Chair,
Cabinet Economic Growth and Infrastructure Committee

Trans-Pacific Partnership: Updated Mandates

Proposal

This paper seeks an updated negotiating mandate for the Trans-Pacific Partnership (TPP) free trade agreement (FTA) negotiations. The guidance sought in this paper is expected to be sufficient to enable the successful negotiation in a number of sectors areas, recommendations would require legislative change (at the point of TPP implementation) but officials consider that these proposals are not substantive or would have limited impact on New Zealand’s policy objectives.

Executive summary

2 TPP is a negotiation which expands and builds on the “P4” FTA and currently involves New Zealand, Australia, Brunei Darussalam, Chile, Malaysia, Peru, Singapore, the United States and Viet Nam. It represents a significant opportunity for New Zealand to conclude an FTA with the United States and to be part of constructing a high-quality platform for broader regional integration, including as a potential pathway towards APEC Leaders’ vision of a Free Trade Area of the Asia-Pacific.

3 TPP negotiations have intensified. TPP Leaders agreed at the November 2011 APEC meetings that negotiators should conclude an agreement as rapidly as possible. Two substantive rounds of negotiations and a series of inter-sessional meetings have taken place since and broad agreement has been reached that negotiators should work towards resolution of non-contentious issues by mid-year. We expect that by July (Round 18) a number of TPP chapters could be substantially agreed and that the negotiating process will transition to a closing phase with Chief Negotiators focusing on resolving the most complex and sensitive issues.

4 This paper is the first of a two-part mandate process. It covers three sets of issues:

1) Proposals for sectoral mandates for a range of goods, services, investment, government procurement, labour and environment, and regulatory and legal issues.

2) Recommendations for transition to and setting of rules on TPP chapters (customs, trade remedies, cross-border services, government procurement, regulatory coherence) over the coming rounds and advance negotiations on sectors areas like textiles, rules of origin, investment, labour and environment, and state enterprises.
(ii) Comment on plans to address TPP issues in a second Cabinet mandate paper in June.

(iii) An overview (in Annex 2) of areas where negotiators expect to reach agreement consistent with current mandates.

5 Decisions in this paper relating to issues would require legislative change at the point of TPP implementation. A number of other issues would have some fiscal implications or require new arrangements to be established. Officials consider that these proposals have some merit or would have a limited impact on New Zealand policy objectives.

6 Envisaged for labour and environment, and state enterprises. The decisions sought in this paper on these issues are proposing safeguards in each of these areas to reflect existing policy approaches or mitigate risk.

7 Potential impacts/risks associated with the decisions in the paper are highlighted in Table 1 below, and cross-referenced to relevant explanatory material in Annex 1.

8 A second Cabinet paper, scheduled to be submitted in June, will focus on goods market investment issues including intellectual property issues; and some legal issues. Analysis of the direct, indirect and dynamic costs and benefits of these issues and an assessment of the strategic, economic, regulatory and social benefits and costs of a likely deal, including the counterfactual implications of New Zealand being left out of an eventual arrangement, will be included to enable Ministers to consider an overall TPP deal. Work on this paper is underway and will be reviewed by upcoming Chief Executive and Cabinet Strategy Committee meetings.

9 Collectively, these mandates are intended to provide a roadmap for negotiators to achieve a TPP agreement in the New Zealand interest. The decisions sought in this paper are intended to advance the negotiation forward over the coming rounds.

10 A glossary of technical terms used in this paper is provided in Annex 5.
Background

11 TPP negotiations have intensified following the November 2011 APEC meetings in Honolulu where Leaders agreed publicly that negotiators needed to press ahead and conclude an agreement as rapidly as possible. In his remarks to the media, President Obama referred to a specific direction to conclude “in the coming year” (i.e. in 2012).

12 This direction has focused negotiating efforts over the last five months. Two further rounds were held in December and March. With solid progress made on less contentious issues.

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2 Rounds 10 (Kuala Lumpur, 5-9 December) and 11 (Melbourne, 1-9 March). Four further rounds are planned in 2012:
- Round 12: Dallas, 8-18 May
- Round 13: 2-10 July
- Round 14: 24 September – 3 October
- Round 15: 3-12 December
15 In any 2012 game plan, New Zealand interests need to be safeguarded.

- 56(c) ii

- 56(c) ii
- 56(c) ii

Current negotiating mandates

16 Negotiators, over the course of the first eleven rounds, have been working within the mandates agreed by Cabinet in 2011 (EGI Min (11) 11/10 and EGI Min (11) 3/5), 2010 (EGI Min (10) 22/4) and 2008 (CBC Min (08) 16/2). Direction on intellectual property, pharmaceutical issues and goods market access was also provided by Ministers in October 2011 and December 2010.

- 56(c) ii

Seeking 56(c) ii mandates for the 56(c) ii issues in the negotiation is the primary purpose of this paper. A second paper, scheduled to be submitted to Cabinet in June, will provide Ministers with an assessment of the strategic, economic, regulatory and social benefits and costs of a likely TPP deal, and seek approval of 56(c) ii mandates for New Zealand faces in TPP.

Comment

18 Table 1 summarises the mandate decisions, and associated impacts and risks, sought in this paper.

Table 1: Revised 56(c) ii mandates: direction sought in this paper

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>PROPOSED MANDATE</th>
<th>SIGNIFICANT IMPACTS / RISKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trade in Goods</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
withheld:

- 66 (a);
- 66 (b) (i);
- 66 (c) (vi);
- 97 (2) (d);
- 97 (2) (j)
- s 6(e); s 6(e)(i); s 6(e)(ii); s 6(e)(iii);
- s 9(e)(c); s 9(e)(d);

**Services, Financial Services and Investment Issues**

- s 6(a); s 6(b)(i); s 6(c)(i); s 6(e)(i);
- s 9(e)(a); s 9(e)(b);

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Agreement that officials should consult with delegated Ministers on any changes to New Zealand's services, financial services and investment market access offer which are only technical in nature or designed to more
Government Procurement

- s b (4j); s b (8) (i); s b (e) (v)
- s q (2) (d); s q (2) (f)

Labour and Environment

- s b (4j); s b (b) (i); s b (e) (v)
- s q (2) (d); s q (2) (f)

Regulatory Issues

- s b (4j); s b (a) (i); s b (e) (v); s q (2) (d); s q (2) (f)
June Cabinet paper

19 The closing phase of TPP will be a protracted process. A landing zone could take six or so months to map out, with one scenario being a process which begins in July and runs through to the last scheduled meeting in December 2012.

20 For this reason officials are seeking to have a comprehensive New Zealand mandate in place by July. The revised mandates sought in this paper are the first part of that process. A second paper will be submitted to Cabinet in June and will provide Ministers with an assessment of the strategic, economic policy and social benefits and costs of a likely TPP deal. Collectively, these mandates are intended to provide a roadmap for negotiators to a TPP agreement in the New Zealand interest.
21 Preparation for the June Cabinet paper is underway. A meeting of relevant Chief Executives and the Cabinet Strategy Committee in early May will provide an opportunity to review progress towards June mandates that reflect New Zealand's needs:

- \[ S(bcd); S(bde); S(bcd); S(bcd); \]
- \[ S(bcd); S(bcd); \]

22 At this stage, the issues for decision in the June paper will include:

- Goods market access: \[ S(bcd); S(bcd); S(bcd); \]
- Intellectual property: \[ S(bcd); S(bcd); S(bcd); \]
- Investment: \[ S(bcd); S(bcd); S(bcd); S(bcd); \]
- Exceptions: \[ S(bcd); S(bcd); S(bcd); S(bcd); \]

23 TPP is potentially the most far-reaching FTA negotiation New Zealand has been involved with at least since GATT. The 'behind the border' and regulatory issues are more numerous and complex than the issues we have had to manage in recent trade
24 Officials are undertaking analysis to consider the direct, indirect and dynamic costs and benefits that are likely to arise from the decisions sought in the June paper. This analysis will consider the marginal costs and benefits of significant issue-specific decisions, and of the agreement as a whole, compared to the counterfactual of New Zealand being left out of TPP. The paper will also include regulatory impact analysis commensurate with the potential nature and magnitude of the regulatory impacts, subject to the practical constraints on any analysis given the stage of negotiations. An extended National Interest Analysis (incorporating a full Regulatory Impact Analysis) will be presented to Cabinet when negotiations have concluded and TPP is submitted for approval for signature.

