.19 Chapter 19: State Owned Enterprises and Designated Monopolies

This chapter establishes disciplines similar to those agreed in the CPTPP, meaning New Zealand is already well-placed to meet them. Moreover the disciplines reflect the principles of New Zealand's State-owned Enterprises Act 1986 and New Zealand's existing international obligations in relation to 'state trading enterprises'.

Under the chapter's disciplines, New Zealand and UK SOEs are required to conduct activities in a non-discriminatory manner, and to apply commercial considerations when doing so (Article 19.4). Specific rules concerning the provision of non-commercial assistance to SOEs and general transparency obligations have also been agreed in Article 19.6.

The chapter contains the following obligations:

- Parties must ensure their businesses are treated according to the same standards as domestic businesses when buying goods or services from an SOE, or selling goods or services to an SOE. The same obligations apply when a monopoly is buying or selling a monopoly good or service.
- A Party must not cause adverse effects or injury to the interests of the other Party through non-commercial assistance it provides to any of its SOEs. This provision builds on existing WTO obligations by focusing specifically on advantages given to SOEs because of their government ownership, and by covering services which an SOE provides outside its own country.
- The two Parties must provide to the other (or make publicly available) a list of their SOEs, no later than six months after entry into force. This list must be updated annually. On request Parties must provide particular further information about policies or programmes that provides for non-commercial assistance – where the request explains how this could affect trade between the Parties.
- The Parties must make best use of relevant international standards including the OECD Guidelines on Corporate Governance of State-Owned Enterprises.
- Both Parties must ensure that administrative bodies which regulate SOEs do so impartially.
- Parties must ensure a designated monopoly does not use its monopoly position to engage in anti-competitive practices (practices which restrict or distort competition, for example anti-competitive agreements or abuse of dominant position) in markets where it has not been granted monopoly rights.

The chapter includes exceptions that are specifically tailored to its obligations:

- Government procurement is excluded from the scope of the chapter (which ensures flexibility around government purchases involving SOEs, including procurement through public-private partnerships).
- Audio-visual services are excluded from the scope of the chapter.
- Sovereign wealth funds (such as the New Zealand Superannuation Fund) and independent pension funds are excluded from the scope.

- Flexibility for future policies a New Zealand Government might want to pursue has been retained – including for monetary policy, the resolution of failed financial service supplier or enterprise engaged in the supply of financial services, and temporary government ownership as a result of foreclosure.
- New Zealand would also be able to take temporary action to respond to a national or global economic emergency, for the duration of the emergency.
- An exception to the chapter excludes SOEs and monopolies with annual revenues below a threshold amount (currently around NZ\$415 million, adjusted every three years).⁴²
- Exceptions enable SOEs to supply financial services pursuant to a government mandate that supports exports or imports, or private investment outside the Party's territory where this does not displace commercial financing or offer more comparable financial services.
- Exceptions also allow government support for SOEs for the supply of construction, operation, maintenance or repair services of physical infrastructure supporting communications between the two Parties, and the supply of air transport services and maritime transport services to the extent that they provide a connection for New Zealand to the rest of the world.

5.20 Chapter 20: Consumer Protection

The Consumer Protection chapter contains legal obligations to:

- maintain measures that proscribe fraudulent, deceptive, misleading, or unfair commercial activities;
- maintain measures that require goods provided to be of reasonable and satisfactory quality, and require services provided to be performed with reasonable skill and care. Where a supplier breaches these conditions, Parties should provide consumers with appropriate redress; and
- provide protections to consumers transacting online that are no less than those provided for other forms of commerce.

The dispute settlement mechanism is only applied to the online consumer protection provision. The rest of the provisions in the Consumer Protection chapter are subject to a consultation process.

5.21 Chapter 21: Good Regulatory Practice and Regulatory Cooperation

The scope of the good regulatory practice elements of the chapter is determined by the definition of “regulatory measure”. For New Zealand, this definition applies to Public Acts and regulations made by Order in Council that are measures of general application relating to any matter covered by the Agreement.

⁴² The threshold is expressed in International Monetary Fund Special Drawing Rights (SDRs), a unit of account used by the International Monetary Fund and based on a basket of international currencies. The conversion from SDRs to New Zealand dollars changes periodically with currency fluctuations.

The good regulatory practice commitments include each Party being required to maintain internal coordination processes and mechanisms based on good regulatory practice principles and to make descriptions of these publicly and freely available.

The primary obligations in respect of public consultation and access to regulatory measures are contained in chapter 29 (Transparency). There are additional obligations under this chapter that apply to the development of proposed major regulatory measures. Each Party is encouraged to make its consultation documentation freely and publicly available and also to make publicly available a summary of how relevant input has informed development of the proposed measure.

Each Party must endeavour to carry out proportionate impact assessments of proposed major regulatory measures. A Party must have processes and mechanisms for carrying out impact assessments that consider particular elements. Each Party must also publish the findings of its impact assessments in a timely manner.

In addition to obligations in chapter 29 (Transparency), each Party commits to ensure that its regulatory measures in effect are freely available and searchable. Each Party must endeavour to maintain processes and mechanisms to promote periodic reviews of major regulatory measures at appropriate intervals. Each Party must endeavour to ensure that, where appropriate, periodic reviews consider opportunities to achieve public policy objectives more effectively and efficiently and whether measures are likely to remain fit for purpose.

The Parties agree to cooperate on implementation of the chapter. A Party may propose to cooperate on good regulatory practice or regulatory cooperation, through contact points or direct contact between relevant domestic regulatory bodies.

Each Party is required to designate and notify a contact point on good regulatory practice and on regulatory cooperation. Changes in contact points are required to be notified.

Where the Parties agree to engage in a regulatory cooperation activity and agree it is appropriate, the Parties must endeavour to:

- inform the other of the development or review of relevant regulatory measures;
- provide information on request; and
- consider the other's regulatory approaches.

A Party may also, when practicable and mutually beneficial, approach regulatory cooperation in a way open to participation by the other Party or by other international trading partners, as the case may be. The Parties may also share information and take a coordinated approach to influence non-Parties in the development of international models in relevant fora. The Parties will also endeavour to encourage informal cooperation between regulators and their counterparts.

This chapter is not subject to the dispute settlement mechanism under the Agreement (Chapter 31 – Dispute Settlement).

5.22 Chapter 22: Environment

Article 22.4 of the chapter (General Commitments) requires that each Party shall:

- endeavour to ensure that its environmental laws and policies provide for high levels of environmental protection.
- not derogate from its environmental laws in order to encourage trade or investment.
- not fail to enforce its environmental laws to encourage trade or investment.

Under Article 22. 6 (Climate Change) each Party commits to:

- promote the mutual supportiveness of trade, investment, and climate policies and measures;
- facilitate and promote trade and investment in goods and services of particular relevance for climate change mitigation and adaptation; and
- promote carbon pricing as an effective policy tool for reducing greenhouse gas emissions efficiently, and promote environmental integrity in the development of international carbon markets.

In Article 22.7 (Environmental Goods and Services) each Party has committed to:

- eliminate tariffs at entry into force on 293 environmental goods (listed in the annex).
- facilitate trade and investment in environmental goods and endeavour to address tariff and non-tariff barriers to trade in such goods.

Under Article 22. 8 (Fossil Fuel Subsidy Reform and Transition to Clean Energy) the Parties have agreed to:

- take steps to eliminate harmful fossil fuel subsidies where they exist, with limited exceptions in support of legitimate public policy objectives;
- end unabated coal-fired electricity generation in their territories as part of a clean energy transition aligned with the goals of the Paris Agreement;
- encourage the transition to clean energy for electricity, heat, and transport;
- end new direct financial support, such as officially supported export credits, for fossil fuel energy in non-Parties, except in limited circumstances (outlined in the article); and
- encourage non-Parties to develop and undertake best practice approaches to fossil fuel subsidy reform.

Article 22.9 (Marine Capture Fisheries) builds on similar disciplines in CPTPP and obliges each Party to:

- operate a fisheries management system designed to prevent over fishing and overcapacity, reduce by-catch, promote recovery of overfished stocks and minimize adverse impacts on associated marine ecosystems;
- promote the long term conservation of species recognised as threatened in relevant international agreements; and
- prohibit subsidies:
 - for fishing that negatively affect fish stocks that are in an overfished condition;
 - for the transfer of fishing vessels from the UK or New Zealand to other States, including through the creation of joint enterprises;
 - subsidies for operations that increase the fishing capacity of a fishing vessel, or for equipment that increases the ability of a fishing vessel to find fish, except where they meet legitimate public policy goals such as improved safety or sustainability;

- provided to fishing for fish stocks managed by a Regional Fisheries Management Organisation or Arrangement where the subsidising Party or vessel flag State is not a Member or cooperating non-Member of the Organisation or Arrangement;
- for fishing or fishing related activities conducted without the permission of the flag State where required and, if operating in another State's waters, without permission of that State;
- for any fishing vessel or operator while listed by the flag State, the subsidising Party, the FAO or a relevant Regional Fisheries Management Organisation or Arrangement for IUU fishing, in accordance with the rules and procedures of that State, Party, organisation, or arrangement and in conformity with international law; and
- for any vessel or operator that has been found to have committed a serious violation of conservation or management measures within the preceding 12 months.

In addition, the Parties have committed to notify each other of their fisheries subsidies.

The Parties have also committed to take effective action against illegal, unreported, and unregulated fishing, and to cooperate in a range of related activities, including on electronic catch traceability and certification.

Moreover, the Parties have agreed to afford appropriate recognition of the sustainability and fisheries compliance performance of each other's vessels and operators in consideration of their applications for foreign fisheries licences.

Under Article 22.10 (Sustainable Agriculture) each Party commits to:

- take measures to, and promote efforts to, reduce greenhouse gas emissions from agricultural production; and
- promote sustainable agriculture and associated trade.

Article 22.11 (Sustainable Forest Management) provides for each Party to:

- promote the conservation and sustainable management of forests;
- contribute to combatting illegal logging, illegal deforestation, and associated trade, including with respect to non-Parties;
- promote trade in forest products harvested in accordance with the law of the country of harvest and from sustainably managed forests;
- promote trade in legally and sustainably produced commodities which could otherwise be associated with deforestation; and
- endeavour to reduce deforestation and forest degradation, including from land use and land-use change.

The provisions of Article 22.12 (Biological Diversity) require each Party to:

- take measures to combat the illegal trade in wildlife, including with respect to non-Parties as appropriate;
- take appropriate measures to protect and conserve native wild fauna and flora identified to be at risk including from trade-related activities within its territory, including by taking measures to conserve the ecological integrity of specially protected natural areas;

- continue efforts to combat the illegal trade in ivory, including through appropriate domestic restrictions on commercial activities concerning ivory and goods containing ivory;
- promote and encourage the conservation and sustainable use of biodiversity including in trade-related activities, in accordance with its law or policy; and
- promote the conservation of marine ecosystems and species, including those in the areas beyond national jurisdiction.

In Article 22.13 (Resource Efficient and Circular Economy), the two Parties undertake to:

- encourage resource efficient product design, including the designing of products to be easier to reuse, dismantle or recycle at end of life;
- encourage environmental labelling, including eco-labelling, to make it easier for consumers to make more sustainable purchasing choices;
- endeavour to avoid the generation of waste, including electronic waste, by encouraging reuse, repair and remanufacture as well as the recycling of waste where it does occur, and strive to reduce the amount of waste sent to landfill; and
- encourage relevant public entities to consider the policy objectives in paragraph 2 in their purchasing decisions in accordance with Article 16.10 (Environmental, Social, and Labour Considerations) of the Government Procurement chapter.

Article 22.14 (Ozone Depleting Substances) requires each Party to take measures to control the production and consumption of, and trade in, substances governed by the Montreal Protocol, and shall pursue a more ambitious phase-down of hydrofluorocarbons, as well as endeavouring to reduce the use of pre-charged equipment containing hydrofluorocarbons.

Article 22.15 (Air Quality) requires the Parties to endeavour to reduce air pollution.

Under Article 22.16 (Protection of the Marine Environment from Ship Pollution and Marine Litter) the Parties have agreed to take measures to prevent the pollution of the marine environment from ships; and take measures to prevent and reduce marine litter, recognising the global nature of the challenge of marine litter.

Article 22.17 (Voluntary Mechanisms to Enhance Environmental Performance) provides for the Parties to encourage the use of flexible and voluntary mechanisms to protect natural resources and the environment in their territory, and endeavour to encourage private sector entities and organisations to develop voluntary mechanisms that conform to certain criteria.

Under Article 22.18 (Responsible Business Conduct and Corporate Social Responsibility) the Parties agree to:

- encourage enterprises operating in their respective territories or jurisdictions to adopt principles of responsible business conduct and corporate social responsibility that are related to the environment, consistent with internationally recognised standards and guidelines that have been endorsed or are supported by that Party; and
- provide supportive policy frameworks that encourage businesses to behave in a manner that takes into account those principles of responsible business conduct and corporate social responsibility related to the environment.

Article 22.19 (Cooperation Frameworks) provides for the Parties to cooperate as appropriate on the matters identified in the chapter, and that they may cooperate on other matters where there is mutual benefit from that cooperation.

Under Article 22.20 (Institutional Arrangements) each Party is to designate a contact point for matters covered under the chapter. The article also establishes an Environment and Climate Change Committee and sets out the responsibilities of the contact points and the functions of the Committee.

As in CPTPP, Article 22.21 (Public Submissions) requires each Party to provide for the receipt and consideration of written submissions from persons of that Party regarding its implementation of this chapter in accordance with its domestic procedures, and to consider matters raised by the submission and provide a timely response to submitters.

Similarly, Article 22.22 provides for each Party to engage with existing or new independent advisory groups in relation to the operation and implementation of this chapter, and to inform the group as to the outcome of any dispute relating to the chapter.

The chapter is subject to consultation procedures under Articles 22.23, 22.24 and 22.25. Under Article 22.26 (Dispute Resolution) procedures for establishing a panel to resolve disputes are outlined.

5.23 Chapter 23: Trade and Labour

The chapter requires each Party to respect, promote and realise in its laws the following rights as stated in the 1998 International Labour Organization (ILO) Declaration:

- Freedom of association and the effective recognition of the right to collective bargaining.
- The elimination of all forms of forced or compulsory labour.
- The effective abolition of child labour and, for purposes of the Agreement, a prohibition on the worst forms of child labour.
- The elimination of discrimination in respect of employment and occupation.

Parties are also required to adopt and maintain laws and regulations (as well as relevant practices) governing decent working conditions, as determined by each Party, with respect to minimum wages, hours of work, and healthy and safe working conditions. The Parties commit to adopt and implement laws for facilitating the resolution of individual and collective labour disputes and to maintain an effective labour enforcement system, including labour inspections.

The Parties are prohibited from waiving, or otherwise derogating from (or offering to do so), their labour laws to encourage trade or investment, if to do so would weaken or reduce adherence to the ILO rights or categories of decent working conditions specified in the chapter. Nor may a Party, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour laws to encourage trade or investment. However, each Party may exercise reasonable discretion and make bona fide decisions on the allocation of enforcement resources, provided that the exercise of such discretion is not inconsistent with its chapter obligations.

The Parties commit to promote the objectives of the ILO Decent Work Agenda concerning labour protection, subject to national conditions, circumstances and priorities.

The Parties also commit to implementing policies and measures they consider appropriate to ensure equal opportunities, protect against employment discrimination and protect against wage discrimination, including working towards the elimination of gender wage gaps. The Parties commit to developing cooperative activities to improve the capacity and conditions for women in trade and the workplace which shall be carried out with the inclusive participation of women.

Article 23.9 obliges each Party to encourage private and public sector entities operating in its territory to take appropriate steps to prevent Modern Slavery in their supply chains. To this end, each Party shall adopt or maintain measures, in a manner it considers appropriate, to facilitate entities to identify and address Modern Slavery in their supply chains, including through guidance, the proposal of laws, facilitating capability and encouraging responsible recruitment policies and practices.

Article 23.10 of the chapter commits the parties to encourage enterprises to adopt corporate social responsibility initiatives and to promote relevant international corporate social responsibility instruments.

The Parties are obligated to promote public awareness of their labour laws and ensure that information on laws and their enforcement is publicly available. Each Party must also ensure that its administrative, judicial and labour tribunal processes for enforcement of its labour laws are fair, accessible and transparent and permit effective action against the infringement of labour rights.

Each Party must put in place procedures for the receipt and consideration of written submissions from the public on matters related to the chapter and must make its procedures readily accessible and publicly available. Each Party must also establish and maintain an independent advisory group, including worker and employer representation and consult them on the operation and implementation of the chapter. The Advisory Groups also participate in joint dialogues with the labour committee established under the chapter, on the implementation of the chapter.

The chapter provides for the designation of contact points for each party and establishes a Labour Committee of officials to oversee, monitor and review the implementation of the chapter, establish and review cooperative priorities and activities, and help resolve any differences between the Parties on the interpretation or application of the chapter. The Committee must meet within one year of entry into force of the Agreement and thereafter every two years, unless decided otherwise by the Parties. The Committee is required to issue a public report, summarising each meeting.

Article 23.18 of the chapter provides for labour consultations between the Parties in the event of any issue arising between them if this is requested by a Party. Responses to any such request must be made according to the timeframes set out in the chapter and the consulting Parties are required to make every attempt to arrive at a mutually satisfactory resolution of the matter. If the consulting Parties are unable to resolve the issue, then either Party may request that the Joint Committee that oversees the Agreement convene to consider the matter. Should this fail to resolve the issue, Ministerial consultations may result.

Should the matter remain unresolved within 120 days of the original matter being raised, the requesting Party may seek the establishment of a Panel under the dispute settlement provisions of the Agreement which then apply.

5.24 Chapter 24: Small and Medium-Sized Enterprises

Article 24.1 of the chapter sets out general principles in relation to SMEs. These include:

- a shared recognition that: SMEs play a fundamental role in contributing to economic growth, sustainable development, employment, and innovation and that the Parties shall seek to cooperate to promote SME participation in international trade and global value chains.
- affirming a shared commitment to enhance the ability of SMEs to benefit from this Agreement.

Article 24.2 requires each Party to establish or maintain a digital medium that allows public and free-of-charge access information about the Agreement, including the text and a summary of the FTA and information designed for SMEs to assist them in benefitting from the opportunities provided by the FTA. This may include elements specified in Article 24.2.3. The information must be regularly reviewed to ensure it is up to date and accurate.

Article 24.3 provides for cooperation activities, to increase trade and investment opportunities for SMEs, including a list of possible activities. These cooperation activities are optional. Under Article 24.4, each Party is obliged to cooperate on promotion activities aimed at SMEs as part of the implementation of the Agreement. The form those activities may take is left to the Parties to determine.

Article 24.5 establishes designated contact points on SMEs for each Party. These shall, where appropriate, focus on: exchanging information to assist in monitoring the implementation of the FTA as it relates to SMEs; consider other matters relating to SMEs including any issues raised by SMEs regarding their ability to benefit from this Agreement; and facilitate the provision of recommendations to the Inclusive Trade Sub-Committee as necessary.

Article 24.7 notes that the SME chapter is not subject to the dispute settlement mechanism in Chapter 31.

5.25 Chapter 25: Trade and Gender Equality

The objective of this chapter is to reinforce the intention that New Zealand and the UK have to ensure the NZ-UK FTA is implemented in a manner that advances women's economic empowerment and promotes gender equality. The chapter recognises the important contribution trade and investment can make to these goals and the key role that gender-responsive policies can play in achieving inclusive economic growth and sustainable development.

To this end, the Parties reaffirm the importance they attach to promoting gender equality policies and practices and to building capacity in this area, including in the non-government sector. They also recognise the benefit of sharing respective experience in the development and implementation of policies and programmes to address systemic barriers to women's participation in international trade.

Article 25.2.1 of the chapter also identifies the other provisions across the NZ-UK FTA that work to support and advance the objectives of women's economic empowerment and gender equality. These

include provisions in the Digital Trade, SME, Domestic Regulation, Financial Services, Trade and Labour, Government Procurement and Trade and Development chapters.

The general commitments in the chapter are contained in Article 25.3. In these, the Parties agree to advance women's economic empowerment across the NZ-UK FTA and to promote the importance of a gender perspective in the trade and investment relationship between the Parties.

Under this article, the Parties commit to implementing and enforcing their respective laws, policies, practices and regulations promoting gender equality and improving women's access to trade and economic opportunities. They undertake to take steps towards increasing women's participation in trade and investment, including through identifying barriers that limit opportunities for women in the economy; as well as to promote public awareness of their gender equality laws, regulations, policies and practices. The two Parties indicate clearly that they consider it inappropriate to waive or otherwise derogate from their gender equality laws to encourage trade or investment.

Article 25.4 contains commitments by both Parties reaffirming their international obligations in this area, including those under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN 2030 Agenda on Sustainable Development SDG5, and the objectives outlined in the WTO Joint Declaration on Trade and Women's Empowerment, December 2017.