25 Reflecting the complexity and potential reach of TPP, the following processes have been established to provide input into the development of the mandates:

- A ‘core group’ of officials with representatives from key agencies involved in the negotiation is focused on cost/benefit issues across the negotiation and briefing and preparation for separate Chief Executive and Ministerial processes.
- A meeting of ‘core group’ Chief Executives will focus on the development of the June Cabinet paper and preparations for a Cabinet Strategy Committee meeting on TPP.
- Further Ministers will discuss preparation of the June Cabinet paper, including possible mandate parameters in a Cabinet Strategy Committee meeting on 7 May.

Consultation

26 The following departments have been consulted in the preparation of this paper and concur with its recommendations: Department of Conservation, Department of Labour, Ministry for the Environment, Ministry of Economic Development, Ministry of Health, Ministry of Primary Industries, New Zealand Customs Service, Reserve Bank of New Zealand, Te Pūi Kōkiri and the Treasury.

27 The Department of Prime Minister and Cabinet has been informed and OEGI has also been consulted.

Financial Implications

28 Fiscal costs of TPP are likely to include the following components, incurred across different departments and over a number of years:

(a) Negotiations: includes preparatory work leading to negotiation rounds, any outsourcing of analysis to external consultants, travel, consultation and outreach. These costs will be incurred for the duration of the negotiations;

(b) Implementation; includes costs arising from changes to domestic policy and legislative settings and ‘operational’ costs (such as any increased transparency or consultation requirements). This is likely to be the most significant area of new costs.
(d) Tariffs: reduction in revenue generated from tariff elimination over time. Lost tariff revenue is only applicable to imports from the US and Peru given New Zealand has FTAs in place with other TPP members.

29 Officials will provide more detailed information to Cabinet on cost and funding issues in the June Cabinet paper. Negotiators are working to secure TPP outcomes that would deliver long-term economy-wide benefits well in excess of these financial costs.

Human rights

30 This paper contains no proposals inconsistent with the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990.

Legislative implications

31 None at this stage. At the point of TPP implementation, however, legislative change would be required to implement the flexibilities proposed in the following areas:

32 Officials agree that these proposals would have limited impact on New Zealand policy objectives.

Regulatory impact analysis

33 A Regulatory Impact Analysis is not required for this paper as it does not seek material decisions which would result in significant or wide-reaching regulatory implications for New Zealand and where the regulatory implications arise from changes to existing policy. The June Cabinet paper will seek material decisions from Ministers, and will therefore require regulatory impact analysis commensurate with the potential nature and magnitude of the regulatory impacts, subject to the constraints on such analysis given the stage of negotiations. An extended National Interest Analysis (Incorporating a full Regulatory Impact Analysis) will be presented to Cabinet when negotiations have concluded and TPP is submitted for approval for signature.
Publicity

34 No publicity is planned on the issues discussed in this paper.

Recommendations

35 The Minister of Trade recommends that the Committee:

Overview

1 note that Trans-Pacific Partnership (TPP) negotiations have intensified following the outcomes of meetings among TPP Leaders and Trade Ministers in the margins of the November 2011 APEC summit;

2 note that at APEC 2011 TPP Leaders issued a direction to negotiators to conclude an agreement as rapidly as possible and that President Obama stated publicly that negotiators should aim to conclude an agreement “in the coming year” (i.e. 2012);

4 note that Round 12 of TPP negotiations is scheduled for 8-18 May in Dallas, with further meetings scheduled for July, September and December;

6 note that to facilitate agreement on § 6(1); § 9(ωγ) issues negotiators are seeking a revised mandate intended to provide scope to §6(ω) a range of goods, services, investment, government procurement, labour, environment, regulatory and legal issues as outlined in recommendations 7-91;

Negotiating Mandates

Trade in Goods Issues

Textiles and Apparel

- § 6(1); § 6(κ(κυ))
- § 9(ω) κ(κυ), § 9(ω) κ(κυ)
18. Note that a customs chapter that promotes predictable, transparent and expeditious procedures is in prospect.

12. Note that simple, objective and process-based change of tariff classification (CTC) origin rules have been agreed for larger amounts of the tariff schedule.

13. Note that additional regional-value-content (RVC) rules are also under negotiation and, if agreed, would provide exporters flexibility to demonstrate origin for the purposes of claiming preferential tariff preferences.
- $b(x)$, $b(e) > c(y)$,
- $g(e) > c(x)$, $g(e) > c(y)$

**Trade Remedies**

- $b(x)$,
- $b(e) > c(y)$,
- $g(e) > c(x)$,
- $g(e) > c(y)$.

**Services and Investment Issues**

**Cross-Border Trade in Services**

- $b(x)$,
- $b(e) > c(y)$,
- $g(e) > c(x)$,
- $g(e) > c(y)$,
- $f(z) > c(y)$,
- $g(z) > c(x)$.

**Financial Services**

- $b(x)$, $b(e) > c(x)$, $b(e) > c(y)$,
- $g(e) > c(x)$, $g(e) > c(y)$.
- s 6 (a);
- s 6 (b) (i);
- s 6 (c) (vi);
- s 9 (2) (d);
- s 9 (2) (e).
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Services and Investment Market Access

53 authorise the Minister of Trade and relevant portfolio Ministers to approve proposed changes to New Zealand’s services, financial services and investment market access offers that are technical in nature or are designed to more accurately reflect policy intent;

Government Procurement

- \( s \ b (e) \)
- \( s \ b (e) (v) \)
- \( s \ b (e) (g) \)
- \( s \ b (e) (d) \)
- \( s \ b (e) (c) \)

Labour and Environment

- \( s \ b (c) \)
- \( s \ b (e) (c) \)
- \( s \ b (e) (d) \)
- \( s \ b (e) (c) \)
- \( s \ b (e) (c) \)
OFFICIAL INFORMATION ACT

...
Regulatory Issues

Intellectual Property

- 3 6 (e);
- 3 6 (e) (v);
- 3 9 (v) (s) (c);
- 3 9 (v) (d);
- 3 9 (v) (s) (j)
note that the overarching objectives of the text proposals reflect competitive
neutrality principles and crown entity and SOE governance practices in
New Zealand:

- S 6 (a)
- S 6 (b)(i)
- S 6 (b)(v)
- S 9 (2)(d)
- S 9 (2)(j)

Regulatory Coherence

86 note that publication of an annual regulatory agenda would have a low
marginal cost for New Zealand given that agencies are already required to
develop regulatory plans and provide these to Treasury:

- S 6 (a), S 6 (c)(v)
- S 9 (2)(d), S 9 (2)(j)
Legal Issues

- s 6 (a);
- s 6 (e) (vii)
- s 9 (2) (d)
- s 9 (2) (j)

Other Issues

- s 6 (a), s 6 (e) (vii)
- s 9 (2) (d), s 9 (2) (j)

94 note that a brief overview of these areas is provided in Annex 2;

Further Cabinet and Ministerial Guidance

95 note that it remains possible that some technical adjustments to the mandates sought in this paper may be required to conclude certain issues;

96 authorise the Prime Minister, Minister of Finance, Minister of Trade and the relevant portfolio Minister(s) to take decisions on any technical adjustments required to the mandates sought in this paper; and

97 note that negotiators plan to submit a second Cabinet paper to Ministers in June that will provide an assessment of the overall balance of a possible TPP deal and seek guidance on New Zealand’s s 6 (a), s 6 (f), s 6 (g), s 6 (h) (j), s 6 (l) (a) issues under negotiation (including goods market access, intellectual property, pharmaceuticals and investment).

Hon Tim Groser
Minister of Trade
Annex 1: mandates: background

This annex provides further background on the mandates proposed for a range of goods, services, investment, government procurement, labour and environment, and regulatory and legal issues.

Textiles and Apparel

- Section (a);
- Section (b)(c);
- Section (c)(d);
- Section (e)
- \[ C(a); \]
- \[ C(b); \]
- \[ C(c); \]
- \[ C(d); \]
- \[ 9(C); \]
- \[ 9(D); \]

Decision sought:
- \[ >C(C); \]
- \[ 9(C); \]
- \[ 9(D); \]

Rules of Origin (ROO):
- \[ C(a); \]
- \[ C(b); \]
- \[ C(c); \]
- \[ C(d); \]
- \[ 9(C); \]
- \[ 9(D); \]

Simple, objective and process-based change-of-tariff-classification (CTC) rules have been agreed for large elements of the tariff schedule. Optional regional-value-content (RVC) rules are also under discussion for some products which would allow exporters, like they do under AANZFTA, to have flexibility in how they demonstrate origin for the purposes of claiming TPP tariff preferences.
- s 6 (a)
- s 6 (b) (c)
- s 6 (e) (v i)
- s 9 (2) (c i)
- s 9 (2) (c j)

Decision sought:  s 6 (a), s 6 (b) (c), s 6 (e) (v i), s 9 (2) (c d), s 9 (2) (c j)

Customs:  s 6 (a), s 6 (b) (c), s 9 (2) (c d), s 9 (2) (c j)

Commitments for advanced rulings provide important benefits and facilitate trade.  s 6 (a), s 9 (2) (c j)

These rulings provide guarantees on how a particular product will be treated by customs authorities.  s 6 (a)

The New Zealand Customs Service (NZCS) does not currently provide such rulings and agreement to do so would require amendments to the Customs and Excise Act 1996 and associated regulations.
12 Valuation rulings would involve customs authorities providing guidance on how an importer should apply Schedule 2 of the Customs and Excise Act 1996 to calculate the value of a good. Responsibility for actual calculations and declarations would remain with the importer. Depending on the level of uptake, however, there could be some resource implications for NZCS. Based on current demand for advice on valuation matters, a proposal of this kind could require an additional two—four full-time equivalent employees to implement.

13 Offsetting the legislative and resource implications are the potential benefits of increased certainty in other TPP markets for New Zealand exporters. Advanced rulings offer guarantees for traders and access to advice on valuation would be a new commitment that is not available to New Zealand exporters through existing agreements with TPP members.

\[
\begin{align*}
- S \text{ b (c) } & S \text{ b (c) (d) } \\
- S \text{ b (e) (c) } & S q (e) (c) \\
- S q (e) (c) & S q (e) (c) \\
- S q (e) (c) & S q (e) (c) \\
- S q (e) (c) & S q (e) (c) \\
\end{align*}
\]

Trade Remedies

15 The outcome in prospect on trade remedies will preserve TPP members' respective WTO rights and obligations, will reflect current policy settings, and is mostly consistent with the GATT agreement (EGI Min (11) 11/10).
- 6 (a), 6 (c)(i)(c)
- 9 (2)(b)(i), 9 (2)(c)

Decision sought:

**Services and Investment Issues**

**Cross-Border Trade in Services**

- 6 (a)
- 9 (2)(c)(i)
- 9 (3)(c)

19. The P4 includes WTO-plus coverage of air services by incorporating the air transportation services set out in the Multilateral Agreement on the Liberalisation of International Air Transportation (MALIAT).

- 9 (2)(a)
- 9 (1)(i)(v)
- 6 (a)

Decisions sought:

- 6 (a), 6 (c)(c)(c), 9 (2)(a), 9 (2)(c)(c)
Financial Services

21. Large elements of the financial services text have been agreed and the chapter is largely on track for conclusion.

While TPP will be New Zealand's first substantive financial services chapter (we normally negotiate financial services under one general services text), many of the chapter's provisions are drawn from New Zealand's existing WTO commitments.

22. A prudential exception that allows TPP members to apply measures, which are inconsistent with the obligations of the financial services chapter, to protect investors, depositors, policy holders or to ensure the integrity and stability of the financial system.
- s b (q)
- s b (b) (i)
- s b (e) (i)
- s q (z) (d)
- s q (z) (j)

Decisions sought:

- s b (z)
- s b (b) (i)
- s (z) (d)
- s (z) (j)

Temporary Entry

37 A temporary entry chapter which expands on the s b (b) P4 outcome and is consistent with current policy settings is close to conclusion.

- s (b) (i); s b (b) (i); s b (e) (i); s q (z) (d); s q (z) (j)
The article, which generally prohibits a TPP member from imposing certain requirements on investors as a condition of approving investment activity (e.g. requirements to use a minimum level of local content, transfer technology or export a certain level of production), will benefit New Zealand investors in TPP markets.
- s b (a)
- s b (b) (c)
- s q (2) (d)
- s q (2) (e)

Decision sought:
- s b (a)
- s b (b) (c)
- s q (2) (d)
- s q (2) (e)

Investor-State Dispute Settlement (ISDS)
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OFFICIAL INFORMATION ACT
Services and Investment Issues

Denial of Benefits

43 Denial of benefits clauses are standard provisions in services and investment chapters that, in addition to agreed scope and definitions, clarify the origin of service suppliers and investors (and therefore their eligibility to benefit from services and investment commitments in FTAs).

- § 4(2)(a)
- § 4(2)(b)(i)
- § 4(2)(b)(ii)
- § 4(2)(c)(i)
- § 4(2)(c)(ii)
- § 4(2)(c)(iii)

Decision sought:

- § 6(2)(a)
- § 6(2)(b)(i)
- § 6(2)(b)(ii)
- § 6(2)(c)(i)
Market Access Commitments

47 Negotiations on services, financial services and investment market access are making steady progress

- \( S 6 (a) \)
- \( S 6 (b) (i) \)
- \( S 6 (c) (v) \)
- \( S 9 (2) (a) \)
- \( S 9 (2) (e) \)

48 New Zealand's services and investment offer was most recently discussed in Melbourne

- \( S 6 (i) \)
- \( S 6 (c) (i) \)
- \( S 6 (e) (v) \)
- \( S 9 (2) (c) \)
- \( S 9 (2) (c) \)

Officials propose to consult with the Minister of Trade and relevant portfolio Ministers on any planned changes to New Zealand's offer that are of a technical nature or are designed to more accurately describe or reflect policy intent. \( S 6 (a) ; S 9 (2) (c) ; S 9 (2) (c) \) will be considered as part of the June Cabinet paper process.

Decision sought: authorise the Minister of Trade and relevant portfolio Ministers to approve proposed changes to New Zealand's services, financial services and investment market access offers that are technical in nature or are designed to more accurately reflect policy intent.

Government Procurement

- \( S 6 (c) \)
- \( S 9 (2) (c) ; S 9 (2) (c) \)
- \( S 6 (a) ; S 6 (c) (v) ; S 9 (2) (c) ; S 9 (2) (c) \).
Steady progress has been made on procedures and rules (chapter text) and the list of entities (market access) that will be subject to TPP procurement rules.

- s 6 (a);
- s 6 (b) (v);
- s 9 (2) (d); s 9 (2) (f);

This approach is consistent with changes envisaged under the domestic reform process being led by the Ministry of Economic Development and rules that New Zealand would need to accept if it was to accede to the GPA. A Cabinet paper considering these and other government procurement reform issues is scheduled to be considered in May 2012.

Decisions sought:

- s 6 (a);
- s 6 (b) (v);
- s 6 (c) (v);
- $b(c_i), b(b)\, c(i), b(e)\, c(v_i) \backslash
  s\, g(2)\, c(i), s\, g(2)\, c(j) \backslash
\backslash
\backslash
Labour and Environment: \backslash
- b(a), b(b)\, c(ii), b(e)\, c(x_i) \backslash
- s\, g(2)\, c(i), s\, g(2)\, c(j) \backslash
\backslash
\backslash
withheld in full:
- s b (a);
- s b (b) (c);
- s b (c) (c);
- s q (2) (d);
- s q (2) (e) (f).
Labour

- S 6 (a);
- S 6 (b); (i)
- S 6 (e); (ii)
- S 9 (2); (a); S 9 (2); (c;)

Environment

- S 6 (a);
- S 6 (b); (i)
- S 9 (2); (a);
- S 9 (2); (c;)

The New Zealand approach across sectors is outcome-based aiming at sustainable management of all natural resources. It seeks to manage adverse effects on the environment and establish legislative and economic/regulatory frameworks when absolutely necessary, within which investment decisions are largely market driven.
- 8 (a);
- 8 (b) (i);
- 8 (c) (ii);
- 9 (a) (iii);
- 9 (b) (iv).