Strengthening cooperation between the Parties in this area is the focus of Article 25.5. Under this article, the Parties undertake to carry out cooperation activities aimed at enhancing the ability of women, including wāhine Māori, workers, entrepreneurs and businesswomen to fully access the benefits under the NZ-UK FTA. Areas of potential cooperation identified may include:

- developing programmes that recognise and value women's unpaid care work;
- improving women's access and participation in sectors in which they are under-represented, including science, technology, engineering, innovation and e-commerce;
- advancing the development of women's leadership and business networks;
- promoting the improvement of women's digital skills and access to online business tools;
- promoting access to relevant financing and financial assistance;
- developing trade missions for businesswomen and women entrepreneurs;
- fostering women's entrepreneurship, including activities to promote increased international engagement of women-led SMEs;
- promoting equal opportunities for women in the workplace, including flexible work;
- providing opportunities for wāhine Māori to engage in trade activities and supporting economic opportunities for diverse groups of women in trade and investment; and
- collaborating in international fora such as the WTO and OECD to advance trade and gender equality issues and understanding.

The priorities for cooperation activities will be decided on by the Parties and may be undertaken through a range of forms, including: dialogues, workshops, seminars, conferences, cooperation

projects (including internships), visits and research; technical assistance to facilitate capacity building and training; exchanges of experts and information; and sharing of experience and best practice.

A particular specific area in which the Parties have agreed to undertake closer cooperation is in the development of a framework for analysing sex or gender-disaggregated data and gender-focused analysis of trade policies (Article 25.4.6). Cooperation in this area may include conducting gender-based analysis and monitoring of the effects of trade, both qualitative and quantitative, sharing methods and processes for collecting relevant statistics and data, as well as evaluation methodologies, improving analysis and monitoring of specific barriers to trade for wāhine Māori and women-led or owned businesses.

Article 25.6 provides for the Inclusive Trade Sub-Committee established under Article 30.8 (Inclusive Trade Sub-Committee – Institutional Provisions) to support, monitor and review the implementation and operation of this chapter and other relevant provisions in the Agreement. Each Party will also designate a contact point to facilitate communication on any matters arising under this chapter.

This chapter is not subject to dispute settlement under Chapter 31 (Dispute Settlement) of the Agreement.

5.26 Chapter 26: Māori Trade and Economic Cooperation

Article 26.2 sets out the context and purpose of this chapter. In it, the Parties recognise the unique relationship between Māori and the UK, noting that representatives of the British Crown and Māori were the original signatories to Te Tiriti o Waitangi/The Treaty of Waitangi and that the New Zealand Crown has now succeeded to the British Crown in respect of all rights and obligations under the Treaty.

Given this, the Parties have recognised the importance of cooperation under the chapter being implemented in a manner consistent with the Treaty and, where appropriate, informed by Te Ao Māori, Mātauranga Māori and tikanga Māori (Article 26.2.3). The value of Māori leadership and approaches informed by Te Ao Māori and Mātauranga Māori to contribute to the design and implementation of policies and programmes in New Zealand to protect and promote Māori economic aspirations is recognised too (Article 26.2.4).

Under Article 26.2.5, the Parties have also recognised the value of increased Māori participation in international trade and investment, including digital trade, through the promotion of Māori approaches and methodologies; as well as the value of enhancing cultural and people-to-people links through the opportunities that the chapter creates for both Parties (Article 26.2.7).

The Parties acknowledge the challenges that exist for Māori in accessing the trade and economic opportunities of international trade, as well as the importance of international trade in enabling and advancing Māori wellbeing (Article 26.2.8)

With the above in mind, the Parties have agreed that the purpose of the chapter is to pursue cooperation between them that contributes towards New Zealand's efforts to enable and advance Māori economic aspirations and wellbeing (Article 26.2.9).

Under Article 26.3 (International Instruments), the Parties refer to the commitments they have under the following international agreements:

- the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions 2005;
- the UN 2030 Agenda for Sustainable Development 2015;
- the Convention on Biological Diversity 1992; and
- The UN Declaration on the Rights of Indigenous Peoples 2007.

In addition to this chapter, much work has been undertaken to ensure benefits to Māori under the NZ-UK FTA feature across the Agreement more broadly. Article 26.4 summarises other parts of the Agreement where specific provisions aimed at enhancing the participation of Māori in the trade and investment opportunities arising from the NZ-UK FTA can be found. These include the chapters on: General Exceptions, Government Procurement, Digital Trade, Intellectual Property, Trade and Gender Equality, Trade and Environment and Small and Medium-Sized Enterprises (SMEs).

Areas of potential cooperation under the chapter are set out in Article 26.5. This indicates that the Parties may facilitate, where appropriate and on mutually agreed terms following a request by a Party, cooperation activities in the following areas:

- collaborating on enhancing the ability of Māori-owned enterprises to access and benefit from the trade and investment opportunities created under the Agreement;
- collaborating on developing links between UK and Māori-owned enterprises, including access to new and existing supply chains, e-commerce opportunities, and trade in products of Māori origin;
- undertaking joint roadshows and activities promoting links between Māori-owned SMEs and UK SMEs; and
- continuing to support science, research and innovation links between the UK and Māori communities.

In undertaking such cooperative activities, the article also refers to the Parties inviting the views and participation of relevant stakeholders and, in the case of New Zealand, of Māori, in accordance with Treaty of Waitangi principles.

Article 26.6 refers to the specific case of the Haka Ka Mate. Under this article, the Parties acknowledge the significance of the Haka Ka Mate to Ngāti Toa Rangatira and commit to work together to identify appropriate ways to advance recognition and protection of the Haka Ka Mate.

Article 26.8 ensures that the Inclusive Trade Sub-Committee supports the effective implementation and operation of this Chapter, and also the monitor and review of its implementation.

Article 26.9 clarifies that the dispute settlement mechanisms applicable under the Agreement and set out in Chapter 31 (Dispute Settlement) will not apply to this chapter.

5.27 Chapter 27: Trade and Development

In a first dedicated chapter on Trade and Development, the Parties recognise the importance of development in promoting inclusive economic growth and the instrumental role that sustainable trade and investment can play in contributing to economic development, prosperity and a resilient global economy. The Parties acknowledge that inclusive economic growth should be sustainable and encompass economic development, social development, climate resilience and environmental protection.

The chapter recognises the fundamental importance of a stable, open and rules-based multilateral trading system, including for developing countries and the vital contribution of the WTO in this regard.

In Article 27.1, the Parties reaffirm their commitment to promoting and strengthening an open trade and investment environment in order to improve livelihoods, reduce poverty, raise living standards and create employment opportunities in support of development. They also note the important contribution that transparency, good government and accountability make to the effectiveness of trade and development policies and the sustainability of development outcomes.

More broadly across the NZ-UK FTA, a range of chapters incorporate provisions aimed at enhancing cooperation between the Parties on trade and development and providing potential benefit to developing countries. Article 27.1.6 lists these other trade and development focused provisions.

Article 27.2 commits the two Parties to closer cooperation on trade and development, with the aim of promoting developing country participation in international trade and supporting inclusive and sustainable growth and development in developing countries. Cooperative activities envisaged under this article include: dialogue and exchange of information, sharing best practice on trade and development policies and programmes, promoting developing country participation in multilateral and regional fora and joint advocacy in areas relating to trade and development.

This article also notes that the Parties may work to share best practice in the area of monitoring and conducting analysis of trade agreements and their effects on developing countries, including use of qualitative and quantitative methods; as well as to monitor – either jointly or individually – the impact of the NZ-UK FTA on developing countries, with an endeavour to share any outcomes.

The Inclusive Trade Committee (established under Article 30.8 – Institutional Provisions) will oversee and support the effective implementation of this chapter. In addition, each Party undertakes to designate a contact point to facilitate communication between the Parties on any matter relating to this chapter.

This chapter is not subject to dispute settlement under Chapter 31 (Dispute Settlement) of the Agreement.

5.28 Chapter 28: Anti-Corruption

In this chapter, the Parties reaffirm their resolve to prevent and combat bribery and corruption in matters affecting international trade or investment and recognise the need to build integrity within both the public and private sectors, with both having responsibilities in this regard. The two Parties

also recognise the importance of regional and multilateral initiatives in this area, including those undertaken at the UN, the WTO, the OECD, and in the Financial Action Task Force and commit to working together to encourage and support appropriate such initiatives to prevent and combat bribery and corruption. Each of the Parties reaffirms its commitments in the Anti-Bribery Convention and the UN Convention Against Corruption (UNCAC).

The chapter covers measures to prevent and combat bribery and corruption relating to any matter covered by the NZ-UK FTA.

To this end, Article 28.3 requires the Parties to adopt or maintain legislative or other measures that make a criminal offence of certain conduct or activities affecting international trade and investment. These include:

- offering its own public officials, a foreign public official or an official of a public international organisation an undue advantage to take an action or refrain from an action to obtain a business advantage;
- soliciting or acceptance by a public official of such an undue advantage;
- embezzlement or misappropriation by a public official of property or funds accessed through their official position and participation or association in conspiracy, attempts or aiding and abetting such an offence by other persons in their jurisdiction; and
- laundering or concealment of the proceeds of crime through various means.

The article also requires each Party to adopt or maintain the measures that may be necessary with regard to financial and accounting records in order to prohibit the use of certain practices used to commit the offences covered under Article 28.3.1. These include use of 'off-the-books' accounts, recording non-existent expenditure, use of false documents and intentional early destruction of bookkeeping documents. Nor will either Party permit expenses incurred in connection with an offence covered under Article 28.3 to be tax deductible in their jurisdiction.

Article 28.3 further commits the Parties to put in place measures to establish liability in respect of the offences covered under paragraphs 1-4 of the article as well as to put in place sanctions commensurate with the gravity of the offence. These sanctions are to be effective, proportionate and dissuasive, may be of a criminal or non-criminal nature, including monetary sanctions (Article 28.3.5 and 28.3.6).

Under the chapter, the Parties have committed to having in place measures to enable the identification, tracing, freezing, seizure and confiscation of the proceeds from or any property used in the offences covered under Article 28.3.

Recognising the harmful effects of facilitation payments, Article 28.3.9 requires the Parties to encourage their business enterprises to prohibit or discourage the use of facilitation payments, as well as to take steps to raise global awareness of this issue. In situations where facilitation payments may be permitted, the Parties undertake to ensure that such payments are not used to secure an advantage in international trade or investment.

Article 28.4 contains provisions in support of 'whistle-blowers'. These include making public information on the competent authorities in each jurisdiction responsible for measures to prevent and combat bribery and corruption covered in the chapter. The Parties also commit to adopt publicly

available procedures for reporting any incidents that might constitute an offence covered in Article 28.3, including for such reports to be made anonymously. At the same time, the Parties are required to have appropriate measures in place to protect and provide remedy for persons reporting such incidents in case of discrimination or disciplinary action.

In order to promote integrity, honesty and responsibility among public officials in their jurisdictions, the two Parties commit to endeavour to put in place practical steps in relation to selection and training of officials in positions particularly vulnerable to corruption; as well as to promote transparency in the behaviour of public officials in the exercise of their public functions and policies and procedures to identify and manage conflicts of interest (including procedures for declaration of any additional employment, gifts or benefits received by public officials that might create a conflict of interest). These practical steps also include measures to facilitate reporting by public officials of acts of bribery or corruption (Article 28.5).

To promote engagement by civil society in efforts to prevent and combat bribery and corruption, Article 28.6 requires the Parties to take appropriate measures to promote active participation in these efforts by non-public sector individuals or groups, including business enterprises, civil society and non-governmental organisations. This includes efforts to raise public awareness of the causes and impacts of bribery and corruption, including through public information and education activities, encouraging professional associations and other bodies to develop internal control programmes and codes of conduct to detect and prevent bribery and corruption, encouraging company management to provide disclosure of their internal controls, ethics and compliance programmes, including in annual reporting, as well as encouraging companies to maintain sufficient internal auditing controls and compliance programmes to assist in preventing and detecting acts of bribery and corruption.

Article 28.7 supports the enforcement of the measures to prevent and combat bribery and corruption outlined in the chapter. It contains an undertaking from each Party not to fail to effectively enforce the measures it adopts or maintains to comply with the obligations in the chapter, through any sustained or recurring action taken or not taken after the date of entry into force of the Agreement. This recognises, however, that it remains with the law enforcement and judicial authorities in the respective jurisdictions to decide on the enforcement of their measures, including with regard to the allocation of resources. The Article also reaffirms the Parties' commitment to cooperation to enhance the effectiveness of law enforcement actions undertaken as part of applicable international agreements in this area.

The two Parties commit to making every effort, through means such as dialogue, exchange of information, and cooperation, to address any issues that could affect the operation or application of the chapter (Article 28.9.1).

This chapter is only subject to the dispute settlement provisions provided for in chapter 31 of the NZ-UK FTA in cases where a Party considers a measure of the other Party is inconsistent with the obligations under this chapter or that the other Party has otherwise failed to carry out its obligations under the chapter in a way that affects trade or investment between the two Parties (Article 28.9.3). Recourse to dispute settlement under the Agreement is not available in respect of a matter covered under the enforcement provisions in this chapter (Article 28.7 (Application and Enforcement of Measures to Prevent and Combat Bribery and Corruption)).

5.29 Chapter 29: Transparency

This chapter establishes best practice requirements for the development, adoption and implementation of regulatory measures of general application affecting trade and investment. The regulatory measures of general application addressed under the chapter include the Party's laws, regulations, procedures and 'administrative rulings of general application' (defined as 'an administrative ruling or interpretation that applies to all persons and fact situations and that establishes a norm of conduct, but does not include rulings made in an administrative or quasi-judicial proceeding in a specific case or an adjudication on a particular act or practice).

Article 29.2 obliges the Parties to ensure their laws, regulations, procedures and administrative rulings of general application on matters covered by the NZ-UK FTA are promptly published so that interested persons from the other Party can access them. The Article also requires each Party, to the extent possible and appropriate, to publish its consultation documentation regarding such laws and regulations at an early stage and to give interested persons of the other Party a reasonable opportunity to comment.

When introducing new or changed laws, regulations or procedures, the two Parties will also endeavour to allow a reasonable period between the adoption and public availability of these new or changed measures, and their date of entry into force (Article 29.2.3).

When adopting regulations of general application, the Parties undertake to promptly publish the regulation on an official website or other appropriate digital medium, or in a nationally circulated official journal and, if appropriate, to include an explanation of the purpose and rationale for the regulation (Article 29.2.4).

Article 29.3 covers administrative proceedings. With a view to making sure that each Party's laws, regulations, procedures and administrative rulings of general application are administered in a consistent, impartial and reasonable manner, the Parties have agreed that:

- wherever possible a person of the other Party directly affected by a proceeding should be given reasonable notice of the initiation of the proceeding and information on the proceeding and issue in question;
- that such a person be given a reasonable opportunity to present facts and arguments in support of their position prior to finalisation of an administrative action; and
- the Party's procedures will be in accordance with its law.

The Parties have also recognised the importance of review and appeal mechanisms. Under Article 29.4, the Parties are obliged to establish or maintain judicial or administrative tribunals or procedures to enable prompt review, and – if warranted – correction of a final administrative action concerning a matter covered by the Agreement. These tribunals must be impartial and independent of the authority enforcing the administrative action. At the same time, the Parties to a proceeding should have a reasonable opportunity to support or defend their respective positions, and to a decision based on the evidence and submissions recorded, with such a decision to be implemented by the authority concerned.

Under Article 29.5, each Party commits to inform the other Party of any proposed or actual measure that it considers may materially affect the operation of the Agreement or the other Party's interests under the Agreement. This requirement will be considered fulfilled if the actual or proposed measure had been notified to the WTO. At the request of either Party, the requested Party will endeavour to provide information and respond to questions on any proposed or actual measure, with the request or any information provided to be conveyed through the Parties contact points.

To promote access to information on matters covered by the Agreement, the two Parties undertake, to the extent possible, to endeavour to ensure that the information their central government publishes is accessible in an open, machine-readable format (Article 29.6).

5.30 Chapter 30: Institutional Provisions

Chapter 30 (Institutional Provisions) sets out the arrangements for the institutional mechanisms established under the NZ-UK FTA to monitor and support the functioning of the Agreement. These include an overarching Joint Committee (Article 30.1), six subsidiary Sub-Committees (on Trade in Goods, Environment and Climate Change, Inclusive Trade, Labour, Sanitary and Phytosanitary Measures, and Services and Investment) and seven Working Groups (on Intellectual Property, Procurement, Animal Welfare, Financial Services, Professional Business Services, Rules of Origin and Customs and Trade Facilitation, and Wine and Distilled Spirits (Article 30.10).

The chapter also contains general provisions outlining the Parties' intention to undertake periodic general reviews of the Agreement, to each establish an overall contact point to facilitate communication between them on matters concerning the Agreement, and to cooperate in the exchange of information to support the effective functioning of the Agreement.

Article 30.1 establishes a Joint Committee at the level of senior officials or Ministers, with Article 30.2 setting out the functions of the Joint Committee, including to consider any matters regarding implementation of the Agreement, to review its general operation, to supervise the work of the committees and working groups established under the Agreement and to consider any proposal to amend the Agreement.

Decisions of the Joint Committee are to be taken by mutual agreement, with the Joint Committee to meet within one year of entry into force of the Agreement. Administrative support for meetings of the Joint Committee will be provided alternately, and the Joint Committee (and any subsidiary body) may establish its own rules of procedure to support the conduct of its work (Article 30.4).

The Joint Committee has the authority to establish additional committees or working groups, merge or dissolve committees, working groups and other subsidiary bodies and develop arrangements for the implementation of the Agreement. It can also consider matters raised by any of the other subsidiary bodies.

The Joint Committee is also empowered with considering and adopting, subject to completion of each Party's domestic legal procedures, any modifications to the schedules of commitments under the Agreement, including the Parties' tariff schedules, rules of origin, government procurement entities, and the list of environmental goods.

Under Article 30.3 (General Review), the two Parties have agreed to undertake a general review of the Agreement every seven years after its entry into force.

Article 30.5 requires the two Parties to designate an overall contact point to facilitate communications between the Parties on any matters relating to the NZ-UK FTA. If requested by a Party, this overall contact point will also assist by identifying the office responsible for a particular matter and helping to establish communication with the requesting Party.

The exchange of information article (Article 30.6) builds on provisions in the Trade in Goods chapter and contains best endeavours commitments to cooperate in the exchange of Information in other areas relevant to the effective functioning of the Agreement, including through ad hoc discussions between experts, making arrangements to exchange information and determining methods for interpreting and analysing that information.

The Parties have committed to each consult with a wide range of domestic stakeholders and to seek their views on the implementation of the Agreement.

The Inclusive Trade Committee will be responsible for monitoring the implementation of the chapters on Māori Trade and Economic Cooperation, Small and Medium Sized Enterprises, on Trade and Development, and Trade and Gender Equality. Its functions are outlined in Article 30.8. They include:

- monitoring and reviewing the implementation and operation of these chapters and of the provisions in other chapters that support the objectives of these chapters; and
- making recommendations to the Joint Committee on these areas, including for future cooperation as outlined in the more specific provisions in the article (Articles 30.8.2, paragraphs (c)-(f)).

The Inclusive Trade Committee will make periodic reports of its activities undertaken under Article 30.8, including future cooperation activities, to the Joint Committee.

5.31 Chapter 31: Dispute Settlement

This chapter outlines the procedures that apply to the formal settlement of disputes under the Agreement. Its objective is to provide an effective, efficient and transparent process for the settlement of disputes between the Parties on their rights and obligations under the NZ-UK FTA. Article 31.4 of the chapter indicates its scope applies to the avoidance or settlement of disputes in situations where a Party considers that:

- (i) an actual or proposed measure of the other Party is inconsistent with its obligations under the Agreement;
- (ii) the other Party has failed to carry out its obligations under the Agreement; or
- (iii) a benefit a Party could reasonably expect to have accrued to it under the National Treatment and Market Access for Goods, Rules of Origin and Origin Procedures, Customs Procedures and Trade Facilitation, Cross-Border Trade in Services, or Government Procurement chapters is being nullified or impaired.

Article 31.3 makes clear that the Parties will endeavour to agree on the interpretation and application of the Agreement and will make every attempt to cooperate and consult in order to arrive at a mutually satisfactory resolution of matters affecting the Agreement's operation.

The first step in bringing a state-to-state dispute under the NZ-UK FTA is to request formal consultations as provided for in Article 31.5. This Article provides that any differences between the Parties should, as far as possible, be settled by good faith consultations between the Parties. If the disputing Parties are unable to resolve the matter through consultations, the requesting Party may seek the establishment of a panel to make a determination on the issue.

At any time during the dispute settlement process, the Parties may agree to use an alternative method of dispute resolution such as good offices, conciliation or mediation to try to find a solution to their dispute. Such alternative procedures may begin at any time and may be terminated at any time by a Party (Article 31.20). The disputing Parties may agree at any time to terminate panel proceedings and jointly notify that agreement to the panel (Article 31.22.4). If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the dispute proceeds for resolution before a panel (Article 31.20.2). The availability of alternative methods of dispute settlement provides the broadest range of possibilities for resolving a dispute.

If a panel is appointed it shall be composed of three arbitrators. Each Party appoints one arbitrator and can nominate up to three candidates to serve as the chair of the panel. The Chair (who cannot be a national, employed by or reside in one of the Parties) is appointed by common agreement taking into account the candidates nominated by each Party. If no consensus can be reached on a panel Chair, then the Secretary-General of the Permanent Court of Arbitration can be asked to make the remaining appointment (Article 31.7)

There are provisions in the chapter that set out qualification requirements for all arbitrators (Article 31.8). These requirements are modified, where a dispute arises in certain areas (Financial Services, Labour, and Environment).

If a panel determines that a measure is inconsistent with a Party's obligations, that it has failed to carry out its obligations or is nullifying or impairing benefits under the Agreement, the responding Party must, whenever possible, eliminate the non-conformity, nullification or impairment. This must be done within a reasonable period of time if it cannot be done immediately (Article 31.13.2), with provision for the Parties to agree on a reasonable period of time, if possible, or ask the panel chair to determine this through arbitration (Article 31.13.3).

If there is disagreement as to whether the relevant Party has complied with the determination within a reasonable period of time, the complaining Party may request negotiations with the responding Party to arrive at mutually acceptable compensation. If the Parties cannot agree on such compensation, then there are steps that allow the complaining Party to suspend benefits of equivalent effect (Article 31.15). If the responding Party is unable to bring its measures into compliance, it may, as an alternative to retaliation, pay a monetary assessment for up to a twelve month period.

A panel must base its reports on the relevant provisions of the Agreement, the submissions and arguments of the Parties, and any information or advice it has obtained in accordance with Rule 37 of the Rules of Procedure (Annex 31A). The Panel's initial report needs to contain: (a) findings of fact; (b)

the determination of the panel on the issue concerned; (c) any other determination requested in the terms of reference; and (d) the reasons for the findings and determinations.

There is an opportunity for a Party to submit written comments on the initial panel report and for the panel to modify its report and make any further examination it considers appropriate. The panel has to present its final report to the Parties within 30 days of the date of presentation of the interim report (Articles 31.12).

If the panel finds that a Party's measure is inconsistent with the Agreement, or is causing nullification or impairment, its report shall require the responding Party to remove the inconsistency or make a mutually satisfactory adjustment to address the nullification or impairment. The final report of the Panel is final and binding on the Parties (Article 31.12).

The responding Party is to comply promptly and in good faith with the final report. Where it is not able to comply immediately, the responding Party must notify the complaining Party of the reasonable period of time it requires to comply, within 30 days of issue of the final report. If no agreement can be reached on the reasonable period of time, the original panel can be asked to decide on this and must do so within 40 days of the date of the request. The reasonable period of time, where determined by the panel, is not to exceed 15 months from the date the final panel report was issued, but may be shorter, depending upon the particular circumstances of the dispute. The reasonable period of time may be extended by mutual agreement of the Parties (Article 31.13).

There are also provisions dealing with a Party's compliance with the Final report (Article 31.14) and the nature of temporary remedies before a measure is brought into compliance with a final report (Article 31.15).

Where there is disagreement as to the existence or consistency of measures taken to comply, the original panel may be asked to examine the matter and must provide its compliance report to the Parties within 90 days. In exceptional cases, if the panel considers that it cannot provide its compliance report within the specified time period, it will inform the Parties in writing of the reasons for the delay, together with an estimate of when it will issue its report.

If the responding Party does not notify any measure taken to comply with the final panel report within the reasonable period of time; advises that it does not intend to comply with the final report, or the panel finds compliance with the final report has not been achieved or the measure taken to comply is inconsistent with this Agreement, the responding Party must enter into any consultations requested by the complaining Party with a view to agreeing mutually acceptable compensation.

If, in any of the circumstances set out above, the complaining Party chooses not to request consultations or no agreement is reached on compensation within 20 days, the complaining Party may notify its intention to suspend certain specified concessions or other obligations under the Agreement equivalent to the level of nullification or impairment caused by the responding Party's non-compliance.

Concessions or other obligations suspended under Article 31.1.5 should, in general, first be in the same sector or sectors in which the panel has found an inconsistency or nullification or impairment; or if this is not possible, in other sectors (but only where these obligations are subject to dispute settlement), with reasons provided for resort to these other sectors.

If the responding Party wants to contest the intended level of suspension of concessions it must do so no later than 10 days after receipt of the notification and can ask the original panel to examine the matter to determine if the level of the suspensions is equivalent and permissible under the Agreement. The panel shall notify its decision no later than 90 days later, or if reasons are provided, up to an additional period of 30 days. Concessions or other obligations shall not be suspended until the panel has notified its decision, with any such consistent with the panel's decision.

Any compensation or suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the responding Party has complied with the final panel report, or the Parties have reached a mutually agreed solution. Where such temporary measures are adopted, the complaining Party must terminate them no later than 30 days after it has confirmed that the responding Party has brought itself into compliance. Article 31.15.8 makes clear that none of these temporary measures is preferred to full compliance with the final report, with Article 31.16 providing for a compliance review after the adoption of any such temporary remedies.

Article 31.18 on Choice of Forum notes that when a dispute regarding the same matter arises under this Agreement and under another international agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute. The provision further prevents a party from raising the same matter under another international agreement (i.e. forum-shopping).

Article 31.22 provides for the suspension and termination of proceedings, at any time, at the joint request of the Parties, for up to 18 months. In the event of that suspension, the relevant time periods shall be extended by the time for which the panel proceedings were suspended, with the panel resuming at any time on the joint request of the Parties or the end of the agreed suspension period. If the panel proceedings have been suspended for more than 18 consecutive months, the authority of the panel shall lapse and the proceedings terminate, unless the Parties agree otherwise.

The Dispute Settlement chapter is supplemented by Annexes setting out the Rules of Procedure for Panels and the Code of Conduct for arbitrators. These form an integral part of the Agreement and include details on how the dispute processes should be managed.

5.32 Chapter 32: General Exceptions and General Provisions

The General Exceptions chapter provides exceptions that allow the Parties to take actions that would otherwise violate the obligations of the Agreement.

Article 32.1 applies the general exceptions found in Article XX of GATT and Article XIV of GATS to those chapters for which these exceptions are relevant. This includes the application of both the GATT and GATS General Exceptions to Articles 5-9 of the Investment chapter, as well as the chapters on Digital Trade and State-Owned Enterprises and Designated Monopolies.

The effect of incorporating these exceptions is to ensure that, provided such measures are not used for trade protectionist purposes, the NZ-UK FTA will not prevent New Zealand or the UK from taking measures (including environmental measures) necessary to protect human, animal or plant life or health, or public morals. The same applies with respect to measures to prevent deceptive practices, or to conserve living and non-living exhaustible natural resources.

Article 32.1.3 goes on to clarify that environment measures necessary to protect human, animal or plant life or health also includes measures necessary to mitigate climate change.

Further to the above exceptions, Article 32.1.4 makes clear that nothing in the Agreement prevents the adoption of measures necessary to protect national works or specific sites of historical or archaeological value or to support creative arts of national value. This paragraph does not, however, apply to Chapter 17 (Intellectual Property).

5.32.1 Security Exception

The security exception set out in Article 32.2 makes clear that the Parties:

- cannot be required to provide or allow access to any information where it determines that to do so would be contrary to its essential security interests; and
- that each Party may apply any measure that it considers necessary for the fulfilment of its obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

5.32.2 Balance of Payments Measures

Article 32.3 allows either Party, in the event of serious balance of payments and external financial difficulties (or the threat of such), to apply restrictive measures, as follows:

- in the case of goods, in accordance with GATT 1994 (and the WTO Understanding on the Balance-of-Payments Provisions of the GATT 1994), to adopt restrictive import measures;
- in the case of services, in accordance with GATS, adopt or maintain restrictions on trade in services, including on payments or transfers;
- in the case of investments, adopt or maintain restrictions on the transfer of funds related to investment, including those on capital account and the financial account.

Such restrictive measures have to be:

- be consistent with the Articles of Agreement of the International Monetary Fund (IMF).
- avoid unnecessary damage to other Parties' commercial, economic and financial interests.
- not exceed what is necessary to deal with the circumstances.
- temporary and be phased out progressively as the situation improves;
- be applied on a national treatment basis and not less favourably than any non-Party;
- Not be used to avoid necessary macroeconomic adjustment.

There are also several notification and consultation requirements a Party seeking to impose a restrictive measure for balance of payments purposes must observe under Article 32.3.3, 32.3.4 and 32.3.5.

5.32.3 Taxation Exception

The taxation exception in Article 32.4 works on the premise that nothing in the Agreement applies to taxation measures unless stated explicitly in Article 32.4 that it will apply.

5.32.4 Tax Conventions

Article 32.4.3 clarifies that nothing in the Agreement affects the rights and obligations of either Party under any tax convention. In the case of an inconsistency between the NZ-UK FTA and a tax convention, then the provision in the tax convention will prevail. In the case of an inconsistency between the NZ-UK FTA and a tax convention between the two Parties, the issue is to be referred to the competent authorities of the Parties, who will have 6 months (extendable up to a further 12 months) to determine whether and to what extent an inconsistency exists. No dispute settlement action can be taken during that time (Article 32.4.4).

5.32.5 Obligations that Do Apply to Taxes

The following obligations apply in respect of taxation measures:

- the national treatment obligation in the National Treatment and Market Access for Goods chapter (Article 32.4.5(a)) and other such provisions required to give effect to the article, will apply to taxation measures to the extent applied in Article III of the GATT 1994;
- the Export Duties, Taxes and Other Charges obligation (Article 32.4.5(b)) will apply to taxation measures;
- the Services and Financial Services chapter National Treatment obligations (Article 32.4.6) will apply to taxation measures on income, capital gains, taxable capital of corporations or value of an investment or property relating to purchase or consumption of particular services (though a Party is not precluded from conditioning receipt of an advantage relating to the purchase or consumption of a particular service on it being provided in the territory of the Party); and
- the Services and Investment chapter National Treatment and Most Favoured Nation (MFN) obligations and the Financial Services chapter National Treatment obligation (Article 32.4.6) will apply to all taxation measures apart from those on income, capital gains, taxable capital of corporations, the value of an investment or property (but not on the transfer of that investment or property), or taxes on estates, inheritances, gifts and generation-skipping transfers.

Article 32.4.7 clarifies, however, that the Services, Financial Services and Investment provisions above will not apply to:

- any MFN obligation concerning an advantage accorded by a Party under a tax convention;
- a non-conforming provision of an existing taxation measure, or its continuation or prompt renewal;
- an amendment of such a non-conforming measure if it does not make the measure more non-conforming;

- adoption or enforcement of any new taxation measure aimed at ensuring the equitable or effective imposition or collection of taxes; or
- a provision requiring that the receipt or continued receipt of advantages or income from a pension or superannuation fund be based on the Party maintaining continuous jurisdiction, regulation or supervision over that fund.

Under Articles 32.4.8 and 32.4.9, the Investment chapter obligations on expropriation (Article 14.4) will apply to taxation measures, as will that chapter's obligations on performance requirements (Article 14.8), subject – in the case of performance requirements – to the provisions of Article 32.4.3 and 32.4.5.

5.32.6 Treaty of Waitangi

The effect of the Treaty of Waitangi exception is that, provided measures are not used for trade protectionist purposes, the NZ-UK FTA will not prevent New Zealand from taking measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by the Agreement, including in fulfilment of its obligations under the Treaty of Waitangi. The text also specifies that interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of the Agreement (Article 32.5).

5.32.7 Health and Disability Services

Under Article 32.6, the Parties recall the exclusions and exceptions across the Agreement that are applicable to the UK's National Health Service (NHS) and the New Zealand health and disability system. This includes the provisions in the General Exceptions chapter, as well as those in the chapters on Cross-Border Trade in Services, Investment, Intellectual Property, Government Procurement, Domestic Regulation and the Parties relevant non-conforming measures in Annexes I and II.

5.32.8 Disclosure of information

Article 32.7 ensures that nothing in the NZ-UK FTA requires a country to provide or allow access to information where to do so would be contrary to its domestic law, or would impede law enforcement, or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of particular enterprises.

5.32.9 Confidentiality

Under Article 32.8, where a Party designates information it provides to the other Party in accordance with this Agreement as confidential, the other Party is obliged to maintain the confidentiality of this information, with the information to be used only for the purposes specified and not otherwise disclosed, unless the Party receiving the information is required to under its domestic law, including for judicial proceedings.

5.33 Chapter 33: Final Provisions

This chapter sets out the arrangements for entry into force of the Agreement, as well as indicating the status of the Annexes to the Agreement and providing for amendments to the Agreement and processes for its termination.

Under Article 33.5, the NZ-UK FTA will enter into force on a date agreed in writing between the two Parties subsequent to confirmation by both Parties that their respective necessary domestic legal requirements and procedures have been completed to enable the Agreement to enter into force.

Article 33.1 confirms that the Annexes, Appendices, Schedules and footnotes to the NZ-UK FTA constitute an integral part of the Agreement, while Article 33.2 makes clear that where international agreements are referred to or incorporated into the NZ-UK FTA, this is understood to include amendments to these international agreements or their successor agreements where these enter into force for both Parties after signature of the NZ-UK FTA.

The Chapter also includes an article that makes it clear that, where reference is made in the Agreement to legislation of a Party, that legislation shall be understood to include amendments to the legislation and successor legislation, unless otherwise provided in the Agreement.

Finally, this chapter outlines the requirements for any amendments to the NZ-UK FTA to enter into force (Article 33.3) as well as providing for either Party to terminate the Agreement following six months' written notice to the other Party (Article 34.4).

5.34 Side Instruments

New Zealand and the UK have also concluded three side instruments to the Agreement, each of non-treaty status:

- Side letter on the Haka Ka Mate: this is an understanding under which New Zealand and the UK each acknowledge the association Ngāti Toa Rangatira has with, and its guardianship of, the Haka Ka Mate;
- Side letter on oenological (winemaking) practices: this is an understanding reached between New Zealand and the UK in which the UK has committed to a process for assessing and, as appropriate, recognising specified winemaking practices used in New Zealand, and to allowing wine using such practices to be imported into the UK;
- Side letter on Scottish whisky localities: this is an understanding that New Zealand will not permit the sale of whisky labelled or advertised with representations of Scottish whisky localities including Campbeltown, Islay, Highland, Lowland, or Speyside unless manufactured in Scotland, to the extent that the use of such representations is found to be misleading or deceptive under the terms of New Zealand's Fair Trading Act 1986 or any successor legislation.

6. Measures which the Government could or should adopt to Implement the Treaty Action, the Intentions of the Government in Relation to such Measures, Including Legislation

Most of the obligations in the NZ-UK FTA would be 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's independent, fair and effective judicial system and efficient administrative system together provide the kinds of procedural guarantees for foreign businesses that are required under a number of the chapters in the Agreement. This is evidenced by the fact that New Zealand consistently ranks as one of the easiest countries in the world to do business in.

However, several legislative and regulatory amendments would be required to align New Zealand's domestic legal regime with certain obligations under NZ-UK FTA, and thereby enable New Zealand to ratify the Agreement. These are detailed below.

6.1 Changes Required

The following changes have been identified as being required.

6.1.1 National Treatment and Market Access for Goods chapter

An Amendment to the Tariff Act 1988 to enable Orders in Council to be made to: identify the UK for the purposes of the Tariff Act; and amend the definition of 'Tariff' (as defined in the Act) to enable the application of the preferential tariff rates agreed in the NZ-UK FTA.

Amending regulations under the Tariff Act 1988 would be required to implement obligations relating to the tariff treatment of goods returned after repair or alteration.

An amendment to the Dairy Industry Restructuring Act 2001 to list the UK as a separate quota market, and bring the transitional butter and cheese quotas under the existing quota management system. This amendment would also allow for the modifications to New Zealand's country-specific WTO dairy quotas required post-Brexit.

A legislative amendment will be required for New Zealand to manage the administration of the transitional apples quota. This change will be undertaken via an amendment to an existing Act (e.g. the New Zealand Horticulture Export Authority Act 1987) or new legislation.

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 the United Kingdom.

6.1.3 Trade Remedies chapter

An amendment to the Tariff Act 1988 to provide for the bilateral transitional safeguard mechanism agreed under the Trade Remedies chapter.

6.1.4 Investment chapter

Amendments to the Overseas Investment Act screening regime to increase, for non-government investors from the United Kingdom, the threshold above which approval must be obtained to invest in “significant business assets” in New Zealand from NZ\$100 million to NZ\$200 million, as provided for in New Zealand’s schedule in Annex I (Cross-Border Trade in Services and Investment Non-Conforming Measures).

The UK will thus be able to benefit from the same screening threshold agreed with many of New Zealand’s other FTA partners, including CPTPP Parties, China, and Korea (NZ\$200 million).

6.1.5 Intellectual Property chapter

Amendments to the Copyright Act 1994, to:

- extend copyright terms by 20 years for authors, performers and producers, to be implemented within 15 years of entry into force of the FTA (the extension, once implemented, would only apply to works still within their current term of protection under the Copyright Act at that point); and
- implement commitments to extend existing performers’ property rights to include the playing in public of sound recordings of their performance.

New legislation to introduce a New Zealand artist’s resale right (ARR) scheme (which would be operated on a reciprocal basis with the UK) would need to be adopted within two years of entry into force of the Agreement.

6.2 New Zealand-UK Free Trade Agreement Legislation Bill

Cabinet approval has been sought to include the New Zealand-UK Free Trade Agreement Legislation Bill on the 2022 Legislation Programme as a Category 2 priority.

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

7. Economic, Social, Cultural and Environmental Effects of the Treaty Entering into Force / Not Entering into Force for New Zealand

7.1 Trade for All

The New Zealand Government launched its Trade for All policy in 2018. Trade for All has the objective of working to ensure that New Zealand's trade policy helps all New Zealanders to benefit from trade and that trade policy contributes to addressing global and regional issues of concern, such as environmental issues and labour standards. An extensive consultation process was undertaken with Māori as Treaty Partner, interested stakeholders and the general public between August and October 2018. This included written feedback and face-to-face engagement around New Zealand through 11 dedicated hui with Māori and 15 public meetings.

An independent Trade for All Advisory Board was also established in November 2018 to produce specific recommendations in regard to future trade policies. The Advisory Board's membership was selected to cover a range of perspectives and reflect the diversity of contemporary New Zealand. In November 2019, the Trade for All Advisory Board report was released and included a set of 53 recommendations, which the Government has responded to and agreed to progress on the basis of a short, medium and longer term prioritisation framework.⁴³

Further to these steps, the Government released a detailed discussion document in early 2021 outlining proposals for an updated framework to guide New Zealand's approach to Trade, Environment and Climate Change (as recommended by the Trade for All Advisory Board). The Government has also established a standing Trade for All Ministerial Advisory Group to advise on the implementation of the Trade for All Advisory Board's recommendations and to provide Ministers with the opportunity to engage regularly with a wide range of Māori, business, academic and civil society trade policy experts on the direction of New Zealand trade policy.

Trade for All principles and priorities have underpinned New Zealand's approach to the NZ-UK FTA negotiations from the outset. This intent was explicitly articulated in the high level negotiating objectives released by New Zealand at the launch of negotiations in June 2020. Key Trade for All principles and interests in trade and sustainable development (including environment, climate change and labour) and inclusive trade (especially for Māori, women and small and medium enterprises) were directly identified as one of the six overarching principles guiding New Zealand's approach to the NZ-UK FTA.

The NZ-UK FTA has given effect to these principles and interests, including through the following:

- inclusion of dedicated chapters on Māori trade and economic cooperation, trade and gender equality, trade and development, consumer protection and small and medium enterprises; and

⁴³ Reference to pro-actively released Cabinet papers on MFAT's website reporting on Government's response to the TFAAB report and subsequent implementation.

- advanced provisions on trade and environment (including with specific reference to climate change), trade and labour and anti-corruption.