Decisions sought:

- 6 (a) (v);
- 6 (b) (vi);
- 9 (a) (vii);
- 9 (b) (viii).
Regulatory Issues

Intellectual Property (IP)

- S 6 (a);
- S 6 (b)(c);
- S 6 (c)(d);
- S 9 (2)(a);
- S 9 (2)(c);
- S 9 (2)(d);

ISP liability

73 In copyright law it is possible for ISPs to be found secondarily liable for copyright infringement where their services or networks have been used to facilitate copyright infringement (e.g. file sharing over the internet).
The New Zealand Telecommunications Forum has been consulted.

Copyright management information (CMI)

CMI is the digital equivalent of the front page of a book. It identifies the work, its author or the copyright owner, and provides information about the terms and conditions for using a work.
- 8 6 (a); 8 6 (b) (c).

Withheld in full:
- 8 6 (a);
- 8 6 (b) (c);
- 8 6 (d) (e);
- 8 9 (2) (d);
- 8 9 (2) (e).
Decision sought:
- $s \in (a) \exists b \in (z) \forall c \in (d) : s \in (2)(c)$

Regulatory Coherence

87 $s \in (a) \exists b \in (z) \forall c \in (d) : s \in (2)(c)$

the regulatory coherence agenda, a distinguishing 21st century feature of TPP, given the outcomes under negotiation should help promote more effective regional integration and coordination, and assist businesses to operate more seamlessly across and behind borders.

$\exists b \not\in (a) \forall c \not\in (d) : s \in (2)(c)$

88 Good progress has been made towards these objectives. One issue which might be accepted as part of a final package, $s \in (a) \exists b \in (z) \forall c \in (d)$, is a requirement to publish an annual regulatory agenda (ARA) for ‘covered regulatory measures’ that a Party reasonably expects its regulatory authorities to issue over the following 12-month period. $s \in (a) \exists b \in (z)$.

89 New Zealand does not have a comparable requirement, though agencies are required to provide Treasury with information on their intentions to introduce, amend or repeal regulation as part of the annual regulatory planning process. On this basis, while the implementation of an ARA requirement under TPP would lead to the establishment of new processes, an ARA obligation is expected to have a low marginal cost. Published
ARAs would also support New Zealand’s interest in greater transparency of rule-making in TPP Parties and should benefit New Zealand businesses trading with or investing in them.

- § 6 (v);
- § 6 (c)(i).
- § 6 (c)(iv);
- § 9 (c)(d);
- § 9 (c)(j).

Decision sought:

Legal Issues

92 Solid progress has been made across the legal and administrative chapters towards an outcome.

Dispute Settlement

- § 6 (v);
- § 6 (c)(i).
- § 6 (c)(iv);
- § 9 (c)(d);
- § 9 (c)(j).
- s b (a);
- s b (b) (c);
- s b (c) (i);
- s q (e) (i);
- s q (e) (i);
- s q (e) (i);
- s q (e) (i);

Decision sought:

**Entry into Force**

96 Arrangements for entry into force of an eventual TPP agreement were discussed. The issue is straightforward in a two-party agreement but can be dealt with in a number of ways in a plurilateral context. AANZFTA, for example, entered into effect only when New Zealand, Australia and at least four ASEAN members had provided notifications that relevant domestic procedures had been completed.
Decision sought:
\[ \begin{align*}
\text{6 (c)(i)}, & \quad \text{6 (2)(d)}; \\
\text{6 (2)(j)}, & \quad \text{6 (a)}
\end{align*} \]

Other Legal Issues

There are a series of legal issues that will also require further mandate consideration. These include:

- \[ \text{6 (b)(i)}; \]
- \[ \text{6 (3)(b)(ii)}; \]
- \[ \text{6 (c)(vi)}; \]
- \[ \text{6 (e)(c)(v);} \]
- \[ \text{9 (2)(d)(i)}; \]
- \[ \text{9 (2)(c)(j)}; \]

Reflecting the cross-cutting nature of these issues, officials will seek guidance on these points in the June Cabinet paper.
Annex 2: Areas where negotiators expect to conclude

Officials consider that

Technical Barriers to Trade (TBT)

2 Negotiators are close to concluding a TBT outcome. The chapter in prospect will establish a WTO-plus framework to address regulatory barriers to trade and promote regulatory cooperation.

Sanitary and Phytosanitary (SPS) Measures

3 New Zealand's objective of negotiating SPS commitments that reflect the broad approach agreed in P4, consistent with existing policy settings, is well advanced. The chapter is likely to include a number of WTO-plus mechanisms that will help facilitate trade and cooperation, including through a framework to address current and future SPS measures affecting trade.
Electronic Commerce

7  The chapter aims to promote the use and development of electronic commerce, through minimising additional requirements that may impede the growth of e-commerce and encouraging the adoption of regulatory frameworks capable of promoting confidence in e-commerce.

Telecommunications

10. A telecommunications chapter that provides a framework for open and competitive markets, consistent with New Zealand’s existing telecommunications regulatory framework, is well advanced. The chapter includes several WTO-plus provisions such as number portability and unbundling of network elements. A handful of more complex issues, including covering submarine cable systems and technology/standards requirements (where some Parties have little regulatory experience) are still being worked through.
11 New Zealand’s inclusion of provisions designed to encourage ways to address the high costs of international mobile roaming (IMR). If agreed, this would be a useful 21st century deliverable for TPP. In tackling this issue, negotiators are working to ensure that sufficient safeguards are in place to address the potential risks of free-riding—a concern that has also been registered by industry.

Competition

12 The competition chapter

13 Key elements of the chapter currently include commitments to adopt and maintain competition laws, maintain an authority responsible for enforcing those laws and ensuring that its enforcement policy does not discriminate on the basis of nationality. The chapter also includes commitments that recognise that private rights of action are an important supplement to the public enforcement of national competition laws and commitments that recognise the importance of consumer protection policy and enforcement to creating efficient and competitive markets. The obligations are consistent with existing New Zealand legislation (the Commerce Act and the Fair Trading Act).

Small and Medium-Sized Enterprises (SMEs)

14 Negotiators are close to concluding this chapter. The main provisions in the chapter are an obligation on each TPP party to establish a webpage that contains information on the opportunities that arise out of the TPP for SMEs (analogous to webpages New Zealand has established for other FTAs) and other information that would be of use to SMEs trading in the region, and the establishment of a committee to identify ways in which SMEs can take advantage of such opportunities.

Competitiveness and Business Facilitation

15 Negotiators are close to concluding this chapter. The main provision is the establishment of a Competitiveness and Business Facilitation Committee to consider ways in which the TPP may be implemented in a manner that enhances the domestic, regional and global competitiveness of each Party’s economy and promotes economic integration and development, within the free trade area. The Committee will have a particular focus on strengthening supply chains in the region.
Annex 4:

Annex 4 (pages 53 and 54) withheld in full:

- Section 6(a);
- Section 6(c) (vii);
- Section 9(b)(ii);
- Section 9(b)(iii).
## Annex 5: Glossary of technical terms