7.2 Linkages between trade and productivity, sustainability and inclusiveness

7.2.1 The Productive, Sustainable and Inclusive Trade Channels Framework

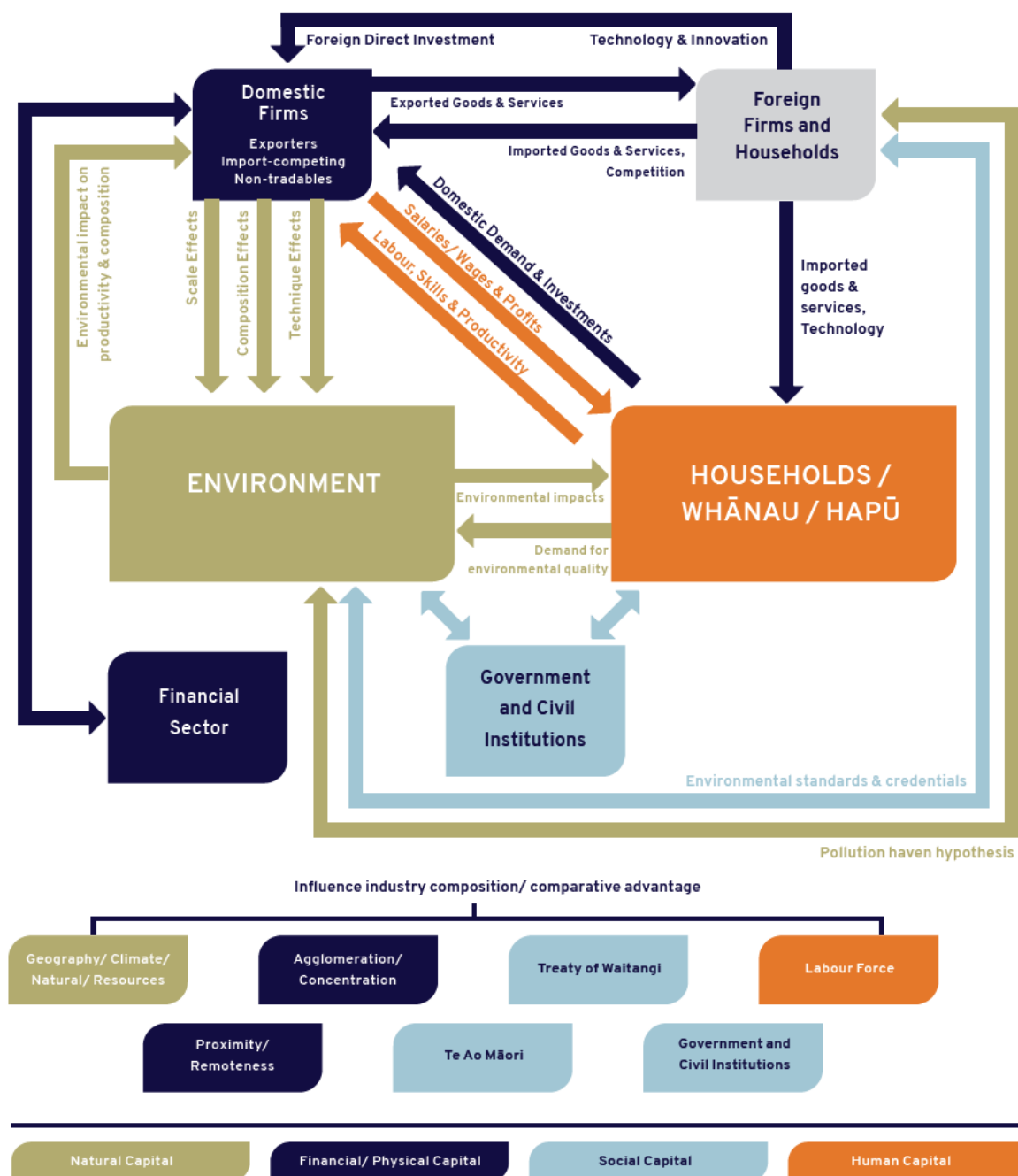
Economists at the Ministry of Foreign Affairs and Trade have developed the Productive, Sustainable and Inclusive Trade Channels (PSITC) framework as an analytical tool for identifying and understanding the complex channels through which trade affects productive, sustainable and inclusive outcomes. It is a critical tool for evaluating the impact of trade and trade agreements, including the NZ-UK FTA, from a Trade for All perspective.

The PSITC framework is based on a standard economic model of a small, open economy. The main components of the model are households, whānau and hapū; the environment; domestic firms; foreign firms and households; government and civil institutions; and the financial sector. All of these aspects are linked to the four ‘capitals’ of the Treasury’s Living Standards Framework (LSF) – i.e. Natural, Financial/Physical, Social, and Human Capital. The full PSITC framework is set out in Graphic 7.2.1 below.

The framework identifies the main interlinkages through which the impacts of trade flow from one component to another. This allows us to identify the transmission channels from trade to productive, sustainable and inclusive outcomes, including distributional dimensions for households, whānau and hapū, and domestic firms. The framework also highlights the potential trade-offs, feedback loops, unintended consequences and countervailing forces associated with trade.

The PSITC framework has been used to frame and guide the following analysis of the effects of the NZ-UK FTA, including around distributional and regional impacts, the impacts on Māori and women, and the effects on the environment.

Graphic 7.2.1: Productive, Sustainable and Inclusive Trade Channels Framework



PRODUCTIVE TRADE

1. Domestic and foreign households demand goods and services from domestic firms. Domestic firms provide employment and wages to domestic households in return for labour, productivity and skills. Domestic firms also provide profits to households that have an ownership stake in them. A range of factors determine industry composition.
2. Increased trade / trade liberalisation changes the composition of industry / firms in tradables sector (some industry/firms better off / some worse off) through improved access to overseas markets, increased international competition in domestic markets, foreign investment, and technology diffusion. Increased quality and variety of imports is also a benefit to households and firms.
3. Returns and productivity and therefore wages and employment rise in tradables industry's that are better off and vice versa. This is an intra- and/or inter-industry reallocation effect.
4. Net effect of (3) creates an income effect (that is positive at an aggregate level) that further influences industry composition (including for non-tradables) through domestic demand and investment. Cheaper imported goods and services may also contribute to improving household budgets.

INCLUSIVE TRADE

5. The distribution of workers and business owners by region / gender / ethnicity across industries determines if they are net beneficiaries of trade. This distribution is largely determined by non-trade factors, although trade will have small impacts.
6. Trade-driven changes in relative prices might be equalising (reduce consumption inequality) if price declines are more concentrated in the bundle of goods and services consumed by lower-income households and vice versa (dis-equalising).
7. The overall impact on household inequality from trade will be a mix of the income-related effects (5) and the consumption-related effects (6).

SUSTAINABLE TRADE

8. Increased economic activity increases environmental impacts (scale effect).
9. Change in composition of economy (2 and 4 above) can have positive or negative environmental impacts (composition effect).
10. Demand for environmental quality (and ability to pay) increases with income (4 above) translating into more stringent environmental regulations/standards (although might not occur until beyond a particularly income threshold).
11. The environment and environmental regulation impact on productivity (positive or negative) e.g. through changing business practices or processes (technique effects), climatic effects.
12. Changes to environmental standards are also driven by international forces (including trade). This is usually a harmonisation with higher standards to meet export requirements, although a "race to the bottom" is possible.
13. Environmental attributes contribute to demand for exports. These may be linked to environmental standards or may reflect features of the product / service itself (e.g. credence attributes).
14. Pollution haven hypothesis: Pollution intensive industry shift to countries with weaker regulations. Carbon leakage is a special case of the pollution haven hypothesis. Pollution haven effect: Environment regulation has an effect on trade flows, at the margin e.g. firms offshore some "dirty" production.
15. Diffusion of green and low emissions technologies improves environmental quality or mitigates negative effects (technique effects). This diffusion may occur through environmental goods and services.

7.3 Summary of Impacts

Evidence shows that trade and other forms of international engagement often provide aggregate economic and other benefits, particularly for smaller economies.⁴⁴ International engagement can also have associated environmental, social and other impacts.⁴⁵

This chapter of the NIA assesses the overall economic, social, cultural and environmental effects of the NZ-UK FTA for New Zealand. It draws on the advantages and disadvantages outlined in Section 4 above, as well as economic modelling of the impact of the NZ-UK FTA. Analysis of the social and environmental impacts is structured around the Productive, Sustainable and Inclusive Trade Channels Framework developed by MFAT. The Framework is a critical tool for evaluating the impact of trade and trade agreements from a Trade for All perspective in support of the Government's objective of making trade policy work for all New Zealanders.⁴⁶

The Government commissioned independent economic modelling of the impact of the NZ-UK FTA.⁴⁷ By 2040, once the NZ-UK FTA is fully in effect, New Zealand's annual real GDP is estimated to be between 0.10 percent and 0.12 percent larger than if the FTA did not exist, equal to between NZ\$0.7 billion and NZ\$0.8 billion. The relatively short phase-in periods for most market access improvements mean that about half of the economic benefits will be realised within the first few years of the agreement coming into effect. The remaining gains build over time, largely in line with the gradual increase and eventual removal of beef quotas. The modelling employed fairly conservative assumptions and parameters leading to a relatively conservative estimate; actual impacts could turn out to be higher (or lower).

The net economic benefit of the NZ-UK FTA for New Zealand would be expected to translate into a corresponding net benefit to New Zealand society, for example, through generating higher real wages and providing increased resources to spend on health, welfare, cultural and environmental outcomes. Whilst expected to be of net economic benefit to New Zealand, these gains will be unevenly distributed across the economy and society. The FTA may also have a negative impact in some areas of the economy, for example those exposed to greater international competition. Table 3 summarises the expected impacts of the NZ-UK FTA across various economic, social, cultural and environmental areas.

The sections below discuss the expected economic, social, cultural and environmental effects of the NZ-UK FTA in further detail, including distributional implications. Estimates of employment by and ownership of goods exporting firms draw heavily on recent firm-level analysis by MFAT using New Zealand's administrative data sources, the Longitudinal Business Database (LBD) and Integrated

⁴⁴ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

⁴⁵ Ibid.

⁴⁶ MFAT Discussion Paper: The Productive, Sustainable and Inclusive Trade Channels Framework: Mellor: June 2021.

⁴⁷ ImpactECON LLC: Impacts of the New Zealand-UK Free Trade Agreement on the New Zealand Economy, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: February 2022.

Data Infrastructure (IDI).⁴⁸ The fiscal costs to New Zealand of entering the NZ-UK FTA are outlined in Section 8.

Table 7.3 Summary of Impacts

Area	Increase in NZ GDP when FTA fully in effect, relative to baseline ⁴⁹	
	Percent of real GDP	Constant 2019 NZ\$
Reductions in tariffs on goods trade. (Economic benefit).	0.039	\$267 million
Expansion in quota access for goods trade. (Economic benefit)	0.049	\$335 million
Reductions in non-tariff measures (NTMs) on goods trade. (Economic benefit).	0.009 to 0.020	\$62 million to \$138 million
Reductions in NTMs on services trade. (Economic benefit).	0.007 to 0.014	\$50 million to \$95 million
Total economic benefit.	0.10 to 0.12	\$710 million to \$811 million

Impact on New Zealand		
Employment	Net positive	Aggregate employment is unchanged with a modest increase in real wages.
Social Regulation	No negative impact expected	Does not inhibit the right to regulate for legitimate public policy purposes.
Health	No negative impact expected	Does not impinge on the regulation or operation of New Zealand's health and disability system.
Immigration	No negative impact expected	Commitments on temporary entry of business persons do not apply to persons

⁴⁸ MFAT Working Paper: All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms: Verevis, Brunt, Cribbens and Mellor (2022)).

⁴⁹ Source: ImpactECON Report: Note: Ranges are based on the upper and lower estimates from the scenarios. Estimates are based on market access outcomes per the Agreement in Principal, 5-10% reduction in the cost of some goods and services Non-Tariff Measures (NTMs), and 10% reduction in customs processing times.

		seeking access to the employment market of New Zealand, or to nationality, citizenship, or residence.
Human Rights	No negative impact expected	No effect on human rights in New Zealand.
Treaty of Waitangi	No negative impact expected	Nothing in the NZ-UK FTA that would prevent the Crown from meeting its obligations to Māori.
Small and Medium Sized Enterprises (SMEs)	Net positive	Outcomes expected to modestly benefit SME exporters.
Māori	Net positive	Outcomes expected to modestly benefit Māori business owners and workers.
Women	Net positive	May improve trade engagement for women business owners and workers.
Culture	No negative impact expected	Does not impinge on policies towards or preclude support for New Zealand culture and the creative arts, including ngā toi Māori, traditional knowledge and cultural practices.
Environment	Net effect expected to be limited	The NZ-UK FTA incorporates advanced provisions on trade and environment, including in relation to environmentally harmful subsidies and on liberalisation of environmental goods. Does not inhibit the right to regulate environmental matters for legitimate public policy purposes.

7.4 Economic Effects

Trade makes a significant contribution to New Zealand's economic performance. Prior to COVID-19, exports and imports of goods and services each accounted for around 28 percent of New Zealand's GDP.⁵⁰ Exporting allows New Zealand businesses to access larger markets, benefit from economies of scale, and to specialise in areas of comparative advantage. Connections to international markets, including importing goods and services, also allow New Zealand to access resources, knowledge and ideas that can boost its productivity, competitiveness and stimulate innovation.

⁵⁰ The sharp fall in services trade due to border restrictions and other COVID-related impacts mean that by late 2021 the share of exports and imports had fallen to around 22-23% each.

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—is associated with a 4 percent increase in output per working-age person.⁵¹ More recent research by the World Bank showed a 1 percent increase in global value chains increased per capita incomes by 1 percent.⁵² Conversely, a simulation by the IMF showed that an increase in protectionism equivalent to a 10 percent tariff *reduced* per capita incomes by up to 1.5 percent.⁵³

Improvements in market access for goods, services and investment under an FTA, including those delivered through the removal of tariffs and addressing non-tariff barriers to goods and services exports and investment, provide opportunities for existing New Zealand businesses to achieve increases in the value of their trade and investment activities. Lower costs and new opportunities can also result in new businesses entering overseas markets. Moreover, the opportunity for local companies to expand market size through increased exports can boost productivity and efficiency through economies of scale. These effects are often described as ‘static gains’ or ‘first-order effects’.

A second source of economic benefit from FTAs is ‘dynamic productivity gains’ or ‘second-order effects’. These effects are harder to quantify as they accumulate over time and may be attributable to the downstream effects of trade agreements, rather than the immediate impacts driven by tariff removal or other improvements in market access alone. Trade and investment may be stimulated through improvements in the regulatory framework brought about by FTAs, which increase transparency, fairness and predictability for businesses.

Moreover, the facilitation of increased trade and investment flows provides companies with more exposure to competition, innovation, international benchmarking and opens up opportunities to develop stronger links with international business partners. Spill-overs from this process into the domestic economy can include the generation of ongoing productivity improvements (dynamic productivity gains) across the wider economy.

7.4.1 Modelling approach and main scenarios

Economists seek to capture the effects of changing trade barriers on GDP, trade flows, national welfare and other variables with sophisticated Computable General Equilibrium (CGE) models. CGE models link different sectors in different countries together using, in this case, the Global Trade Analysis Project (GTAP) trade data and input/output tables. CGE modelling estimates changes to variables for both the UK and New Zealand, and for almost all other countries.

CGE models rely on assumptions and are restricted by data limitations, and hence are better suited to indicating the size and direction of effects than providing precise estimates. This modelling is not a full cost benefit appraisal of the NZ-UK FTA. Costs external to the model are considered separately below.

⁵¹ OECD. 2003. The Sources of Growth in OECD Countries, Paris.

⁵² World Development Report 2020: Development in the Age of Global Value Chains: <https://www.worldbank.org/en/publication/wdr2020>.

⁵³ The Economist 2021: Special Report on Trade. 6 October 2021.

The New Zealand government commissioned a comprehensive study into the impact of the NZ-UK FTA, focussed on New Zealand.⁵⁴ In this study, ImpactECON considered the impact of the NZ-UK FTA on trade in goods and services. ImpactECON modelled the economic impact of the NZ-UK FTA by first determining a 'baseline scenario', i.e. an estimate of how New Zealand's economy would be expected to develop as part of the global economy in the absence of the NZ-UK FTA, and then comparing this to liberalisation of trade in goods and services through the NZ-UK FTA in five areas. The result of the CGE model takes account of the complicated adjustments that might occur in an economy following new trade flows and consequent adjustments to resource allocation.

The five areas considered were:

- reductions in tariffs on goods trade.
- increases in UK quotas and, eventually, their elimination, for certain primary sector products.
- reductions in non-tariff measures (NTM)⁵⁵ on goods trade.
- reductions in non-tariff measures on services trade.
- improved trade facilitation measures.

ImpactECON modelled two main scenarios. The reduction in tariffs and increases in quotas are the same in each scenario.⁵⁶ However, the main variation in the scenarios comes from varying the degree of liberalisation in the remaining areas to reflect uncertainty in the extent of outcomes able to be achieved in addressing NTMs. The first scenario assumes relatively modest gains from reductions in NTMs and improved trade facilitation, while scenario two assumes larger gains from NTM reductions.

In addition to the two main scenarios, further sensitivity analysis is undertaken on the quota expansion and elimination. There is some uncertainty over the magnitude and pace with which the beef quota in particular will be filled. The sensitivity analysis examines this issue.

7.4.2 Baseline Uncertainties

Estimating the baseline, which involves projecting economic and demographic variables over several decades, is challenging at the best of times. However, for the NZ-UK FTA modelling the situation was considerably complicated by two significant events – Brexit and COVID-19. Whilst the process for the UK leaving the European Union has been under way for some time, it did not take effect until 31 January 2020. This closely coincided with the emergence of COVID-19. COVID-19 can be expected to impact on the economic structure, trading patterns, and long-run prospects of both the UK and New Zealand economies, as well as the economies of other trading partners. Brexit will also have impacts on the structure of the UK economy and its trading patterns. It is still too early to understand

⁵⁴ ImpactECON LLC: Impacts of the New Zealand-UK Free Trade Agreement on the New Zealand Economy, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: February 2022.

⁵⁵ A non-tariff measure (NTM) is a policy measure, other than a tariff, which may restrict trade. Many NTMs are legitimate measures to achieve particular objectives, such as biosecurity or protecting consumer health and safety, and some measures apply equally to domestic and imported products.

⁵⁶ Modelling took place in October/November 2021, meaning that the Agreement in Principle was available for consideration in the modelling. MFAT wish to gratefully acknowledge ImpactECON's efforts in undertaking the modelling in such a compressed timeframe.

how such changes might evolve, or how extensive they may be. ImpactECON have used their extensive professional expertise to account for this, to the extent possible, in the baseline. Nevertheless, there is a higher-than-usual uncertainty around the modelling results.

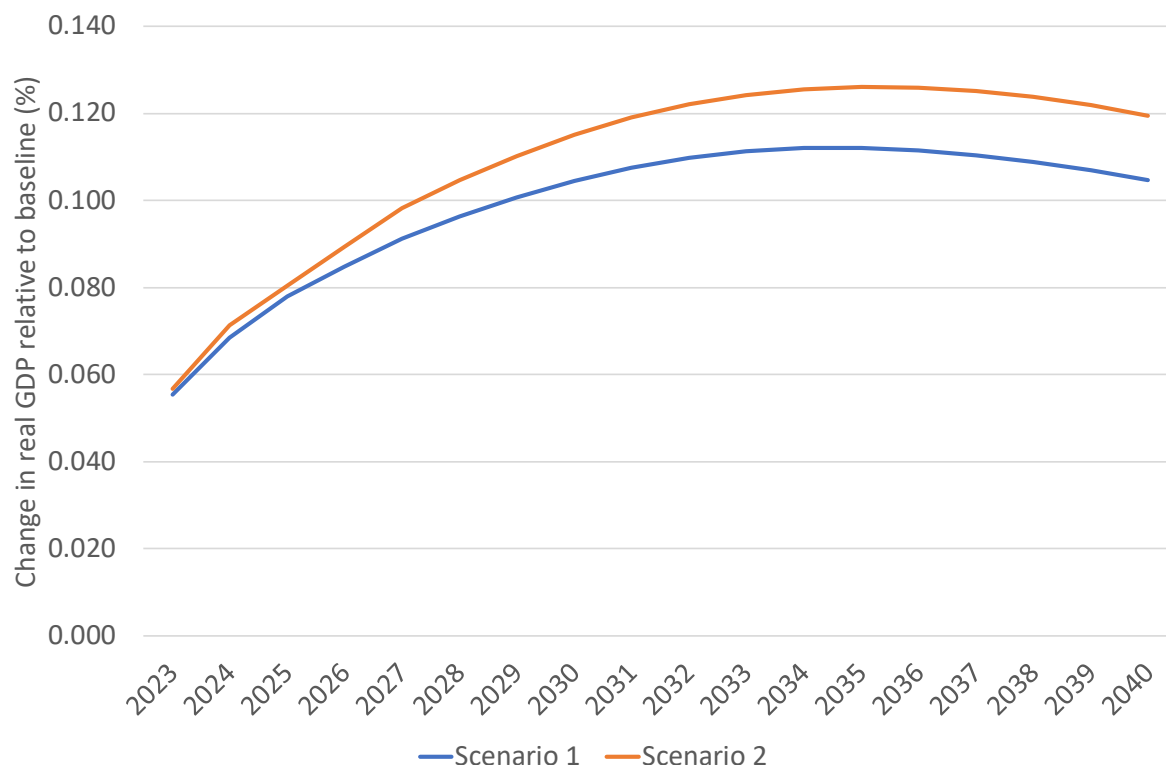
Notwithstanding this greater uncertainty, the modelling results still provide considerable insight into the likely effects of the FTA. The impacts of the FTA are presented as deviations from the baseline. Assuming that any wider structural changes that do occur would be largely the same with or without the NZ-UK FTA, the modelling results of the different scenarios will be broadly accurate.