<table>
<thead>
<tr>
<th>Acronym/Term</th>
<th>Full Term/Name</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>AANZFTA</td>
<td>ASEAN-Australia- New Zealand Free Trade Agreement</td>
<td>FTA between members of Association of South-East Asian Nations (including TPP participants Singapore, Brunei Darussalam, Viet Nam and Malaysia), Australia and New Zealand. Entered into force for some members on 1 January 2010.</td>
</tr>
<tr>
<td>ACTA</td>
<td>Anti-Counterfeiting Trade Agreement</td>
<td>Treaty for the purpose of establishing international standards for enforcement of intellectual property rights and a mechanism for cooperation between enforcement agencies. Signed October 2011 (including by New Zealand, Australia, Singapore, the US). Has not entered into force as requires 6 signatories to ratify, but none has done so yet.</td>
</tr>
<tr>
<td>Advance rulings</td>
<td></td>
<td>A binding ruling issued by a customs authority, in response to a request from a trader normally in advance of import, that provides an assessment on a particular issue (e.g. origin, tariff classification)</td>
</tr>
<tr>
<td>ANZTPA</td>
<td>Australia New Zealand Therapeutic Products Authority</td>
<td></td>
</tr>
<tr>
<td>AUSFTA</td>
<td>Australia-United States Free Trade Agreement</td>
<td>Entered into force on 1 January 2005</td>
</tr>
<tr>
<td>CER</td>
<td>Closer Economic Relations</td>
<td>Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and related agreements. Entered into force on 1 January 1983</td>
</tr>
<tr>
<td>CMI</td>
<td>Copyright Management Information</td>
<td>An intellectual property term, CMI identifies a work, its author or the copyright owner, and provides information about the terms and conditions for using a work</td>
</tr>
<tr>
<td>Cumulation</td>
<td></td>
<td>A rules of origin term that allows goods from one FTA Party to be used in the production of a product in another FTA Party and be considered an originating product of that latter Party.</td>
</tr>
<tr>
<td>CTC</td>
<td>Change in Tariff Classification</td>
<td>A rules of origin term: an approach to determining substantial transformation whereby changes in tariff classification, using the Harmonised System (HS or tariff code), determine whether a good qualifies for tariff preference under a FTA</td>
</tr>
<tr>
<td>De minimis</td>
<td></td>
<td>A rules of origin term which establishes a small threshold (a small percentage of a final product’s value) – or exception – under which inputs that are non-originating do not impact on the origin status of the final product.</td>
</tr>
<tr>
<td>Acronym/Term</td>
<td>Full Term/Name</td>
<td>Notes</td>
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<td>-------------</td>
<td>----------------</td>
<td>-------</td>
</tr>
<tr>
<td>EIF</td>
<td>Entry Into Force</td>
<td>Date on which an FTA becomes legally binding on all Parties and commitments are implemented, or where phasing is agreed, commitments begin to be implemented.</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
<td></td>
</tr>
<tr>
<td>GATS</td>
<td>WTO General Agreement on Trade in Services</td>
<td>WTO agreement on services</td>
</tr>
<tr>
<td>GATS-plus</td>
<td>International Labour Organisation</td>
<td>Rules (text) or market access outcomes that build on the standards established under the GATS</td>
</tr>
<tr>
<td>ILO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ISDS</td>
<td>Investor State Dispute Settlement</td>
<td>A mechanism that allows an investor to initiate dispute settlement proceedings against a government for breaches of applicable investment agreement obligations</td>
</tr>
<tr>
<td>ISP</td>
<td>Internet Service Provider</td>
<td></td>
</tr>
<tr>
<td>KORUS</td>
<td>Korea-United States Free Trade Agreement</td>
<td></td>
</tr>
<tr>
<td>MFN</td>
<td>Most-Favoured Nation (treatment)</td>
<td>A services and investment commitment to not discriminate against services, service suppliers, investors or investments of one country in favour of services, service suppliers, investors or investments from another country.</td>
</tr>
<tr>
<td>Acronym/Term</td>
<td>Full Term/Name</td>
<td>Notes</td>
</tr>
<tr>
<td>-------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>National</td>
<td>Treatment</td>
<td>The obligation to treat foreign goods, services, investors and suppliers no less favourably than the domestic equivalent</td>
</tr>
<tr>
<td>Non-derogation</td>
<td></td>
<td>A requirement to uphold something (e.g. laws) and not detract or weaken</td>
</tr>
<tr>
<td>Non-discrimination</td>
<td></td>
<td>A requirement to not discriminate among foreign suppliers or between foreign and domestic suppliers in like circumstances</td>
</tr>
<tr>
<td>P4</td>
<td>Trans-Pacific Strategic Economic Partnership</td>
<td>FTA between New Zealand, Brunei Darussalam, Chile and Singapore that entered into force on 1 May 2006 for some Parties and was the immediate precursor to TPP negotiations</td>
</tr>
<tr>
<td>Performance</td>
<td>requirements</td>
<td>A condition imposed on the business operations of a foreign investor, such as a requirement to use a minimum level of local content, transfer of technology or export a certain level of production</td>
</tr>
<tr>
<td>ROO</td>
<td>Rules of Origin</td>
<td>The chapter and product-specific rules that collectively determine whether a good is deemed to be a product of an FTA Party and therefore qualifies for tariff preference</td>
</tr>
<tr>
<td>RVC</td>
<td>Regional Value Content</td>
<td>A rules of origin term: an approach to determining substantial transformation (origin) whereby a good qualifies for origin and tariff preference under an FTA if a specified percentage of the product's value (e.g. 50%) is added through production or further processing carried out in a Party</td>
</tr>
<tr>
<td>SPs</td>
<td>Sanitary and Phytosanitary Measures</td>
<td>Measures implemented by governments to protect human health, animal or plant life or health</td>
</tr>
<tr>
<td>SEs</td>
<td>State Commercial Enterprises</td>
<td></td>
</tr>
<tr>
<td>SCEs</td>
<td>State Enterprises</td>
<td></td>
</tr>
<tr>
<td>TBT</td>
<td>Technical Barriers to Trade</td>
<td>Impediments to trade relating to standards, technical regulations and conformity assessment systems</td>
</tr>
</tbody>
</table>
| Joint Commission  |                                                                                | An overarching body that will be created under TPP's Administrative and Institutional Provisions chapter and
<table>
<thead>
<tr>
<th>Acronym/Term</th>
<th>Full Term/Name</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRIMS</td>
<td>(Agreement on) Trade-Related Investment Measures</td>
<td>WTO agreement on investment measures that affect trade in goods</td>
</tr>
<tr>
<td>TRIPS</td>
<td>(Agreement on) Trade-Related Aspects of Intellectual Property Rights</td>
<td>WTO agreement on intellectual property</td>
</tr>
<tr>
<td>WIPO</td>
<td>World Intellectual Property Organisation</td>
<td></td>
</tr>
<tr>
<td>WTO-plus</td>
<td></td>
<td>Rules (text) or market access outcomes that build on the standards agreed at the WTO</td>
</tr>
</tbody>
</table>

- s 6 (a)   
- s 6 (b) (i)
Chair,
Cabinet Economic Growth and Infrastructure Committee

Trans-Pacific Partnership: Updated Mandates

Proposal

This paper seeks an updated negotiating mandate for the goods market access, intellectual property, and investment issues in the Trans-Pacific Partnership (TPP) free trade agreement (FTA) negotiations. A revised mandate is also sought for a range of cross-cutting legal issues.

Executive summary

1. Negotiators are continuing to work to conclude a TPP in line with Leaders instructions for a comprehensive, high standard, 21st century agreement as rapidly as possible. Effort remains principally focused on reaching substantial conclusion across a number of chapter texts and while solid progress is being made it remains unclear when negotiations might transition to an "end game" process.

2. This paper is a part of that preparation. It seeks updated mandates for goods market access and investment.

It covers five areas:

1. Goods market access
2. Intellectual property

withheld:
- 56 (4);
- 56 (5) (vi);
- 59 (3) (d);
- 59 (2) (e).
5. Cross-cutting legal issues

- $s b(\alpha)\ s b(\alpha (\alpha))\ s q(\alpha (\alpha))\ s q(\alpha (\alpha))$.

4. TPP continues to present the prospect of significant upside for New Zealand. The benefits are broader than tariff elimination for goods. TPP is also expected to create significant commercial opportunities for services exporters, investors and procurement suppliers as a result of commitments that reduce barriers to trade and investment and allow New Zealand firms to bid for TPP government contracts. The potential gains from the integration of more New Zealand businesses into regional networks and supply chains, including the improved access to innovation, capital and resources that will flow from that, present significantly larger opportunities.

5. But there are also potentially significant costs, $s(\alpha)\ s b(\alpha(\alpha))\ s q(\alpha(\alpha))$.

On that basis, and reflecting the significant trade, GDP and regional integration gains TPP could generate for New Zealand, officials are confident that the mandates proposed are capable of delivering an overall agreement well within the bounds of what can be seen as being in the national interest.

- $s b(\alpha)\ s b(\alpha(\alpha))\ s q(\alpha(\alpha))\ s q(\alpha(\alpha))$

Instead officials will seek further guidance from Cabinet if it proves not possible to conclude TPP within the parameters proposed in this paper.

7. Annex 6 (page 71) contains a glossary of technical terms used in this paper.

Background

8. In May 2012 Cabinet considered a paper which sought updated mandates for these areas under negotiation in TPP (EGI Min (12) 7/6). Following negotiating rounds in Dallas (Round 1, May) and San Diego (Round 13, July) officials continue to consider that the direction agreed in EGI Min (12) 7/6 $s b(\alpha)\ s q(\alpha(\alpha))\ s b(\alpha(\alpha))\ s q(\alpha(\alpha))$.

- The May paper also noted the need to develop a revised mandate for $s b(\alpha)$ in issues in TPP: goods market access, intellectual property $s b(\alpha)\ s b(\alpha(\alpha))\ s b(\alpha(\alpha))\ s b(\alpha(\alpha))$ and investment.

This mandate supplemented earlier guidance agreed by Cabinet (EGI Min (11) 11/10, EGI Min (11) 3/5, EGI Min (10) 22/4, and CBC Min (08) 16/5). Direction on intellectual property, pharmaceutical issues and goods market access was also provided by various Ministers in October 2011 and December 2010.
The purpose of this paper is to prepare for the negotiation by seeking mandates on goods market access, intellectual property, investment and some cross-cutting legal issues. The direction sought in this paper follows discussion of these issues by the Cabinet Strategy Committee on 18 June 2017.

Negotiation Update

The negotiating effort to date has focused principally on finalising non-contentious chapter text with an understanding that market access schedules and the most difficult text issues (such as intellectual property) will take longer to negotiate. Solid progress has been made towards this objective over the last two rounds with the first chapter completed (Small and Medium Enterprises) with other less contentious texts well on the way to substantial conclusion. Round 14 will be held over 6-15 September 2012 and should result in further progress towards achieving a comprehensive, high standard, 21st century agreement consistent with the directions agreed by TPP Leaders at APEC in November 2011.

This work is now occurring in the context of the imminent inclusion of Mexico and Canada at the negotiating table. Announcements welcoming both countries to the negotiations were made in the context of the June 2012 G20 Summit though formal confirmation of their membership needs to await the completion of domestic approval procedures in some TPP countries (such as the US 90-day notification to Congress of intention to negotiate). Assuming those processes track as planned, both countries will formally become members in October in time to participate at the negotiating table for the first time in December (Round 15, 3-12 December 2012, which New Zealand may host in Auckland).

Comment: balancing benefits and costs in TPP

Increased exports and international linkages are critical to lifting New Zealand’s productivity and economic growth. There is strong evidence, including New Zealand’s
own experience in sectors like agri-tech, wine, clothing and aviation, that removing barriers in international markets can spur innovation. These themes are recognised in the Building Export Markets work stream of the Business Growth Agenda, including through initiatives that aim to break down barriers in global markets and create frameworks to facilitate access to innovation, capital, skills and resources to aid in the internationalisation of New Zealand business.

15 TPP presents a significant opportunity for New Zealand to advance these objectives in a regional setting.

17 Traditional tariff savings and associated export gains from eliminating tariffs are only part of the picture. TPP will create many more economy-wide opportunities:

- **Promoting services exports.** Reducing barriers to allow New Zealand services exporters to supply and participate more freely in TPP markets.

- **Providing procurement opportunities.** Meaningful guaranteed access to TPP government contracts will present new large-scale opportunities, particularly for New Zealand firms who are currently excluded from procurement processes in TPP countries.

- **Addressing behind-the-border barriers.** Outcomes that establish consultation mechanisms, require transparency in regulatory development, and encourage good regulatory practice, will help address behind-the-border trade barriers (and reduce their incidence in the future).
• **Consolidating existing agreements.** TPP will agree a common set of rules for the region, including the six countries with which New Zealand already has five different agreements. A consolidated set of rules that facilitate the integration of regional supply chains will help create less burdensome trade frameworks that New Zealand exporters can more easily understand and leverage.

• **Leveling the playing field.** The possibility of countries eventually joining TPP would address the displacement (trade diversion) impacts that New Zealand exporters have encountered by having to compete with suppliers from other countries that have preferential access into those markets.

18 These and the other benefits that will flow from open markets that enable the integration of more New Zealand businesses into regional networks and supply chains, including related dynamic, innovation and competitiveness gains, reinforce that a high quality TPP is a big deal that presents the prospects of big gains for New Zealand.

19 The numbers highlight the possibilities. Economic modelling is always an imprecise exercise but a range of comparable general equilibrium models have studied the gains from a US FTA, TPP9 and an expanded TPP. All point to positive and significant GDP gains accruing to New Zealand.

20 The most recent study is a revised analysis of a *TPP13* from the East West Centre last month. This revised study estimates a lift in New Zealand annual income of US$4.5 billion by 2025, assuming the agreement entered into force in 2014 and was progressively implemented and expanded over six years.

21 The increase in income reflects higher GDP, a higher terms of trade and consumers’ access to a greater variety of products.

However, even without these impacts, the October 2011 East West paper pointed to annual income gains for New Zealand of around US$2 billion by 2025.

A more limited study – NZIER’s work on modelling a goods-only FTA with the US – also concluded that there would be benefits for New Zealand in TPP but estimated more modest GDP gains (0.24 percent annual GDP gain by 2030).

---

2 The existing TPP9 countries plus Canada and Mexico (who are likely to formally join in October) and Japan and Korea.

3 Equivalent to 2.2 percent of estimated GDP in 2025.

4 New Zealand exports were also estimated to be US$4.7 billion above the ‘base line’ by 2025.

5 Equivalent to 1 percent of estimated GDP in 2025.
OFFICIAL

INFORMATION

UNCLASSIFIED

26. The attractiveness of New Zealand as a location for innovative firms is evolving globally, new technologies are allowing businesses to significantly increase their efficiency and lower transaction costs. The development of networks has become highly significant in many industries. Many innovations are occurring in a rapid and sequential way. The internet is also making it more possible for such firms to be part of these networks from a variety of geographical locations including New Zealand. New Zealand currently has several dozen innovative firms but if New Zealand is to see a growth in productivity, it is possible that hundreds of such businesses will need to develop. This will assist with development by opening up new markets for these firms...
and creating considerable incentives to innovate to leverage the gains presented by TPP.

A range of New Zealand firms, in fields such as software, information technology, biotech, film and pharmaceuticals, have therefore expressed concern and argue that overly strong intellectual property rights can act as an inhibitor rather than as a promoter of innovation. Many of these firms have developed business models that effectively by-pass intellectual property regimes, whether these regimes involve giving away these rights (eg. open source approaches) or 'inventing around' them. These firms support New Zealand's current intellectual property regime noting that it is based on clear and simple rules, efficient systems and balanced enforcement.

Equally, it is not possible to quantify fully the potential upsides for innovation that enhanced regional integration under TPP would offer New Zealand firms or the diversion risks if TPP were to progress without New Zealand, though the evidence would suggest they are considerable.

Officials are confident that the recommended mandates in this paper are capable of delivering an overall agreement well within the bounds of what can be seen as being in the national interest.

But negotiators cannot discount the possibility that Cabinet will need to consider additional issues in the future.
Mandates

32 Tables 1-4 summarise the mandate decisions sought in this paper and the associated impacts and risks. Substantive commentary on each issue is included in the following annexes:

- Annex 1: Goods market access (page 32)
- Annex 2: Intellectual property (page 38)
- Annex 3: [Redacted] (page 54)
- Annex 4: Investment issues (page 59)

Issues outside the mandates proposed in this paper:

- [Redacted]
- [Redacted]
- [Redacted]
Cross-cutting legal issues

36 A revised mandate is also required for a series of legal exceptions that apply across the agreement.

- s 6 (a);
- s 6 (b)(i);
- s 9 (e)(ii);
- s 9 (f)(ii).
**TABLE 1: GOODS MARKET ACCESS**

(See Annex 1 for substantive commentary)

Page 12 is also withheld in full on the same grounds as the 01A as stated above.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 (a)</td>
<td></td>
</tr>
<tr>
<td>6 (b)</td>
<td></td>
</tr>
<tr>
<td>9 (1)</td>
<td></td>
</tr>
<tr>
<td>9 (2)</td>
<td></td>
</tr>
</tbody>
</table>
TABLE 2: INTELLECTUAL PROPERTY

(See Annex 2 for substantive commentary)

Pages 14 and 15 are also withheld under the same grounds of the OIA as those stated above.
**TABLE 3:**

withheld in full
- 5 063
- 6 262
- 2 662
- 7 672
- 5 727

Page 17 also withheld in full under the same grounds of the OIA as listed above.
TABLE 4: INVESTMENT ISSUES

(See Annex 4 for substantive commentary, including further comment on impact and risks)

Pages 19 and 20 are also withheld in full under the same grounds of the OIA as listed above.
Consultation

38 The following departments have been consulted in the preparation of this paper and concur with its recommendations: Inland Revenue Department, Ministry of Business, Innovation and Employment, Ministry for Culture and Heritage, Ministry of Health, Ministry for Primary Industries, New Zealand Customs Service, Pharmac, Te Pūnui Kākiri and The Treasury.