7.4.3 Modelled gains: Total gains from trade liberalisation

Based on the modelling, the overall impact of the NZ-UK FTA on New Zealand's economy is estimated to be an increase of between 0.10 percent and 0.12 percent in New Zealand's GDP in 2040 (between NZ\$710 million and NZ\$811 million in 2019 dollar terms). The range largely reflects the uncertainty over the magnitude of impacts of reductions in NTMs.

The relatively short phase-in periods for most goods market access improvements mean that about half of the economic benefits will be realised within the first few years of the agreement coming into effect. Similarly, most improvements from NTM reductions and improved trade facilitation are assumed to occur within the first five years of entry into force. As a result, the majority of the benefits to New Zealand are expected to occur within a decade (Graphic 7.4.3.1).

Graphic 7.4.3.1: Estimated change in real GDP from NZ-UK FTA



Source: ImpactECON

7.4.4 Modelled gains: Reductions in tariffs

Under the NZ-UK FTA, the bulk of UK tariffs on imports from New Zealand are to be eliminated on entry into force of the Agreement, with limited phasing to remove remaining tariffs and transitional quotas for a small number of products. All remaining New Zealand tariffs on imports from the UK are to be eliminated at entry into force.

ImpactECON estimated that tariff elimination increases New Zealand's GDP by about 0.039 percent once the NZ-UK FTA is fully implemented. This about one third of the overall GDP gain for New Zealand. The model captures gains from allocative efficiency as relative prices adjust following tariff reductions. The change in relative prices encourages New Zealand production to shift towards areas where we have the greatest competitive advantage.

7.4.5 Modelled gains: Increases in quota access

The NZ-UK FTA includes transitional quotas that expand New Zealand access for exports to the UK for five specific primary sector products:

- A seasonal apple quota of 20,000 tonnes, that applies for the first three years of the agreement until the full removal of tariffs on apples year-round thereafter. The seasonal quota applies from 1 August to 31 December (with tariffs removed at entry into force outside this period).

- A quota on butter products that starts at 7,000 tonnes and increases to 15,000 tonnes by year five. After this, butter will be tariff-free.
- A quota on cheese products that starts at 24,000 tonnes and increases to 48,000 tonnes by year five. After this, cheese will be tariff-free.
- A quota on beef products that starts at 12,000 tonnes and increases to 38,820 tonnes in year 10, followed by a product-specific safeguard rising to 60,000 tonnes by year 15. After this, beef will be tariff-free.
- A quota on sheep meat products of 35,000 tonnes for the first four years, then 50,000 tonnes until year fifteen. After this, sheep meat will be tariff-free. This new access is additional to that under existing WTO quotas.

For all of the above quotas, the in-quota tariff rate is 0 percent. Out of quota tariffs vary by tariff line and for apples, butter and cheese, the out of quota tariff will steadily reduce to zero in line with the phase-in periods noted above.

ImpactECON estimated that these transitional expansions in New Zealand quota access and their eventual elimination increase New Zealand's real GDP by 0.049 percent. Quota access and eventual elimination is estimated to account for about 45 percent of the overall gains to New Zealand.

As noted in the modelling approach, the pace and extent of beef quota uptake is an area of significant uncertainty. The two main scenarios represent a best estimate of this uptake based on the judgement of ImpactECON and officials at the Ministry of Foreign Affairs and Trade and Ministry for Primary Industries. Sensitivity analysis by ImpactECON shows that, under more generous uptake assumptions, the impact of increased quotas could be higher than the main scenarios.

7.4.6 Modelled gains: Non-tariff measures affecting goods and services trade

While lowering tariffs is the most direct mechanism by which countries agree under an FTA to improve market access for trade in goods, the NZ-UK FTA also provides coverage of other measures affecting trade and investment. This includes obligations to address the simplification of rules affecting trade in goods and services, sector-specific annexes and disciplines on import licensing systems. Collectively these are known as 'non-tariff measures' (NTMs).

The removal or reduction of NTMs can represent significant outcomes in an FTA, as the impact of NTMs on global trade is well documented. Numerous attempts have been made by organisations such as the WTO, World Bank, EU, OECD, United Nations Conference on Trade and Development (UNCTAD) and ASEAN to mitigate their effects. In general, the use of NTMs to achieve legitimate policy objectives is recognised, but they should not be implemented in such a way to pose unnecessary obstacles to trade.

The NZ-UK FTA NTM provisions are largely contained in the Customs and Trade Facilitation, Technical Barriers to Trade, Sanitary and Phytosanitary, Goods, Services and Government Procurement chapters (see details in section 4 above). Examples include:

- An expectation of the release of perishable goods within 6 hours, and other goods as soon as possible, and at least within 48 hours.

- Commitment by the UK to recognise a wider range of winemaking practices used in New Zealand production.
- Recognition of the principle of equivalence of SPS measures where the exporting country objectively demonstrates that its measures achieve the importing country's appropriate level of protection.
- An annex on professional services and recognition of professional qualifications to foster opportunities for UK and New Zealand professionals wanting to provide services in each other's territory.
- Services licensing procedures that facilitate applications from smaller or more remote services suppliers, including avoiding the need to apply to multiple regulatory bodies where possible and enabling applications online, as well as acceptance of authenticated documents.
- Government Procurement provisions aimed at facilitating SME participation through simplified administrative procedures where possible, making tender documentation available free of charge and considering SMEs in the design and structure of the procurement.

Available estimates of the impact of NTMs on trade costs, while improving, remain much less developed than data on tariffs.⁵⁷ ImpactECON have used the best available estimates of the ad valorem tariff equivalent (AVE) in order to model the impact of reducing NTMs on goods.⁵⁸ Similarly, the best available source for services NTMs is used.⁵⁹ There is also considerable uncertainty regarding the extent of what the NZ-UK FTA will be able to achieve in terms of reductions. This means estimates of the economic gain from NTM reductions need to be treated with caution.

Two further key assumptions apply to the NTM estimates. Firstly, the NTM estimates do not distinguish between those NTMs that are able to be addressed in trade negotiations and those that are not. Therefore, the modelling limits the size of the potential reduction in NTM costs to account for the portion of NTMs that are not able to be addressed. In the less ambitious scenario, a 5 percent reduction in most NTMs was assumed, while in the more ambitious scenario a 10 percent reduction was assumed.

As would be expected given their significant impact on goods trade, ImpactECON found that the reduction of goods-related NTMs under the NZ-UK FTA would have an impact on trade flows, and hence significant economic gains for New Zealand. By promoting recognition and alignment and reducing the incidence of goods NTMs, the NZ-UK FTA was estimated to increase New Zealand's GDP by 0.009 to 0.020 percent (between NZ\$62 million and NZ\$138 million). About 17 percent of the overall economic benefit from the NZ-UK FTA is estimated to come from reducing goods NTMs.

⁵⁷ ImpactECON LLC: Impacts of the New Zealand-UK Free Trade Agreement on the New Zealand Economy, A Dynamic Computable General Equilibrium Analysis: Walmsley, Strutt and Minor: February 2022.

⁵⁸ The specific source for goods NTM estimates is the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) 2019 econometric estimates. These estimates use highly detailed and internationally consistent datasets of NTMs collated through significant national and international efforts, led by UNCTAD and supported by other key international agencies.

⁵⁹ Services NTM estimates are from CEPII (Fontagné et al., 2016).

ImpactECON find similar impacts from reducing NTMs affecting services trade, albeit at a smaller scale. Reductions in services NTMs through the NZ-UK FTA are estimated to increase New Zealand's GDP by 0.007 to 0.014 percent (NZ\$50 million and NZ\$95 million). About 12 percent of the estimated overall economic benefit would come from reducing service NTMs.

7.4.7 Modelled gains: Improved trade facilitation

ImpactECON further considered the additional trade facilitation impacts of the NZ-UK FTA, namely commitments aimed at facilitating the flow of goods across borders, including through streamlined and consistent application of customs procedures and practices. As with other aspects of the modelling, care was taken to reflect pre-existing expected improvements in trade facilitation, notably through the WTO Trade Facilitation Agreement, in the baseline. This means any trade facilitation gains from the NZ-UK FTA would be relatively small and are estimated on the basis of a modest (10 percent) reduction in customs processing times.

7.4.8 Other modelling estimates

The size of the impact on New Zealand estimated by ImpactECON is broadly similar to other estimates using CGE modelling techniques. The UK Department for International Trade conducted an assessment in 2020⁶⁰. That study concluded that New Zealand's annual GDP would be between 0.14 percent and 0.35 percent larger than if the FTA did not exist, while the change in UK GDP would be close to zero (between -0.01 percent and 0.01 percent).

7.4.9 Sectoral Impacts

The majority of the gain in New Zealand exports is expected to come from the food sector, namely from higher beef, dairy and wine exports (see Table 7.4.9 below). Production also expands in this sector, though by less than the expansion in exports. This is largely because production in the beef and sheep sector is expected to be constrained by environmental limits. Most of the gains from trade in the processed food and agriculture sectors are from the reduction in tariffs and the expansion and eventual elimination of quotas (especially for beef).

Output in the services sector is also expected to increase under the FTA, providing the largest contribution in absolute terms. This is expected to be supplemented by increased imports of services, as barriers to trade in these areas are reduced. The gains in the services sector are largely as a result of reducing services NTMs.

By contrast, output in the manufacturing sector (outside of food and beverage processing) is expected to be largely flat. Imports in this area are expected to increase as local businesses and households take advantage of lower barriers to trade to import manufactured goods from the UK. Higher imports of manufactured products comes from removal of remaining limited New Zealand tariffs on UK products and reductions in NTMs.

⁶⁰ The 'UK-New Zealand Free Trade Agreement: The UK's Strategic Approach' can be found on <https://www.gov.uk/government/publications/uk-approach-to-negotiating-a-free-trade-agreement-with-new-zealand>.

Table 7.4.9: Impact on New Zealand sectoral production, exports and imports, 2040 (cumulative differences from baseline)

	Percent		\$NZm	
	Scenario 1	Scenario 2	Scenario 1	Scenario 2
Production				
Agriculture & unprocessed food	0.011	0.013	9	11
Processed food	0.116	0.153	134	177
Manufactures	-0.01	0.008	-22	18
Services	0.075	0.086	685	787
Exports				
Agriculture & unprocessed food	0.068	0.057	9	8
Processed food	0.645	0.699	483	523
Manufactures	0.04	0.074	24	44
Services	-0.015	0.078	-5	23
Imports				
Agriculture & unprocessed food	0.277	0.311	8	9
Processed food	0.448	0.469	56	58
Manufactures	0.176	0.194	242	266
Services	0.259	0.393	90	136

Source: ImpactECON

7.4.10 Employment Impacts

Trade liberalisation can be expected to change wage levels in the economy and affect relative levels of employment between sectors as sectoral activity experiences expansion or contraction in response. Around one in four jobs in New Zealand are in the export sector and just under half of all jobs are in the more broadly defined tradeables sector, which represents the part of the economy directly impacted by global conditions, the exchange rate, and trade policy.

The CGE modelling undertaken by ImpactECON illustrates the areas in which some of the relative changes would be expected to occur. Real wages are expected to lift by 0.04 to 0.06 percent, relative to the baseline, once the NZ-UK FTA is fully implemented. The estimated increase in real wages is broad-based across different job groupings.

The modelling also points to a small changes in relative levels of employment across sectors, with employment in agriculture, forestry, and fishing, construction, and some services sectors expanding by up 0.04 percent in response to increased demand. Meanwhile employment in some manufacturing and services sectors is estimated to contract slightly (mostly by 0.02 to 0.04 percent). Aggregate

employment is expected to be unchanged. More detailed discussion of the expected effects on Māori employment, female employment, and regional employment is set out below.

7.4.11 Regional Effects

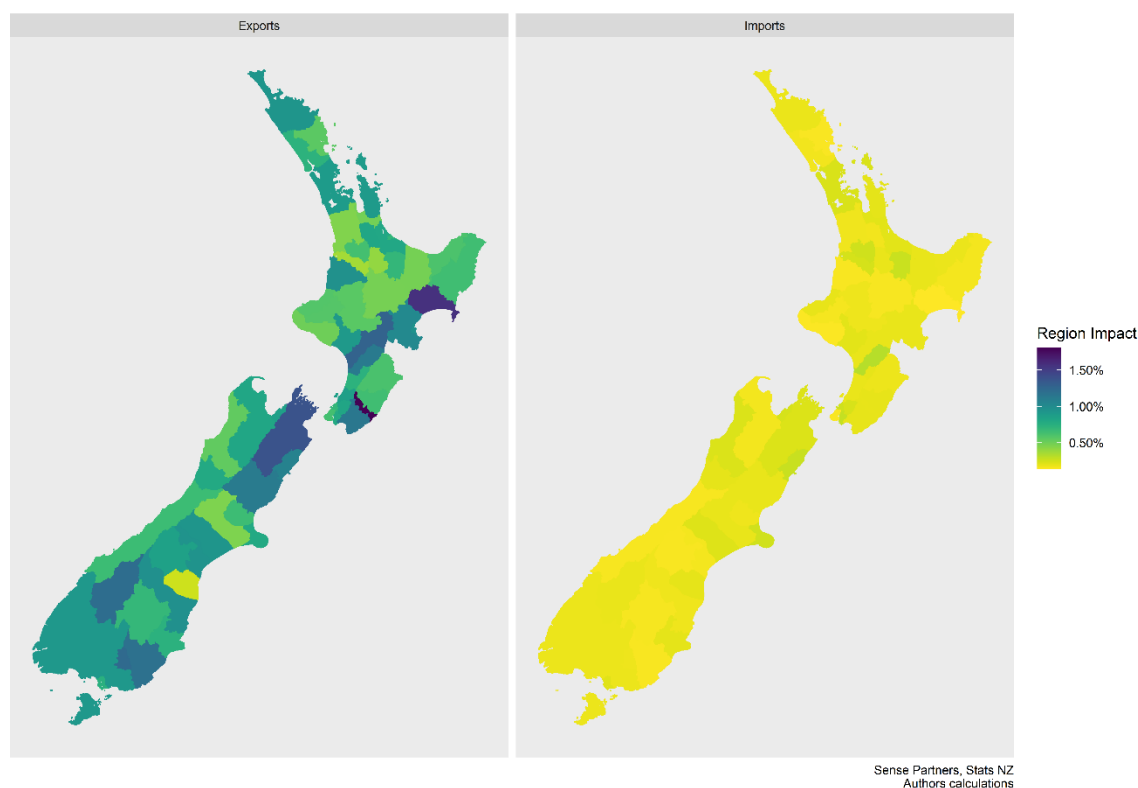
Trade with the UK may have differing effects across New Zealand due to regional differences in industry composition and relative exposure to particular international markets. These regional differences underpin the way in which the NZ-UK FTA would affect particular regions through changes in gross output and intermediate consumption.⁶¹ These changes would occur through potential increases in exports to the UK, which may boost regional gross output, as well as decreases in the price of imported goods, which may lead to higher levels of intermediate consumption.

Regions such as Hawke's Bay, Wairarapa, Marlborough, Southland and Otago sell a higher proportion of their exports to the UK market than do other regions (Graphic 7.4.11.1, left panel). This reflects their comparative advantage in producing New Zealand's major goods exports to the UK, particularly wine and sheep meat. As a result, these regions are expected to benefit most from the economic outcomes associated with the NZ-UK FTA, including export and employment growth.

Also shown in Graphic 7.4.11.1 (right panel) are regional imports from the UK as a proportion of regional output. There is less variability in imports across regions than exports, reflecting the importance of products such as vehicles, machinery, pharmaceutical, and medical products in the composition of New Zealand's imports from the UK and the fact that these products are relatively evenly consumed across regions. As a result, benefits for consumers and businesses from reduced import prices are expected to be relatively evenly distributed across the country.

⁶¹ MFAT Research Paper, 'Industry Exposure to Trade – The Trade Opportunities and Risk Model'.

Graphic 7.4.11.1: Exports to and imports from the UK by region (% of regional gross output)



Source: Sense Partners, Stats NZ, MFAT

7.5 Social and Cultural Effects

The NZ-UK FTA would have few implications for New Zealand's ability to develop social and cultural policy. The NZ-UK FTA Preamble reaffirms the right of each Party to regulate in pursuit of legitimate public welfare objectives and New Zealand's non-conforming measures specifically reserve the New Zealand government's rights in the area of social services provided for a public purpose, including in education, health, housing and public transport. There is also a specific mention in the General Exceptions chapter that recalls and notes the exclusions and exceptions across the Agreement that apply to the UK's National Health Service and New Zealand's health and disability system.

Nor does the NZ-UK FTA impinge on policies towards or preclude support for New Zealand culture and the creative arts. The General Exceptions chapter includes an exception covering the full range of creative arts, including ngā toi Māori (Māori arts), all branches of the performing arts, as well as literature, film and video, and expressly covers creative online content.

7.5.1 Social Policy

New Zealand's social policy frameworks would not be affected by the NZ-UK FTA. In the Cross-Border Trade in Services chapter, the NZ-UK FTA follows the structure of the GATS and excludes services supplied in the exercise of government authority. Moreover, New Zealand has not made any

commitments in respect of the following social services established for a public purpose: child care; health; income security and insurance; public education; public housing; public training; public transport; public utilities; social security and insurance; or social welfare.

Moreover, the exceptions provided for under the Agreement provide a further safety net to ensure legitimate public policy in support of social objectives would not be precluded. In addition to the usual general exceptions covering a range of areas including national security, health, environment, national treasures of artistic, historic, or archaeological value, and situations involving serious balance of payments difficulties', the NZ-UK FTA also specifically points to the exclusions and exceptions in place across the Agreement to safeguard the UK's National Health Service and New Zealand's health and disability system.

7.5.2 Cultural Policy

The NZ-UK FTA incorporates the relevant WTO general exceptions (from GATT and GATS). For clarity, the NZ-UK FTA incorporates the WTO General Agreement on Tariffs and Trade Article XX exception (GATT Article XX (f)) that the NZ-UK FTA Parties may take measures necessary to protect national treasures of artistic, historic or archaeological value, providing that such measures are not used for trade protectionist purposes.

Moreover, it includes a specific exception covering the creative arts, including ngā toi Māori (Māori arts), all branches of the performing arts, as well as literature, film and video, and expressly covers creative online content. In addition, there are several reservations in New Zealand's services and investment non-conforming measures that ensure space for cultural policy. These include reservations covering film and television co-production arrangements, the promotion of film and television production in New Zealand and the promotion of local content on public radio and television.

In these circumstances, the NZ-UK FTA is not expected to have any effect on the Government's ability to pursue its cultural policy objectives, such as supporting the creative arts, and in relation to cultural activities.

7.6 Environmental Effects

7.6.1 Impact of trade on the environment

New Zealand has long recognised the links between trade and the environment. Since 2001, New Zealand has had a Trade and Environment Framework to guide trade negotiations, which is being updated in accordance with the recommendations of the Trade for All Advisory Board.⁶² The Framework provides a set of principles to ensure environmental issues are considered alongside economic objectives in our trade agreements. In doing so, it aims to support the development of

⁶² For more information, see: www.beehive.govt.nz/release/government-issues-new-trade-and-environment-framework.

sound, sustainable, and mutually supportive policies in trade, climate change, and environmental management.

Trade can generate a mix of positive and negative effects on a country's environment and natural resources.⁶³ Because the global market is much larger than the domestic one, incentives from trade can lead industries with a comparative advantage in production to expand in response to global demand, with associated environmental effects. It can also facilitate cross-border sharing of environmentally sustainable technologies and techniques. These changes can affect environmental indicators domestically (such as land use, and water and soil quality) and globally (such as greenhouse gas emissions). Estimating the overall size and direction of these impacts is complex and is highly dependent on producer and consumer preferences, as well as domestic policy settings.

To estimate the effects of trade on the environment, the impacts are commonly broken down in terms of scale, composition, and technique/income effects:

- *scale effects* – as economies expand from trade liberalisation, the overall volume of trade and economic activity increases, resulting in a risk of higher pollution levels and other environmental impacts associated with this increased economic activity. However, this may be partially mitigated by productivity and allocative efficiency gains, which allow more goods and services to be produced using fewer resources.
- *composition effects* – trade liberalisation can affect the composition of production within an economy as domestic production responds to incentives and opportunities in global markets. If trade liberalisation leads to a shift in resources away from environmentally damaging production, composition effects are likely to be net positive. However, a shift towards *more* environmentally damaging production could lead to negative composition effects if domestic policy settings are not sufficiently robust to manage the impacts.
- *technique/income effects* – the cross-border transfer of innovation and technologies facilitated by trade can improve the spread and uptake of environmentally friendly technologies. The additional income generated through trade can also support investment in new technology and production processes with positive environmental outcomes.

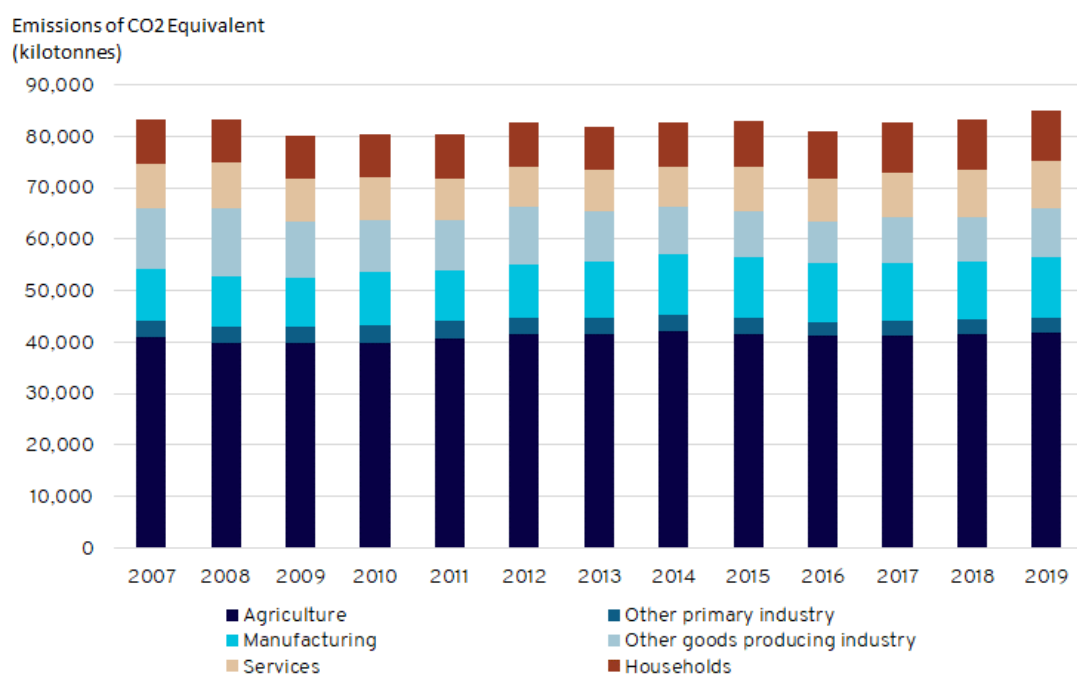
In the past, scale and composition effects from trade were largely negative for New Zealand due to the dominance of the primary sector in our exports. Agriculture – particularly the dairy, sheep, and beef sectors – has been both a large export earner for New Zealand and a relatively large part of greenhouse gas emissions given the composition of the economy. The sector has accounted for around half of New Zealand's total emissions (Graphic 7.6.1.1). In addition, there have been other environmental impacts from the growth of the agricultural sector. For example, increased dairy production contributed to an increase in New Zealand's nitrogen surplus of nearly 40 percent over the two decades to 2016.⁶⁴ Excessive phosphorus concentration and soil compaction have also become more widespread.

⁶³ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

⁶⁴ Ibid.

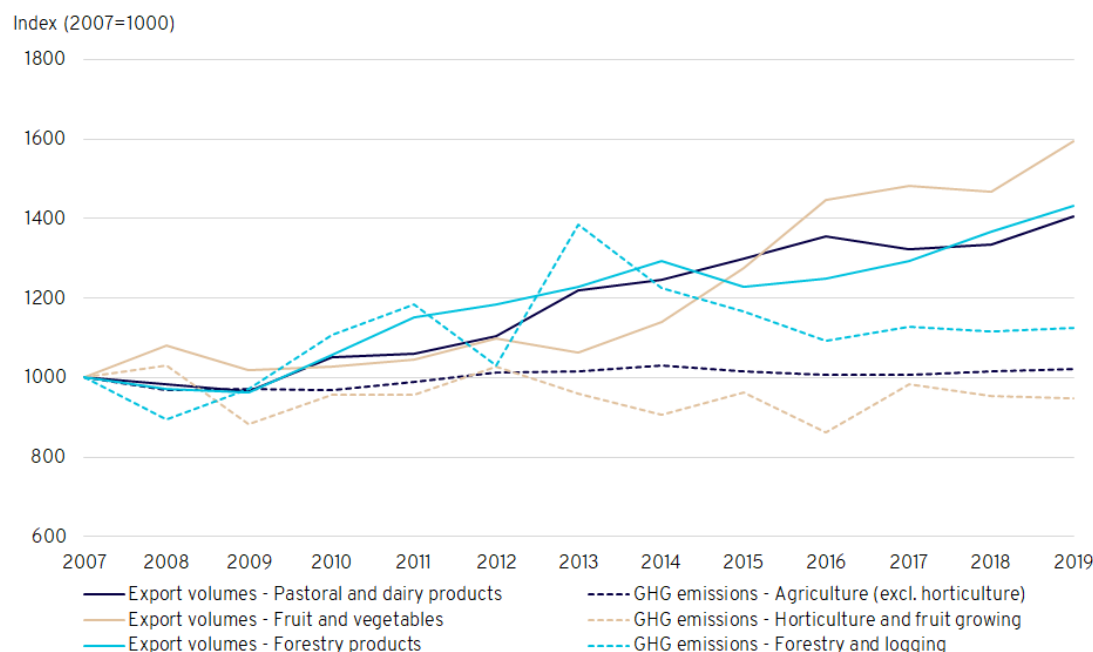
However, there is evidence to suggest the scale and composition effects of trade have reduced in recent years, as strong export growth has not seen corresponding increases in emissions (Graphic 7.6.1.2). A key factor has been reduced scale effects from the primary sector as growth has been generated predominantly from productivity and efficiency improvements, particularly in agriculture where the size of the national dairy herd has remained largely steady since 2012. Environmental regulation and policy efforts have also accelerated, playing an important role in limiting environmental impacts and incentivising the adoption of more sustainable production processes and technology. It is also likely that technique effects have mitigated some of the negative scale and composition impacts, although it is difficult to determine to what extent as it can take a long time for parts of the environment to respond to changes in land use.

Graphic 7.6.1.1: New Zealand emissions by industry sector and households



Source: Stats NZ

Graphic 7.6.1.2: Export volumes and industry emissions since 2007



Given the role of trade in facilitating better resource allocation across countries, it is also important to consider its impacts on the environment in the context of where New Zealand's comparative advantage lies. Trade improves global allocative efficiency by allowing products to be produced where it is most environmentally efficient to do so – i.e. where there is an environmental comparative advantage. While agriculture makes a large absolute contribution to New Zealand's total emissions, globally New Zealand is one of the most efficient suppliers of high-emitting agricultural products like dairy and beef.⁶⁵ As a result, any negative scale and composition effects from New Zealand's agricultural production may actually reduce New Zealand's overall global environmental impact by delivering more efficient production of these products in the global economy.

7.6.2 Environmental effects of the NZ-UK FTA

As mentioned, New Zealand's environmental laws, policies, regulations and practices are designed to deal with the adverse effects of economic activity in a manner consistent with the Government's sustainable development and environmental objectives.⁶⁶ These policy and regulatory frameworks are expected to constrain the net environmental impacts from the NZ-UK FTA. The NZ-UK FTA would not

⁶⁵ Food and Agriculture Organization of the United Nations (FAO), 'Greenhouse gas emissions from ruminant supply chains – a global life cycle assessment', 2013.

⁶⁶ Relevant legislation includes the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Climate Change Response (Zero Carbon) Amendment Act 2019, 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.

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 that constitutes a disguised restriction on trade. The general exceptions are consistent with those provided for in existing international agreements (GATT and GATS) and provide governments with policy space for public interest purposes, including for the protection of natural resources. Moreover, the Environment chapter obligates the Parties not to weaken, derogate from, or fail to enforce their environmental laws and policies for trade or investment purposes.

The net environmental effect of the NZ-UK FTA is also expected to be limited by the magnitude and nature of the projected economic impacts. For example, CGE modelling suggests beef exports would be the largest source of export growth. However, it assumes this is achieved through a reallocation of existing production and capacity, including conversion of sheep production to beef production and a redirection of New Zealand beef exports from other markets to the UK. This assumption reflects New Zealand's recent experience and environmental constraints, as well as the relatively small size of the UK market. This would mitigate any scale effects from higher beef exports, although may result in limited negative compositional effects associated with the higher average environmental footprint of beef than sheep production (including for emissions and eutrophication).⁶⁷

Other economic changes from the NZ-UK FTA are expected to have only limited effects on the environment. CGE modelling projects growth in exports of beverages (primarily wine), butter, and cheese due to improved market access and reduced NTMs. However, the associated increases in production are small relative to total output in these industries – for example, real output in the beverages and tobacco industry is projected to increase by about 1%. Services industries, including business and financial services and trade and communication, are also projected to grow, supported by reductions in services NTMs. However, again, the scale of these changes is marginal relative to overall output and the environmental footprint of these industries is small. Meanwhile, small declines are projected for production of some manufactured goods, including processed foods, machinery, and milk powders, which would partially offset scale and compositional effects in other areas.

Provisions in the Environment chapter may also generate positive environmental effects, including through commitments around fisheries subsidies prohibitions, trade in environmental goods, sustainable forestry, and sustainable agriculture. Benefits of provisions such as those on fisheries subsidies include meaningfully narrowing the scope of subsidy programmes each Party can use, as well as establishing a new benchmark in this area for global subsidies reform.

The NZ-UK FTA is not expected to materially alter New Zealand's exposure to biosecurity risks. While trade agreements can affect a country's biosecurity risk through changing the composition and origins of goods entering a country, the NZ-UK FTA contains robust provisions on Sanitary and Phytosanitary measures that enable New Zealand to continue to maintain a rigorous biosecurity regime. The risk profile of the projected import changes is also low, with import growth expected to be concentrated in manufactured goods. New Zealand's existing framework of environmental and biosecurity laws, regulations, and practices is expected to manage any changes.

⁶⁷ Poore, J., & Nemecek, T. (2018). 'Reducing food's environmental impacts through producers and consumers'. *Science*, 360(6392), 987-992.

7.7 Effects on Māori

7.7.1 Māori Business Engaged in Exports

Much of the engagement of Māori business in trade arises from the relatively high share of land and other primary sector assets owned by Māori.⁶⁸ Altogether, Māori enterprises account for 40 percent of New Zealand's forestry, 50 percent of the country's fishing quota, 30 percent of sheep and beef production and 10 percent of dairy production.⁶⁹ The NZ-UK FTA will improve goods market access for many products of most relevance to Māori export businesses, including sheep meat, beef, fish and fish products, dairy, horticulture products and honey.

Māori business ownership is generally under-represented across both exporting and non-exporting firms, with about 5% of total goods exporting firms identified as Māori owned (Table 7.7.1).⁷⁰ A high proportion of these firms belong to the agricultural, forestry and fishing sector, in line with high levels of Māori ownership of natural assets. Exporting firms with identifiable Māori ownership characteristics made up \$1.5 billion (8%) worth of exports in 2018.⁷¹

Māori exporting firms tend to be about 30% more productive and have twice as many employees per firm than Māori non-exporting firms. Māori owned firms have a high tendency to be small or medium sized firms, with 97% of all Māori firms employing fewer than 50 people. This characteristic is also reflected in Māori owned exporting firms, with 94% of these firms employing fewer than 50 people.

While business ownership data only covers a small population of firms, information concerning business leadership—as defined by the characteristics of the highest paid employee(s) of a firm—captures a wider population. Using this definition, 12% of New Zealand firms could be considered Māori led firms, and 14% of New Zealand's goods exporting firms could be considered Māori led.⁷² Of these exporting firms, some 95% are within the agricultural, forestry and fishing sectors and about 65% have 50 or fewer employees. Again, Māori led firms engaged in export are more productive on average than either Māori or non-Māori firms not participating in international trade.

Given Māori goods exporting firms are more likely to be of a smaller size and involved in the agriculture, forestry and fishing sectors than non-Māori firms, they may face bigger barriers to exporting. As a result, the impacts from the NZ-UK FTA are likely to be particularly important for Māori firms. While economic gains from the NZ-UK FTA are expected to be largest in the primary industries, the general improvement in market access across goods and services trade more generally will also provide opportunities for Māori firms to continue to diversify.

⁶⁸ MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

⁶⁹ Chapman Tripp Te Ao Māori Trends and Insights Pipiri 2017.

⁷⁰ MFAT Working Paper: All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms: Verevis, Brunt, Cribbens and Mellor (2022).

⁷¹ Ibid. Ibid. Note this is somewhat higher than the official Stats NZ estimate of \$0.9 billion in 2018.

⁷² Māori led firms are defined by taking the top 5% earners, and if 50% have identified as being Māori, then that firm is classified as being Māori led. The top 5% is likely to be representative of senior leadership within a firm.

Table 7.7.1: Māori firm count and goods exports by ownership and business leadership (2018)

	Business Leadership			Business owned		
	Exporting	Non-Exporting	Exports, \$ mil	Exporting	Non-Exporting	Exports, \$ mil
Māori	3,378	13,407	433	2,310	15,465	1,487
Non Māori	20,397	117,387	43,297	41,727	218,568	18,145
Total	23,775	130,794	43,729	44,037	234,033	19,631

Source: Stats NZ, MFAT

Note: Business leadership and ownership counts are not mutually exclusive – there will be a high degree of commonality between the two.

7.7.2 Māori Employment and Income

The share of Māori employed in goods export sectors is around 16%, a little higher than the overall Māori share of employment (15%). A much larger share of Māori employment is in the agriculture, forestry and fishing or manufacturing sectors, with over half of Māori export employment in these sectors. There is a similar sector representation for Pacific employees (Table 7.7.2). By comparison, 43% of Asian and New Zealand European employees in export firms are employed in those sectors, with higher proportional representation in the retail and wholesale trade sectors amongst those groups.

Māori are also more likely to be employees in smaller exporting firms, compared to mid-sized or large firms. Māori export employees are paid 8% more on average than Māori employees in non-exporting firms. This export pay premium exists across almost all sectors, and is found across other population groups as well.

The NZ-UK FTA is expected to increase real wages across all job groupings, with wages for services, agricultural and low skilled workers expected to increase the most. Given the high representation of Māori employment within the agriculture, forestry and fishing areas, this group may experience more in the way of income gains, relative to other population groups.

The ImpactECON modelling results of sectorial output and employment impacts from the NZ-UK FTA are extended to estimate the impacts on Māori employment. The extended modelling suggests that there are very modest employment gains for Māori relative to other groups; this is broadly consistent with other independent analysis.⁷³

⁷³ Report on NZ-UK Agreement in Principle prepared for Te Taumata by Sense Partners Ltd, October 2021 has estimated that the removal of tariff and quota restrictions on New Zealand primary sector exports to the UK has the potential to deliver around 400 additional jobs for Māori, see section 3.5 in this NIA. Note, this study focused on primary sector exports while the ImpactECON modelling covers all sectors of the economy, including some modest reductions in some sectors that offset gains elsewhere.

Table 7.7.2: Māori employment by goods exporting and non-exporting sectors (2018)

Industry	Export employment		Non-export employment	
	Māori	Non-Māori	Māori	Non-Māori
Accommodation and Food Services	970	5,180	26,500	165,400
Administrative and Support Services	740	2,980	30,800	135,300
Agriculture, Forestry and Fishing*	32,500	115,500	-	-
Arts and Recreation Services	190	930	7,100	39,090
Construction	3,300	15,180	30,700	125,300
Education and Training	2,300	27,000	31,300	167,250
Electricity, Gas, Water and Waste Services	1,100	5,490	1,600	8,675
Financial and Insurance Services	80	560	6,800	65,580
Health Care and Social Assistance	740	11,300	30,800	194,580
Information Media and Telecommunications	1,700	16,345	2,300	17,780
Manufacturing	25,100	114,400	19,400	91,400
Mining	410	1,955	570	3,070
Other Services	400	2,060	10,700	64,770
Professional, Scientific and Technical Services	1,100	13,820	11,600	141,500
Public Administration and Safety	6,300	37,720	16,700	89,250
Rental, Hiring and Real Estate Services	150	918	6,400	39,090
Retail Trade	9,500	51,690	20,800	148,300
Transport, Postal and Warehousing	4,600	25,140	15,300	59,360
Wholesale Trade	4,600	39,310	7,700	61,810
Total	95,780	487,478	277,070	1,617,505

Source: Source: Stats NZ, MFAT

* Given most agricultural production is exported, all employment in this sector is assumed to be export related.

7.7.3 Māori Consumers

Māori consumers may also benefit from price effects from the NZ-UK FTA, as importing firms compete within the domestic market, leading, in turn, to lower prices and potential welfare gains for consumers. However, there is no clarity as to how this income effect will be distributed across population groups. This depends on both the consumption bundles of different groups and the products on which relative price decreases have occurred. There may be a small income equalising effect between Māori and non-Māori households, or conversely the effects could add to the asymmetry between population groups. The impacts, in either direction, are likely to be very small.

7.8 Effects on Women

7.8.1 Women Business Owners and Employers

Women are underrepresented as business owners and leaders of goods exporting firms.⁷⁴ Of the exporting firms captured in that database's (relatively small) sample, over four times more such firms were owned by men than women (Table 7.8.1). About \$3.7 billion worth of exports can be attributed to women-owned business.

Typically, women-owned exporting businesses are small, with 95% employing fewer than 50 people. However, this is also true for men owned firms, reflecting the more general pattern of most New Zealand firms being typically small scale. Women-owned firms have a slightly higher export propensity than men-owned or split-owned firms. So while women are significantly less likely to own a firm (including an exporting firm), those firms that they do own appear to be marginally more engaged in selling to overseas buyers than firms owned by men.

A similar picture emerges when considering the leadership characteristics of firms.⁷⁵ 36% of firms in the database sample are women-led, but that share falls to 21% for goods exporting firms. It is worth noting however that women-owned businesses are more likely to be involved in the production or delivery of services, exports of which are more difficult to capture in the firm-level data available. Including service exports by women-led businesses may reduce this disparity somewhat.

With women-owned businesses less likely to be involved in the goods export sector, the NZ-UK FTA may have a more limited impact on women-owned goods traded firms. As firms owned by men are more heavily represented in goods trade and with the NZ-UK FTA market access outcomes particularly notable in the primary sector, this may result in more concentrated benefits for men-owned or led enterprises. These sectoral gains can also be seen in the modelling by ImpactECON where the agriculture and manufacturing sectors are predicted to experience higher trade as a result of the NZ-UK FTA tariff reductions. These sectors have lower rates of firm ownership or leadership by women.

Table 7.8.1: Business led and business owned firm numbers by gender

	Business Leadership			Business owned		
	Exporting	Non-Exporting	Exports, \$ mil	Exporting	Non-Exporting	Exports, \$ mil
Men	18,213	77,736	\$ 41,746	26,550	156,867	\$ 15,697
Women	4,854	48,927	\$ 1,541	6,627	56,115	\$ 3,689
Total	23,067	126,663	\$ 43,286	33,177	212,982	\$ 19,386

Source: Stats NZ, based on authors calculations

⁷⁴ MFAT Working Paper: All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms: Verevis, Brunt, Cribbens and Mellor (2022)).

⁷⁵ This uses the top 5% of employees again as the proxy for firm leadership.

7.8.2 Women Employees

In New Zealand, employment of women in the export and tradeable sectors is low relative to men.⁷⁶ About 40 percent of women are employed in both the export and tradeables sector, compared to 60 percent of employed men. This reflects the high representation of women in largely non-tradeable service sectors such as health and education.

More specifically, women have higher participation rates in industries such as accommodation and food services (10% of employed women), education and training (14% of employed women), health care and social assistance (16% of employed women), and retail trade (11%, of employed women). These industries are characterised by relatively low export engagement. This difference is important given the wage premium for workers in exporting sectors compared to non-exporting sectors. Women, in aggregate, are also more likely to be employed in larger firms than men. However, breaking this down by exporting and non-exporting firms, men are more represented in larger exporting firms than women.

Given the lower representation of women in the export sector relative to men, women appear less likely to experience the same level of gains through trade from the NZ-UK FTA. For employees, gains from trade typically come through higher wages, with export firms tending to be more productive than their non-exporting counterparts. In particular, the NZ-UK FTA is likely to boost trade in the sectors mentioned above, including the primary sector, and this may have a disproportionate effect on wages by gender, with more of these benefits potentially accruing to male employees.

By extending the CGE sectoral output results from ImpactECON, these can be used to estimate the impacts the NZ-UK FTA will have on employment outcomes by gender. Similar to the extended analysis for Māori, there are estimated to be only very small, but positive, impacts in the employment outcomes for women relative to men.

⁷⁶ MFAT Working Paper: All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms: Verevis, Brunt, Cribbens and Mellor (2022) and MFAT Working Paper: Understanding the linkages between trade and productivity, sustainability and inclusiveness: Drought and Mellor: June 2020.