39 The Department of Prime Minister and Cabinet has been informed. OEGI has also been consulted.

Financial implications

\[
\text{with}\quad s^2(a),
\]
\[
\delta\theta(s^2(s^2))
\]

Human rights

42 This paper contains no proposals inconsistent with the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990.

Legislative implications

43 None at this stage. At the point of TPP implementation, however, amendments would be required to the following legislation to implement the mandates proposed in this paper:

\[
\delta\theta^2(x),\quad s^2\theta(s^2(s^2))
\]
Regulatory impact analysis

44 A number of the proposals in this paper have significant regulatory implications. An extended National Interest Analysis (incorporating a complete and extensive Regulatory Impact Analysis, RIA) will be presented to Cabinet when negotiations have concluded, ad referendum, and the TPP is submitted to Ministers for approval for signature.

45 At this stage of the negotiations there are a number of constraints that mean it is not possible or appropriate to complete an extensive RIA.

- More generally, there remains the possibility that officials will need to revert to Cabinet to seek further guidance.

46 However, officials have sought to provide an assessment in this paper of the known impacts and costs associated with the mandates proposed. Those assessments are summarised in the third column of Tables 1-6, with specific commentary included in the following annexes:

- Intellectual property (Annex 2):
  - General impacts (paragraphs 5-11)
  - Copyright issues (paragraphs 12-28 and 59)
  - Pharmaceutical and health-related patent issues (paragraphs 29-50)
  - Other patent issues (paragraphs 51-55)
  - Trade marks (paragraph 60-61)
  - Enforcement issues (paragraphs 63-68)

- Investment (Annex 4):
  - (paragraphs 9-14 of Annex 3)

- Taxation issues (paragraphs 10-13 of Annex 5)
47 The Regulatory Impact Analysis Team (RIAT) has reviewed the interim regulatory impact analysis presented in this paper and considers that, given the uncertainties and constraints on analysis inherent at this stage of the TPP negotiation, the information and analysis summarised meets the quality assurance criteria.

Publicity

48 No publicity is planned on the issues discussed in this paper.

Recommendations

49 The Minister of Trade recommends that the Committee:

Overview

1 note that negotiators have continued to make solid progress in the Trans-Pacific Partnership (TPP) negotiations over the first half of the year, and that two further rounds are scheduled for 2012 including a meeting in December which New Zealand may host;

2 note that negotiators consider that the direction agreed in EGI Min (12) 7/6 will be capable of (under negotiation but that New Zealand needs to develop a revised mandate for TPP (goods market access, intellectual property, TPP (goods market access, intellectual property, investment)));

3 note that a high quality TPP presents significant opportunities for New Zealand including by eliminating and reducing barriers on goods and services exports, providing guaranteed access to government procurement markets, establishing new mechanisms to help resolve behind-the-border barriers, and providing incentives for more New Zealand businesses to leverage regional networks and supply chains;

4 note that the benefits presented by TPP are reinforced by a number of economic models that point to positive and significant GDP and export gains for New Zealand:
8. $s \in (a), \ s \in (d), \ s \in \{d, \overline{d}\}$

9. direct officials to report back to Cabinet if negotiators are unable to conclude negotiations on the basis of the direction proposed in this paper;

Goods market access

withheld:

- $s \in (a)$
- $s \in \{d, \overline{d}\}$
- $s \in \{d, \overline{d}\}$
- $s \in \{d, \overline{d}\}$
All of pages 26 and 27 withheld in full under the following provision of the OIA:

- s b (a);
- s (b) (i);
- s b (c) (i) (ii);
- s 9 (22) (a);
- s 9 (22) (i)
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Cross-cutting legal issues

- \( s_6(a) \)
- \( s_6(e)(v,:2) \)
- \( s_9(2)() \)
- \( s_9(2)(c,j) \)
Annex 1: Goods market access offers

Pages 32 to 35 withheld in full under the following sections of the OIA:
- s 6 (a);
- s 6 (b)(ii);
- s 6 (c)(vi);
- s 9 (2)(b);
- s 9 (2)(c)
RELEASED UNDER THE OFFICIAL INFORMATION ACT

Agricultural state trading enterprises (State trading enterprises)
Annex 2: Intellectual Property

withheld:
- s 6 (a),
- s 6 (b)(c).

Page 39 withheld in full on the grounds of the OIA stated immediately above.
- s 6 (a), s 6 (b)(c)
13 New Zealand would be required to extend the term of protection for copyright:
- from 50 to 70 years after the death of the author (for literary, dramatic, artistic, musical works and computer programmes); and
- from 50 to 70 years from the date of publication (for films, television programmes and sound recordings).

14 Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year. Economic modelling estimates the cost of term extension for consumers of books, recorded music, film and television to be $51-58 million per year.
withheld:
- s 6 (a),
- s 6 (e)(vi),
- s 9 (2)(c)(d),
- s 9 (2)(c).
withheld

- \( S \) \( B \) \( (u) \);
- \( S \) \( B \) \( (e) \) \( (u) \);
- \( S \) \( q \) \( (e) \) \( (u) \);
- \( S \) \( q \) \( (e) \) \( c_{ij} \).

Pharmaceutical and health-related patent issues

withheld

- \( S \) \( q \) \( (e) \) \( (u) \);
- \( S \) \( q \) \( (e) \) \( c_{ij} \);
- \( S \) \( q \) \( (e) \) \( (u) \);
- \( S \) \( q \) \( (e) \) \( (u) \).

30 New Zealand does not allow pharmaceutical patent holders to apply for term extension to compensate for any delays in Medsafe’s marketing approval process.

31 Medsafe’s performance in processing marketing approvals is generally strong and has been improving in recent years. In the last four years it has received 126
applications seeking marketing approval for patented pharmaceuticals (an average of approximately 32 each year, though applications numbers have grown each year). Medsafe’s key performance indicator is to process initial evaluations within 200 days for 80 percent of applications. In 2011, 95 percent of all applications (including generics) were processed within that timeframe. 75 percent of applications for patented pharmaceuticals were completed in just 120 days (and even less for drugs that were able to be submitted via Medsafe’s ‘abbreviated’ route)\(^7\). Medsafe’s overall processing time (for all pharmaceuticals, including generics) has decreased from an average of 445 days in 2007 to 235 days in 2011.

6. A requirement to operate a ‘patent linkage’ system:

35 Patent linkage requires the granting of marketing approval for a generic pharmaceutical to be ‘linked’ to the patent status of that pharmaceutical.

\(^7\) It should be noted that Medsafe’s processing times have improved over the last four years. In 2010, 75 percent of applications were processed within 289 days but this includes an average company response time of 100 days which would be excluded from an assessment of whether or not a pharmaceutical should benefit from a term extension.
- withheld
- 86(n)

- 86(l), 86(k)
- 89(2)(d), 89(2)(e)

- withheld
- 86(n)
- 89(2)(d)
- 89(2)(e)
43 Data exclusivity protects the data submitted by an applicant who is seeking marketing approval of a new (innovative) pharmaceutical (or agricultural chemical – see paragraphs 51-52). This protection ensures that a competitor cannot use such data to progress the approval of a generic version until the period of data exclusivity has expired.

44 New Zealand already provides five years' data protection for patented pharmaceutical products.
New Zealand law includes a 56(c)(4) exception that allows the export of any generic for marketing approval purposes, regardless of its patent status.

48 Domestic generic manufacturers: 56(c)(4)(ix): attach considerable importance to retaining the status quo under FR and have indicated that any changes would negatively impact on their New Zealand business models. There is the possibility that changes to this approach could lead to some companies shifting activities such as manufacturing (or, potentially, entire operations) offshore.
Other patent issues

New Zealand does not currently allow patent holders to apply for term extension to compensate for any delays in the grant of a patent. The Intellectual Property Office of New Zealand (IPONZ) is currently responsible for granting patents and operates an efficient approval system that does not result in unreasonable delays (though the possibility of future delays cannot be ruled out).