Table 7.8.2: Gender Employment numbers by goods exporting and non exporting industries

Industry	Export employment		Non-Export employment	
	Female	Male	Female	Male
Accommodation and Food Services	4,000	2,100	116,800	75,000
Administrative and Support Services	1,700	2,000	77,400	88,600
Agriculture, Forestry and Fishing*	51,000	96,700	-	-
Arts and Recreation Services	410	750	24,800	21,500
Construction	3,000	15,400	20,900	135,000
Education and Training	18,600	13,400	150,200	48,300
Electricity, Gas, Water and Waste Services	2,200	4,300	2,900	7,600
Financial and Insurance Services	270	400	40,500	31,900
Health Care and Social Assistance	9,900	2,500	185,500	39,700
Information Media and Telecommunications	7,600	10,600	9,300	10,700
Manufacturing	45,600	93,900	33,100	77,400
Mining	390	1,900	690	2,900
Other Services	1,200	1,300	40,800	34,700
Professional, Scientific and Technical Services	5,500	9,300	75,100	77,900
Public Administration and Safety	19,400	24,800	55,600	50,300
Rental, Hiring and Real Estate Services	230	850	23,000	22,600
Retail Trade	37,300	23,800	92,700	76,400
Transport, Postal and Warehousing	11,800	17,900	18,800	55,600
Wholesale Trade	14,900	28,800	27,300	42,000
Total	235,000	350,700	995,390	898,100

Source: Stats NZ, based on authors calculations

* Given most agricultural production is exported we assume all employment in this sector is export related.

7.8.3 Women Consumers

The effects on women as consumers are not clear. Trade theory would suggest tariff removal on imports would generate increased competition in the domestic market and lower prices in order to compete. On aggregate, this would cause a net positive increase for consumers. Given New Zealand's generally low global tariff rates, however, the extent to which the NZ-UK FTA could be expected to affect consumer prices is likely to be limited. Moreover, it is not clear how these gains would be distributed across different households or by gender.

7.9 Effects on Small and Medium Enterprises

Small and medium enterprises (SMEs) are a key feature of New Zealand's economy. SMEs —typically defined in New Zealand as those with fewer than 50 employees—accounted for around 99 percent of New Zealand businesses in 2019 and employed 960,000 people.⁷⁷ Further, 97 percent of New Zealand businesses had fewer than 20 employees, supporting a workforce of 650,000 people. SMEs represent the majority of businesses across all areas of the economy, but are particularly prevalent in the following industries: rental, hiring and real estate; financial and insurance services; agriculture, forestry and fishing; construction; and professional, scientific, and technical services.

Given their significant economic representation, SMEs also comprise the vast majority of New Zealand exporters. Estimates from firm-level data show that 96 percent of New Zealand firms involved in direct or indirect exporting of goods in 2018 were SMEs.⁷⁸ In addition, many more SMEs engage in and benefit from international trade as importers of competitively priced foreign inputs and technology.

Although SMEs represent the majority of New Zealand exporting firms, their share of total exports is small. While SMEs accounted for 96 percent of the number of exporters in 2018, their exports represented only around 12 percent of the total value of New Zealand's goods exports. They are also much less likely to participate in exporting than larger firms, with SME export propensity less than half that of larger firms.⁷⁹

Their prevalence in New Zealand's exporting landscape also varies across industries. For example, the average firm size in 2018 was less than 20 employees in higher exporting industries such as agriculture, forestry, fishing and wholesale trade.⁸⁰

A key reason behind the lower propensity of SMEs to export is their small scale and more limited resources to overcome high fixed costs of exporting. Due to these more limited financial and human resources, SMEs are less equipped than larger firms to overcome challenges posed by international trade, including complying with different regulatory frameworks, accessing information necessary to understand foreign markets and meet trade regulations, and absorbing the financial risks associated with trade. This means SMEs can be disproportionately affected by trade barriers.

The challenges for SMEs associated with trade more generally can also be seen in the exporting patterns of New Zealand goods exporters to the UK. Consistent with the overall pattern for New Zealand exporting firms, smaller exporters to the UK are much more likely to concentrate exports on the UK market; whereas larger exporters typically export to multiple markets, supported by their ability to take advantage of greater resources and economies of scale.⁸¹ In addition to demonstrating the higher costs of trade for SMEs, this suggests exporting SMEs are likely to have greater exposure to concentration risk than larger firms due to their reliance on a small number of overseas markets.

⁷⁷ For more information, see: <https://www.mbie.govt.nz/assets/small-business-factsheet-2020.pdf>.

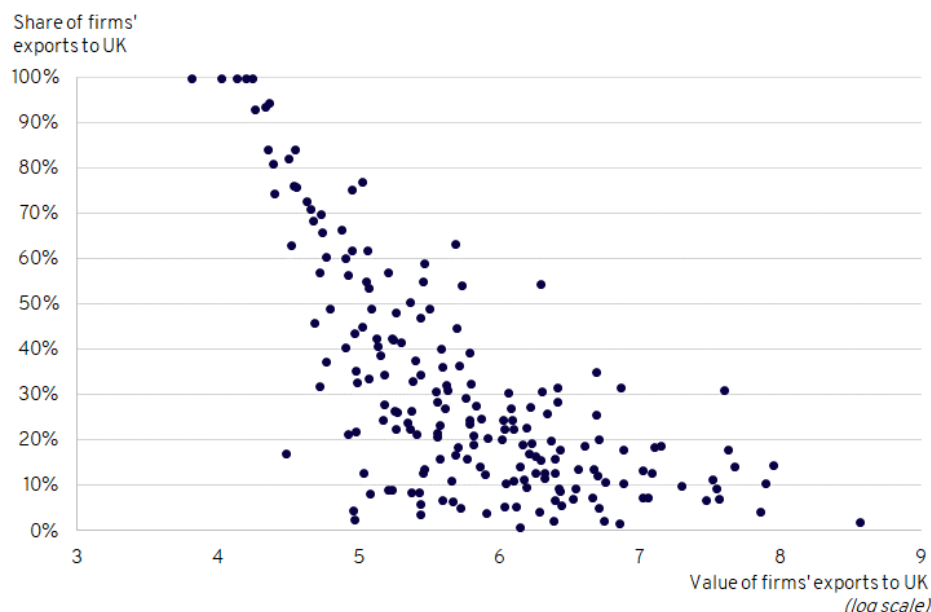
⁷⁸ MFAT Working Paper: All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms: Verevis, Brunt, Cribbens and Mellor (2022)),

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

Graphic 7.9: Firms' goods exports and market concentration for the UK in 2018



Source: Stats NZ, MFAT

Note: Each dot represents a grouping of nine firms to preserve anonymity.

Given these characteristics, the results of the economic analysis suggest the NZ-UK FTA is likely to have positive impacts on SMEs. As discussed, the overall sectoral impacts from CGE modelling suggest that most industries are expected to experience either positive or neutral benefits from the agreement and that the positive gains will be distributed broadly across the economy, including to SMEs. Those SMEs highly concentrated in the UK market may expect to benefit more from the FTA than firms exporting to a wider range of markets.

Several industries where SMEs are particularly prevalent are expected to benefit particularly from the NZ-UK FTA. Most notably this applies to the agriculture, forestry and fishing industry (about 20,000 SMEs) due to market access improvements for key products such as beef, sheep meat, dairy, apples and wine. The benefits from reductions in non-tariff measures for goods and services—estimated at \$111-233 million for the economy by 2040—are also expected to accrue to SMEs, and potentially at a higher rate than for larger firms, given the more limited capacity SMEs have to overcome non-tariff barriers.

The NZ-UK FTA also contains a number of provisions aimed at improving the availability and accessibility of information, including on regulatory requirements affecting trade, for SMEs. The SME chapter of the FTA includes commitments to strengthen cooperation between New Zealand and the UK in promoting the use of e-commerce amongst SMEs, to increase understanding of the intellectual property system, and promote good regulatory practices that support SMEs. Both countries also undertake to establish a central point of contact to facilitate cooperation and information sharing on issues specifically relating to SME trade. Although difficult to quantify, these measures could contribute to lower transaction and administration costs for SMEs exporting to the UK and better equip new SMEs to enter the market.

7.10 Consumer Protection

The NZ-UK FTA is New Zealand's first FTA to include a specific chapter covering consumer protection. This chapter recognises the need to maintain policies and practices to protect consumers from fraudulent and misleading actions, including in the online environment. The chapter also highlights the need for cooperation between countries to develop ways to enhance effective access to effective redress for consumers in each other's jurisdictions.

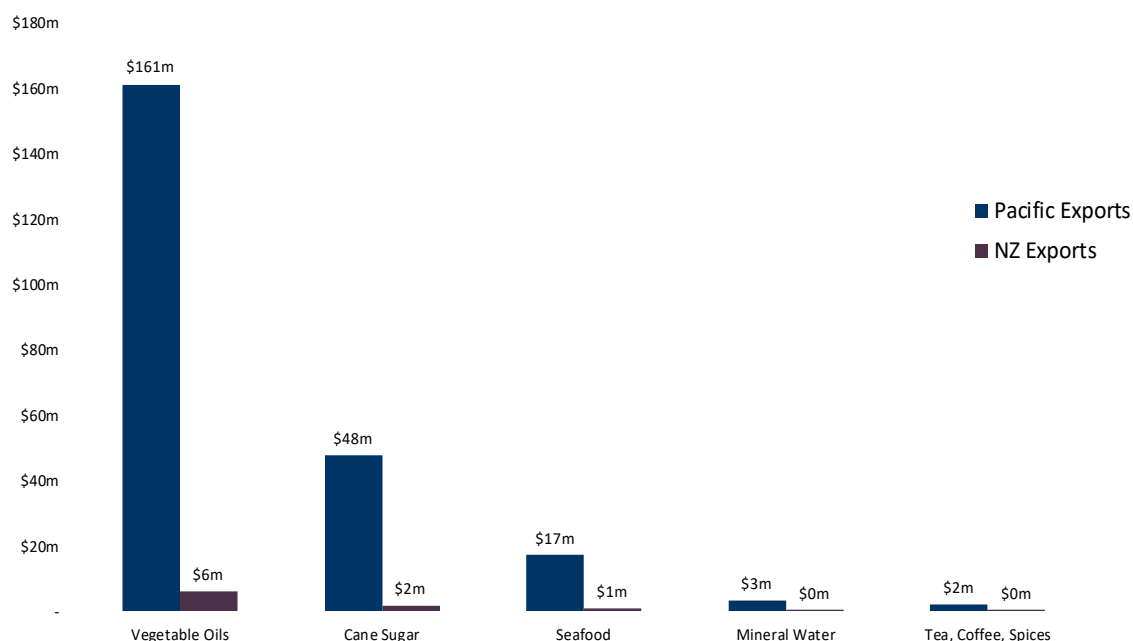
7.11 Trade and Development

7.11.1 Possible trade displacement effects for Pacific Island countries

This section examines possible trade displacement effects on competing goods exports to the UK that may overlap between New Zealand and the Pacific. If the export profile of New Zealand and the Pacific is similar, improved market access opportunities for New Zealand obtained in the NZ-UK FTA could displace exports from the Pacific in the UK market, reducing exports for Pacific Island countries.

Pacific goods exports to the UK totalled NZ\$233 million in 2020.⁸² A large proportion of these exports (about 86%) was made up of vegetable oils and cane sugar, neither of which New Zealand exports in large amounts (Graphic 7.11.1). Other top Pacific exports to the UK included seafood, mineral water, and tea, coffee, and spices, for which New Zealand's exports to the UK totalled less than \$2 million. As a result, there is little to suggest that trade displacement effects are likely to occur for Pacific Island countries. This is also true for Pacific Island and UK competing exports into New Zealand.

Graphic 7.11.1: Pacific Island countries' top goods exports to the UK



Source: Stats NZ, MFAT

⁸² Countries included are: Fiji, Samoa, Solomon Islands, Tonga, Niue, Papua New Guinea, Cook Islands, Nauru, Kiribati, Tuvalu, Tokelau, and Vanuatu.

8. Costs to New Zealand of Compliance with the Treaty

8.1 Tariff revenue

The cost to the New Zealand government of Crown revenue foregone through the removal of tariffs on goods of UK origin is estimated to be in the order of NZ\$19.5 million per annum, based on the average of the total duties paid on goods of declared UK origin over the three-year period from 2017-2019 (i.e. the immediate pre-COVID-19 period).

8.2 Intellectual Property Provisions

Extending the copyright term by 20 years is expected to generate the highest long term costs among the intellectual property provisions. These would not be incurred, however, until the term extension is implemented, with the Agreement allowing New Zealand up to 15 years to implement this particular provision. The overall costs are difficult to quantify, with the market impacts limited to the minority of works (1-2%) that are still commercially available at the point at which their copyright expires. As the commercial benefit to copyright holders is limited to only these 1-2% of works, the main costs would likely be felt in regard to the impact on secondary creativity⁸³ and on the gallery, library, archive and museum sectors.

The UK's proposed artist's resale right regime would impose compliance costs on the secondary art market and may increase the price of art works when they are resold. The implementation and administration of the regime would also impose costs. (Implementation of such a scheme in Australia cost AU\$2.2 million in 2020; the costs in New Zealand would be expected to be proportionately less.)

The expansion of performers' rights in the visual aspects of recordings, as well as the communication of those works to the public, would involve some administrative costs, including for the music and film industries. Overall, though, the impact of this change is expected to be minimal. Some performers may benefit through additional revenue from the licensing of playing of their sound recordings in public, though in many cases, this is likely to be assigned to producers as part of their contracts with the performers.

8.3 Costs to government agencies of implementing and complying with the Treaty

8.3.1 Institutional Arrangements

The NZ-UK FTA establishes a Joint Committee to oversee the implementation of the Agreement, under which six Sub-Committees (on Trade in Goods, Sanitary and Phytosanitary Measures, Services and Investment, Inclusive Trade, Environment and Climate Change, and Labour) and seven working groups (Rules of Origin and Customs and Trade Facilitation, Wine and Distilled Spirits, Animal Welfare,

⁸³ For example, playing out-of-copyright music in public or adapting out-of-copyright scripts into films or plays.

Professional Business Services, Financial Services, Intellectual Property, and Procurement) would be responsible for specific chapters and annexes under the Agreement. Such institutional arrangements are common practice in FTAs, and are seen as important for New Zealand in providing a mechanism for follow up to ensure delivery of the intended benefits of the Agreement.

These institutional arrangements allow Parties a means to pursue compliance of commitments under the Agreement, to undertake the on-going work envisaged in the FTA, to address any emerging issues, and to manage future developments. This can be of particular importance for smaller countries like New Zealand. The Joint Committee and its Sub-Committees and working groups provide opportunities for New Zealand to advance its priorities under the framework of the Agreement – across the full range of goods and services trade, as well as in areas such as inclusive trade. Undertaking these activities has resourcing implications for the government departments involved.

The NZ-UK FTA does, however, recognise the need for flexibility in the operation of these institutional arrangements and makes provision for the Sub-Committees and working groups to meet virtually and, in most cases, for the frequency of meetings to be determined by the Parties. New Zealand will want to engage substantively in the Agreement's institutional arrangements to maximise the opportunities for New Zealand under the NZ-UK FTA. At the same time, New Zealand will be looking to take advantage of the flexibility in meeting arrangements envisaged under the Agreement to ensure maximum efficiency in the conduct of business under the Agreement. On this basis, the likely annual cost of participation in NZ-UK FTA implementation mechanisms is anticipated to be low and expected to be able to be met from existing baselines, including through drawing on resources available under the Trade Negotiations Fund to the extent possible.

Engaging in the NZ-UK FTA's institutional arrangements may in some cases require increased resourcing for agencies, including time commitment for participation in the Joint Committee, its Sub-Committees or working groups, as well as time for preparation. Based on New Zealand's experience in other FTAs, these institutional mechanisms provide a useful forum for progressing New Zealand's objectives under the Agreement. In these situations, the NZ-UK FTA institutional mechanisms would provide a leveraging opportunity, or multiplier, for existing work by agencies. In other areas, however, these institutional mechanisms may introduce certain additional requirements, which would represent a limited cost for the agency concerned.

8.3.2 Administrative Costs

A number of the obligations in the NZ-UK FTA may require limited additional resources to implement. For example: in the IP chapter, cooperation in relation to the geographical indications and genetic resources, traditional knowledge and traditional cultural expressions (GRTKTCE) provisions; in the services area, the Annex on Professional Services undertakings to consult with regulatory agencies and professional bodies to identify interests in promoting recognition of qualifications; and in a number of other areas (including the chapters on Animal Welfare, Environment, Small and Medium-Sized Enterprises, Trade and Gender and Trade and Development) where bilateral cooperation and cooperation in international fora are envisaged. These may involve some additional resourcing. In most cases, these obligations come with reciprocal benefit for New Zealand, with New Zealand stakeholders able to benefit from the UK implementation of these provisions.

Resourcing to maximise the outcomes from the Māori Trade and Economic Cooperation chapter is likely to pose a particular challenge. This will not only be the case for government resourcing, but can be expected to be the case for Māori too, especially for Māori-led small and medium enterprises, wāhine Māori and smaller and more remote Māori communities. This will need to be resolved through close consultation and full participation by Māori in decisions on prioritisation and level of interest in specific potential cooperation activities envisaged under the chapter.

In negotiating the NZ-UK FTA, New Zealand sought outcomes that could be implemented in the most appropriate way in the domestic context. As a result, relevant agencies have planned to fund work within existing departmental baselines, as well as to draw, where possible, on specialised funds, such as the Trade Negotiations Fund. In limited cases where this is not possible, Cabinet approval for additional funding may be sought by the relevant department.

Table 8.3.2: Administrative Costs of New Zealand Commitments under NZ-UK FTA

Administrative Requirements	Costs	Net cost/benefit to New Zealand
Customs Chapter: Advance Rulings	Ongoing costs to be met from baseline funding or cost recovered.	Advance customs rulings in UK market will also be of benefit to New Zealand exporters.
Technical Barriers to Trade: Wine and Distilled Spirits Annex	Agreement to support a complete application to Food Standards Australia New Zealand (FSANZ) by the UK or any persons of the UK to include a definition of 'whisky/whiskey' in the joint Australia New Zealand Food Standards Code will likely require New Zealand to make a submission in support of such a UK application.	This provision in the Annex addresses UK interests in the definition of 'whisky/whiskey' in the joint Australia New Zealand Food Standards Code. New Zealand's interests in reducing barriers to trade for New Zealand wine exporters have been addressed in other provisions in the Annex on Wine and Distilled Spirits and a separate side letter on the process agreed by the UK to recognise additional wine making practices of interest to New Zealand.
Services: Professional Services Annex	Undertaking to consult with regulatory authorities and professional bodies to identify interests in improved arrangements for recognition of qualifications in a range of professional services sectors.	New Zealand professional services providers stand to benefit from any improved recognition arrangements arrived at that facilitate acceptance of New Zealand qualified professionals in the UK.
Intellectual Property: If New Zealand decides to join the Hague Agreement on Industrial Designs	If New Zealand decided to join the Hague Agreement, there would be costs involved in updating Government information technology systems.	A full National Interest Analysis and Regulatory Impact Assessment, including consideration of the costs and benefits for New Zealand, would be done in the context of

	<p>(Australia estimated these one-off costs as AU\$2.3-3.4 million.)</p> <p>Domestic intellectual property advisors would also incur upfront setup costs and may experience some revenue decline from foreign clients.</p>	<p>consideration of possible membership of the Hague Agreement. This would include costs and benefits in relation to New Zealand designers' ability to register their designs offshore without having to apply to multiple jurisdictions and to foreign designers using the Agreement to register their designs in New Zealand; as well as administrative costs and potential revenue implications for IP service providers, such as patent attorneys.</p>
<p>Notification and publication requirements exist in a number of chapters, including State Owned Enterprises and Designated Monopolies, Good Regulatory Practice and Regulatory Cooperation, National Treatment and Market Access for Goods and Transparency chapters.</p>	<p>Where additional requirements exist, these are unlikely to be burdensome and it is anticipated that these would be met within agency baseline funding.</p>	<p>As a whole, the reciprocity provided by UK notifications will be of benefit to New Zealand exporters.</p>

8.3.3 Engagement and Outreach Costs

In the lead up to, and following, the entry into force of the NZ-UK FTA, government agencies would work with the private sector and others to implement strategies to best leverage the opportunities arising from the FTA. This would include ensuring the full range of stakeholders are positioned to utilise opportunities presented by the NZ-UK FTA, engaging with Māori and Māori business, and meeting the public interest in further information about particular areas of the Agreement and its likely impact on New Zealand. Such activities represent an investment in the FTA, rather than a compliance cost.

The Trade Negotiations Fund has a funding pool available to provide departments with resources for establishment and initial implementation activities associated with FTAs. This funding would be drawn on to support initial outreach and establishment costs for the NZ-UK FTA, with maximum use being made of cost-effective online tools and virtual meeting opportunities.

9. Possibility of any Subsequent Protocols (or other Amendments) to the Treaty, and likely effects

The Final Provisions chapter allows for the two Parties to agree to amend the Agreement by mutual agreement in writing (Article 33.3). Where the Parties agree to make an amendment, this will enter into force on a date to be agreed by the Parties, following delivery of the latter of the two Parties' notifications to confirm they have completed their applicable internal requirements to enable entry into force of the amendment, unless the Parties reach a different agreement.

Several of the chapters, for example the Sanitary and Phytosanitary Measures chapter and the Technical Barriers to Trade chapter, envisage the development of possible future implementing arrangements covering specific topics of interest to both sides or, in the case of the Technical Barriers to Trade chapter, the negotiation of additional sector-specific or issue-specific annexes. Any additional annexes developed as a result of further work undertaken by the Parties under these provisions may result in particular amendments to the agreement over the medium term.

Any proposals for such amendments would be considered on a case-by-case basis, with any decision to negotiate and agree on an amendment subject to the normal New Zealand domestic approvals and procedures.

10. Consultation with Māori, the Community and Interested Parties in respect of the Treaty

10.1 Engagement overview

A comprehensive plan to engage with Māori on New Zealand's FTA negotiations with the UK was launched in 2020. This complemented existing strategies developed when New Zealand began FTA negotiations with the EU in 2018, and involved multiple Government agencies. A range of detailed discussions were held with Māori on specific interests in a free trade agreement with the United Kingdom, including on issues such as intellectual property and trade and the environment. In addition, several webinars relevant to Māori were hosted by trade negotiators.

10.2 Engagement with Māori

Since the NZ-UK FTA negotiation was launched, New Zealand officials and negotiators undertook intensive and comprehensive engagement with Māori on interests they wished to see in the Agreement. This informed and shaped the Māori Trade and Economic Cooperation chapter, as well as provisions in a range of other areas, including the Intellectual Property chapter, the Environment chapter and the Trade and Gender Equality chapter.

The engagement process included: regular meetings with Treaty Partner representative groups (Ngā Toki Whakarururanga, Te Taumata, Federation of Māori Authorities and the National Iwi Chairs Forum); in-depth discussion with sectoral leaders; an independent study by Massey University Associate Professor Jason Mika into Māori interests in the NZ UK-FTA (which included some 50 detailed interviews with Māori across New Zealand); funding for a second independent study commissioned by Te Taumata into Māori interests in the FTA; and a number of public hui, targeted communications, web content and online discussions with Māori designed to both increase Māori understanding about the FTA, and for negotiators to understand how the Agreement could best reflect Māori interests. These interests were represented at the negotiating table. The Māori Trade and Economic Cooperation chapter negotiations were directly informed by engaging with the Indigenous Trade Reference Group, as well as a comprehensive consultation process across the full range of government agency Māori networks, and Māori entities with existing cooperative relationships with the UK.

10.3 Public Engagement

Initial public consultations (held between November 2018 and February 2019), elicited a total of 240 written submissions. 204 were received through a dedicated 'Have Your Say' web portal and 35 were sent directly to the Ministry of Foreign Affairs and Trade. An independent report on the outcomes of

these consultations and the submissions received was published on the Ministry of Foreign Affairs and Trade website in June 2020.⁸⁴

During the course of the negotiations, the Ministry of Foreign Affairs and Trade also launched a number of new civil society engagement processes. The Ministry's Trade and Economic Group has established quarterly trade policy consultations with the New Zealand Council of Trade Unions (CTU). In addition, the Ministry is developing a supplementary process by which a small number of CTU representatives can receive regular more detailed and confidential trade policy briefings from key officials and lead negotiators on areas of particular interest to the CTU, such as trade and labour issues and government procurement.

More generally, FTA negotiation processes have been updated to include greater civil society engagement, with the NZ-UK FTA process in the vanguard of these developments. Officials working on trade and environment issues across a range of negotiations in 2020 also held detailed civil society consultations on trade and environment issues across all of our negotiations.

Specifically on the NZ-UK FTA, UK and NZ Chief Negotiators have held five joint public briefings with Q&A sessions by webinar during the course of negotiations. The New Zealand Chief Negotiator also held four New Zealand-only webinars (two with Māori and two with the general public).

In 2021, the Ministry of Foreign Affairs and Trade and New Zealand Trade and Enterprise led two public events in North and South Auckland to facilitate a dialogue with stakeholders on New Zealand's trade agenda and the government's Trade Recovery Strategy. Both events were led by Ministers and included presentations and conversation with senior officials from across the public sector. The UK FTA negotiation was a key focus of discussions.

10.4 Stakeholder Engagement

In 2021, the Ministry of Foreign Affairs and Trade continued its extensive engagement with New Zealand exporters and other businesses with an interest in New Zealand's trade policy agenda and the NZ-UK FTA specifically. This engagement included regular participation at board meetings and briefings on specific commercial issues to a range of New Zealand business, including DCANZ, Beef & Lamb NZ, Onions NZ, Horticulture NZ, Fonterra, the Employers and Manufacturers Association, Chambers of Commerce and Export NZ. Ministry of Foreign Affairs and Trade officials also regularly participate in industry conferences, engaging with stakeholders about New Zealand's trade policy agenda.

In addition to monthly meetings with agriculture stakeholders, in 2020 MFAT initiated monthly virtual briefing and dialogue forums for non-agricultural manufacturing exporters which included representatives from a range of government agencies with trade and economic responsibilities. These began as a response to COVID-19, to provide regular updates for exporters on changing market and COVID-19 response conditions, and to receive their feedback on challenges being faced. These have

⁸⁴ Summary of Public Consultations on a UK-New Zealand Free Trade Agreement, PublicVoice, June 2020, available on MFAT's website: <https://www.mfat.govt.nz/assets/Trade-agreements/UK-NZ-FTA/Public-Voice-Report-June-2020.pdf>.

now been placed on a more regular footing as quarterly briefings to provide an opportunity to discuss the broader trade policy agenda including the NZ-UK FTA. The Ministry of Foreign Affairs and Trade has also launched dedicated quarterly trade policy consultations with Business NZ.

10.5 Summary of issues raised

10.5.1 Issues Raised by Māori

Māori prioritised including a dedicated cooperation chapter on Māori interests, recognising the unique relationship between Māori and the UK as original signatories of Te Tiriti o Waitangi/The Treaty of Waitangi, and the importance of increased Māori participation in international trade agreements.

A second very important priority issue for Māori was to secure meaningful improved market access conditions for products of particular interest to Māori. In particular, Māori focused on the market access conditions for primary sector exports to the UK, including in the meat, fisheries and seafood sectors. This reflected the high degree of Māori ownership of assets and resources in these sectors.

Interest in improved trade opportunities in other areas, including the tech sector, were also raised in consultations with Māori, with a view to broadening and diversifying New Zealand's export and business profile.

Specific concerns relating to Māori interests in digital trade and financial services were raised in the context of the Waitangi Tribunals third and final WAI 2522 Report on e-commerce, which was released in November 2021. The Government is carefully considering the Report's findings and implications. In direct response to the issues raised in the Report, negotiators secured agreement to review the Digital Trade Chapter within two years, taking into consideration the WAI 2522 Report and the New Zealand Government's obligations to support Māori interests under the Treaty of Waitangi.

10.5.2 Main Issues Raised in Broader Public and Stakeholder Consultations

- *Market Access for New Zealand Products:* a consistent priority voiced in initial public consultations and subsequently, including by business and the general public, as well as by Māori (as reported above), was the importance of the elimination of high UK tariffs and reduction of non-tariff barriers impeding New Zealand exports into the UK. This included concerns to level the playing field for New Zealand exporters in relation to competitors in the UK market and to redress the disadvantage experienced by New Zealand when the UK joined the European Communities in 1973. Specific products where improved access was sought included beef, sheep meat, dairy products, fish and seafood, honey, wine, beer, spirits, processed foods, wood, wood products, and horticultural products including apples and pears.
- *Trade Facilitation and Non-Tariff Measures:* industry, business and many individuals saw trade facilitation as an important area of focus in a NZ-UK FTA, with calls for WTO-plus outcomes in areas such as technical barriers to trade, phytosanitary rules and good regulatory practice.

- *Investment*: opportunities for increased investment were raised by both industry and individual stakeholders. Their comments highlighted the benefits increased investment could create through increased productivity, innovation, job creation and higher living standards.
- *Business and Research Collaboration*: some stakeholders were keen to see an FTA open up opportunities for more collaboration with UK business and research institutions, including in areas such as agriculture, food, technology, tourism, education and the environment.
- *Right to regulate*: preserving New Zealand's right to regulate in the public interest was an important concern expressed by many individuals, industry and civil society groups, including trade unions. They stressed the importance of protecting the ability of the New Zealand government to legislate and regulate in the areas of health and other public services, as well as on taxation of multinational businesses.
- *Investor-State Dispute Settlement (ISDS)*: there were also clear concerns raised about possible inclusion of an ISDS clause. Civil society groups raised fears that an ability for international investors to sue the New Zealand Government risked giving unwarranted power to corporate interests and encroaching on New Zealand's sovereignty.
- *Protection of Public Services*: during initial and subsequent public consultations, concerns were raised about the possible impact of FTA commitments on public services maintained for health, social, cultural and environmental purposes.
- *Environmental and Labour Standards*: the importance of incorporating environmental protections and standards within an FTA with the UK was stressed by a range of industry and civil society stakeholders. There were also calls to include provisions protecting New Zealand's unique eco system and environment, as well as addressing climate change. Trade union representatives sought a comprehensive labour chapter, and emphasised the importance of ensuring that New Zealand's labour and business standards were not compromised in any agreement with the UK.
- *Inclusive Trade*: both business and civil society groups were concerned to ensure that the benefits of trade were felt by all New Zealanders, particularly Māori SMEs and Māori women. Emphasis was also put on seeing an NZ-UK FTA actively support small and medium sized exporters to compete on an international level.
- *Visa access*: a large number of those who participated in initial public consultations registered their strong interest in securing improved visa access for New Zealanders to work and study in the UK.

10.6 Addressing concerns

10.6.1 Māori Trade and Economic Cooperation Chapter

Māori placed a high priority on negotiating and concluding a dedicated chapter focused on Māori interests (the Māori Trade and Economic Cooperation chapter). This complements other areas across

the Agreement that address Māori interests⁸⁵ and provides a framework to pursue cooperation between the Parties in order to contribute to and advance Māori economic and wellbeing aspirations.

At the same time, negotiators also recognised the importance of establishing a process to ensure Māori were able to input effectively into shaping the content of this important chapter. The Indigenous Trade Reference Group ensured that Māori interests and expectations were heard and reflected in the negotiations. New Zealand negotiators met regularly with the Reference Group throughout the negotiations, and proved to be a very valuable and effective engagement mechanism.

10.6.2 Goods Market Access

The quality of the goods market access commitments secured under the NZ-UK FTA has opened up significant new export opportunities for Māori, particularly in those sectors such as meat, dairy and some seafood where high market access barriers into the UK market have previously constrained New Zealand exports. In particular, tariffs on many fish and seafood products, honey, wine, most horticulture products and some dairy products will be eliminated on entry into force; the sizeable transitional duty-free quotas agreed for meat products in the lead-up to full liberalisation, provide important and meaningful new export opportunities for Māori. One external report has estimated an additional NZ\$13 million boost to Māori GDP, with the prospect of hundreds of additional jobs being generated as a result.

10.6.3 Digital Trade

Efforts were made to encompass the full range of interests and concerns regarding both the opportunities and challenges posed by increased use of digital technologies and services for the conduct of trade and investment. The outcome is an advanced chapter on Digital Trade that underpins the development of expanded opportunities for New Zealand's high tech sector to engage in and support trade and investment with the UK.

At the same time, the Digital Trade chapter and other parts of the Agreement, including the General Exceptions chapter, safeguard the ability of the New Zealand Government to take the steps it considers necessary to protect the interests of New Zealand users of digital trade, including in relation to the protection of personal information, and to address specific concerns raised by Māori. This includes an undertaking to review the operation of the chapter on Digital Trade within two years of entry into force of the Agreement, with the relevant article noting the Wai 2522 report and New Zealand affirming its intention to engage Māori to ensure the review takes account of the continued need for New Zealand to support Māori to exercise their rights and interests, and to meet its responsibilities under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

⁸⁵ These other parts of the Agreement include the chapters on Government Procurement, Digital Trade, Intellectual Property, Trade and Gender Equality, Environment, Small and Medium-Sized Enterprises and the General Exceptions.

10.6.4 Right to Regulate

The NZ-UK FTA expressly reaffirms the government's right to regulate for legitimate public policy purposes, in areas including health, education, social welfare, the environment, security and taxation policy. This is incorporated in the preamble to the Agreement, as well as reiterated in certain of the specific chapters, including the Cross-Border Trade in Services and Domestic Regulation chapters.

As with other New Zealand trade agreements, the General Exceptions chapter provides clearly for the government to take any measures necessary to protect human, animal or plant life or health, to protect public morals, to secure compliance with laws or regulations not inconsistent with the Agreement, to protect national treasures and to conserve exhaustible natural resources; as well as, in the case of services trade, to protect the privacy of individuals and to prevent deceptive and fraudulent practices.

More particularly, New Zealand's right to take any measures it deems necessary, including regulatory measures, to accord more favourable treatment to Māori, including in fulfilment of its obligations under the Treaty of Waitangi, is safeguarded under the Treaty of Waitangi exception.

The General Exceptions provisions in the NZ-UK FTA also underline that the two governments' respective right to take measures necessary to protect human, animal and plant life or health clearly extends to any such measures necessary to mitigate climate change or relating to the conservation of natural resources.

The General Exceptions chapter also specifically recalls and notes the range of exclusions and exceptions across the Agreement that apply to the UK's National Health Service and New Zealand's health and disability system.

10.6.5 Investor-State Dispute Settlement

There is no provision for Investor-State Dispute Settlement (ISDS) in the NZ-UK FTA. It has also been agreed that ISDS would not apply between New Zealand and the UK should the UK accede to CPTPP..

10.6.6 Public Services

In addition to the general scope of coverage provisions that make clear that services provided by governments ('in the exercise of governmental authority') are not covered by the services obligations in the Agreement, the NZ-UK FTA also incorporates a dedicated provision referring to the protections afforded under the Agreement to both countries health and disability systems (the UK's NHS and New Zealand's health and disability system).

New Zealand has also listed particular reservations that fully protect the government's ability to provide, fund and manage important public services in the interests of New Zealanders now and in the future. These includes reservations in relation to: social services established for a public purpose in areas such as health, income security and insurance, public education, public housing and social welfare; concerning the allocation, collection, treatment and distribution of drinking water; applying to any subsequent devolution of a service provided by government at the time the Agreement enters into force, as well as to the sale of any shares in an enterprise wholly owned or under the effective control of the government.

10.6.7 Environment and Labour Standards

The NZ-UK FTA has some of the highest commitments on trade and environment and trade and labour of any New Zealand FTA. These include the very clear commitment by each country not to waive or otherwise derogate from their respective environment and labour standards or to fail to enforce these to encourage trade or investment.

In the case of labour standards, not only does the Trade and Labour chapter set minimum labour obligations for both Parties and act to encourage high levels of labour protection and promote decent work, it also contains additional provisions promoting non-discrimination and gender equality and commitments on identifying and addressing modern slavery in each Party's domestic and global supply chains. Moreover, the chapter on Trade and Labour provides a platform for cooperation with the UK – an advanced economy with a comprehensive system of labour protections – on issues of interest and benefit to New Zealand. At the same time, the chapter explicitly provides for input into the Labour Sub-Committee and its oversight of the chapter from independent advisory groups made up of civil society stakeholders.

The Environment chapter also goes beyond the outcomes in this area secured in previous New Zealand FTAs to include more extensive provisions to address environmentally harmful subsidies (particularly fisheries subsidies and fossil fuel subsidies), with specific references to climate change and covering the largest range of environmental goods (293 products) to benefit from improved trade conditions negotiated to date.

Similarly, the Environment chapter also provides for input from interested domestic stakeholders.

10.6.8 Inclusive Trade

The inclusive trade objectives of the New Zealand Government's Trade for All policy have underpinned New Zealand's approach to the NZ-UK FTA negotiations from the outset. This intent was explicitly articulated in the high level negotiating objectives released by New Zealand at the launch of negotiations in June 2020. These principles have been given effect in the NZ-UK FTA through:

- dedicated chapters on Māori Trade and Economic Cooperation, Trade and Gender Equality, Trade and Development, Consumer Protection and Small and Medium-Sized Enterprises;
- advanced provisions on Environment (including with specific reference to climate change), Trade and Labour, and Anti-Corruption;
- a full and extensive programme of engagement and consultation with Māori, interested stakeholders and the general public in the lead up to and throughout the negotiations; and
- the inclusion of specific provisions in individual chapters and in the broader institutional arrangements set up under the Agreement to support domestic engagement in the work of the Sub-Committees charged with the operation of the Agreement in the areas of Trade and Environment, Trade and Labour, and Inclusive Trade.

10.6.9 Trade Facilitation

In addition to the market access opportunities created under the NZ-UK FTA, the Agreement has a focus on improving and modernising the rules governing the trading environment between New Zealand and the UK in order to facilitate the growth of trade and economic connections, while safeguarding each government's right to regulate for legitimate public policy purposes.

Particular chapters include those on Customs and Trade Facilitation, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Domestic Regulation, and Digital Trade.

In the area of customs and trade facilitation, for example, the chapter supports efficient and transparent customs procedures, promotes the use of advanced electronic data and electronic systems to facilitate trade and contains commitments to release goods as soon as possible and within certain clear timeframes, including within six hours of arrival for perishable products.

The Technical Barriers to Trade chapter puts in place a modernised framework, building on the WTO TBT Agreement, to address non-tariff barriers. It also includes sector-specific commitments for cosmetics, medicines and medical devices, and has a Wine and Distilled Spirits Annex that works to facilitate trade, including through recognition of a range of New Zealand wine-making practices and ensuring unduly burdensome certification requirements are not imposed on New Zealand wine exports to the UK.

New Zealand already has a well-functioning Agreement with the UK covering exports of animals and animal products (the NZ-UK Sanitary Agreement 2019), which recognises the equivalence of veterinary measures maintained by both Parties for the protection of public and animal health. In the NZ-UK FTA, the Sanitary and Phytosanitary (SPS) chapter builds on this and provides for greater transparency and confidence in each other's SPS regimes, while protecting plant health and enabling trade.

10.6.10 Visa Access

The NZ-UK FTA chapter on Temporary Entry for Business Persons assists New Zealand businesses through the commitments it contains to ensure expeditious application procedures, to require that fees charged for any immigration formality be reasonable and to provide for transparency in the documentation required and conditions to be met by business persons applying under the relevant temporary entry categories.

Each of the UK and New Zealand has made commitments to provide temporary entry to each other's business persons across an expanded range of categories or services. They have also both committed to provide entry to the partner and any dependent children accompanying an executive, manager or specialist transferred within a company (intra-corporate transferees) for the same period as the principal intra-corporate transferee.

Alongside the FTA negotiations, New Zealand and the UK also undertook to work on arrangements to extend and improve the current respective Youth Mobility/Working Holiday schemes. This will build on the long tradition in youth mobility between New Zealand and the UK to improve the access in both directions and will mean young New Zealanders will have enhanced opportunities in the years to come to live and work in the UK. Such improved arrangements are still to be finalised with the UK.

10.7 Inter-departmental consultation

The NZ-UK FTA was negotiated by an inter-agency team led by the Ministry of Foreign Affairs and Trade (MFAT). The inter-agency team was composed primarily of officials from MFAT, the Ministry of Business, Innovation and Employment (MBIE), the Ministry for Primary Industries (MPI) and the New Zealand Customs Service. Officials from these agencies led specific chapters.

A wide range of other ministries were consulted throughout the negotiations, including the Reserve Bank of New Zealand, Ministry for the Environment, Te Puni Kōkiri, Ministry for Women, Ministry of Education, Ministry of Transport, Ministry for Culture and Heritage, and the Treasury. In some cases, these ministries were represented on the negotiating team or supported negotiators at specific sessions.

The Department of the Prime Minister and Cabinet was regularly notified of developments on the negotiations and New Zealand's position.

11. Withdrawal or Denunciation Provision in the Treaty

The NZ-UK FTA can be terminated, as provided for in Article 33.4 (Final Provisions chapter), by either Party on the basis of six months' written notice to the other Party of intention to terminate the agreement, unless the Parties agree otherwise.

12. Agency Disclosure Statement

This National Interest Analysis has been prepared by the Ministry of Foreign Affairs and Trade, in consultation with other relevant government agencies. It identifies all the substantive legal obligations in the NZ-UK FTA, some of which will require legislative implementation, and analyses the advantages and disadvantages to New Zealand in becoming a Party to the NZ-UK FTA.

It presents the findings of the independent economic modelling of the Agreement's impacts prepared by consultancy firm ImpactECON and contains an assessment of the Agreement's potential environmental, social and cultural impacts, together with analysis of potential effects for Māori, women and SMEs.

Implementation of the obligations arising under the NZ-UK FTA 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.