New Zealand's current term is five years, though proposals to alter this approach are currently being progressed by the Ministry for Primary Industries, in conjunction with the Environmental Protection Agency, and the Ministry of Business, Innovation and Employment. The changes would leave the base period of protection (five years) unchanged but provide for a three-year extension for 'additional uses' registered within the original period of protection. Under these circumstances, it may be possible for a period of protection to total up to eight years. This proposal is based on cost/benefit analysis undertaken by agencies and extensive stakeholder consultation, and is considered to present a balance between the need to encourage product innovation and provide incentives for companies to bring products onto the New Zealand market, while preserving competition in the market place.

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29 In addition, a three-year period of protection for new uses and significant reformulations of existing products is proposed to be introduced. These elements, at least in respect to agricultural compounds, are not covered by TPP proposals.
54 The TRIPS Agreement includes provisions that enable countries to exclude plants and animals from patentability. While IPONZ has granted patents for plants and animals over the past 10 to 20 years, this is the result of IPONZ practice rather than the development of policy. Agreeing to lock in this obligation through TPP would result in the loss of future policy flexibility, and would be of particular concern to Maori. The patentability of life forms was a key issue that led to the filing of the Wai 262 claim, and while the Waitangi Tribunal did not make a specific recommendation on this point, Maori expect to engage with the government on this issue. We could expect therefore some negative reactions if New Zealand foreclosed the possibility of a policy dialogue on this issue.

- 56(4)

Accession to international intellectual property treaties

Withdraw: - 56(a)

56(6)(v.i)

56(c)(v)

56(c)(x)

- International Convention for the Protection of New Varieties of Plants 1991 (UPOV 91): New Zealand currently complies with the 1978 version of UPOV but would need to make changes to the Plant Variety Rights Act 1987 ('the Act') to conform to UPOV 91. New Zealand plant breeders would generally support New Zealand membership of UPOV 91 though extended breeder rights would not necessarily result in more plant variety innovation in New Zealand. In 2003, the then Government deferred a decision to join UPOV 91 given concerns that this could constrain the Government's ability to respond to the Wai 262 claim. The Waitangi Tribunal's report has now been released - 56(4)
| witheld: s6(c), s6(cuv), s9(c2cd), s9(c2cj). |

- Budapest Treaty on International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure 1977 (as amended in 1980): New Zealand will be compliant with this treaty once the Patents Bill is passed and brought into force.
Other issues

Trade marks

Domain Names

withheld: S 6(Cd)
S 6(C)x(Cu)
S 9(C)Cd
S 9(C)Cj
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Annex 3: withholding in full:
- s 6(a);
- s 6(b)(i);
- s 9(2)(d);
- s 9(2)(e).

All of pages 55 to 58 are also withheld in full on the same provisions as the DTA listed above.
Annex 4: Investment

withheld in full:
- S 6 (a);
- S 6 (b)(i);
- S 6 (e)(vi);
- S 9 (2) (d);
- S 9 (2) (j).

All of pages 60 to 65 withheld in full on the provisions of the OIA as set out above.
Annex 5: Cross-cutting legal issues

withheld in full:
- s 6 (a);
- s 6 (e) (vi);
- s 9 (2) (a);
- s 9 (2) (b).
Security exception

5 An exception for measures related to national security is a common feature of any trade agreement.

With the:
- S 6 (a);
- S 6 (b)(ii);
- S 6 (e)(vii);
- S 9 (2)(c)(v);
- S 9 (2)(d).
Annex 6: Glossary of technical terms

<table>
<thead>
<tr>
<th>Acronym/Term</th>
<th>Full Term/Name</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTA</td>
<td>Anti-Counterfeiting Trade Agreement</td>
<td>A treaty that includes standards for enforcement of intellectual property rights and a mechanism for cooperation between enforcement agencies. ACTA was signed in October 2011 by New Zealand, Australia, Canada, Japan, Morocco, Singapore, Korea, and the US (followed by the EU and Mexico in 2012). Not yet in force (requires ratification by at least six signatories).</td>
</tr>
<tr>
<td>AUSFTA</td>
<td>Australia-United States Free Trade Agreement</td>
<td>Entered into force on 1 January 2005</td>
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<tr>
<td>CER</td>
<td>Closer Economic Relations</td>
<td>Australia-New Zealand Closer Economic Relations Trade Agreement (NZCETA) and related agreements. Entered into force on 1 January 1983</td>
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<tr>
<td>Common schedules</td>
<td>Also known as plurilateral schedules. A term used in the goods market access negotiations to describe the format that trade schedules should take. Common schedules would involve one TPP Party having one schedule of tariff commitments for all other TPP countries (instead of a series of bilateral schedules).</td>
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<tr>
<td>Counter notice system</td>
<td>A counter notice system allows a person to dispute the action of an ISP where it removes material from a server (or otherwise blocks access) as a result of an alleged copyright infringement.</td>
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<tr>
<td>Cumulation</td>
<td>A rules of origin term that allows goods from one FTA Party to be used in the production of a product in another FTA Party and be considered an originating product of that latter Party.</td>
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<tr>
<td>Data exclusivity</td>
<td>Also referred to as data protection. Protection afforded to data, such as clinical test data, that is submitted as part of a regulatory approval process for a pharmaceutical or agricultural compound.</td>
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<tr>
<td>De minimis</td>
<td>A rules of origin term which establishes a small threshold (a small percentage of a final product's value) - or exception - under which inputs that are non-originating do not impact on the origin status of the final product.</td>
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<tr>
<td>EIF</td>
<td>Entry Into Force</td>
<td>Date on which an FTA becomes legally binding on all Parties and commitments are implemented, or where phasing is agreed, commitments begin to be implemented.</td>
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<td>Acronym/Term</td>
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<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
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<td>GATS</td>
<td>WTO General Agreement on Trade in Services</td>
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<tr>
<td>GATT</td>
<td>WTO General Agreement on Tariffs and Trade</td>
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<tr>
<td>ISDS</td>
<td>Investor State Dispute Settlement</td>
<td>A mechanism that allows an investor to initiate dispute settlement proceedings against a government for breaches of applicable investment agreement obligations</td>
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<td>ISP</td>
<td>Internet Service Provider</td>
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<tr>
<td>KORUS</td>
<td>Korea–United States Free Trade Agreement</td>
<td>Entered into force on 15 March 2012</td>
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<tr>
<td>MFN</td>
<td>Most-Favoured Nation (treatment)</td>
<td>A services and investment commitment to not discriminate against services, service suppliers, investors or investments of one country in favour of services, service suppliers, investors or investments from another country</td>
</tr>
<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
<td>Agreement among Canada, Mexico and the United States that entered into force on 1 January 1994</td>
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<td>National Treatment</td>
<td></td>
<td>The obligation to treat foreign goods, services, investors and suppliers no less favourably than the domestic equivalent</td>
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<tr>
<td>Non-discrimination</td>
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<td>A requirement to not discriminate among foreign suppliers or between foreign and domestic suppliers in like circumstances</td>
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<td>P4</td>
<td>Trans-Pacific Strategic Economic Partnership</td>
<td>FTA between New Zealand, Brunei Darussalam, Chile and Singapore that entered into force on 1 May 2006 for some Parties and was the immediate precursor to TPP negotiations</td>
</tr>
<tr>
<td>PACER</td>
<td>Pacific Agreement on Closer Economic Relations</td>
<td>Entered into force on 2 October 2002</td>
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<tr>
<td>Patent linkage</td>
<td>A requirement for marketing approval of a generic pharmaceutical to be 'linked' to the patent status of the relevant patented drug. There are various approaches to patent linkage but the general intention is to provide a process that enables a patent holder to defer the grant of marketing approval for a generic drug if that holder contends the generic version is subject to a patent</td>
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<tr>
<td>Patent term extension</td>
<td>In this paper, provisions that have the effect of extending the patent term of a pharmaceutical. The standard patent term in New Zealand is 20 years.</td>
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<td>Plurilateral schedules</td>
<td>Also known as common schedules. A term used in the goods market access negotiations to describe the format that tariff schedules should take. Plurilateral schedules would involve one TPP Party having one schedule of tariff commitments for all other TPP countries (instead of a series of bilateral schedules)</td>
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<tr>
<td>ROO</td>
<td>Rules of Origin</td>
<td>The chapter and product-specific rules that collectively determine whether a good is deemed to be a product of an FTA Party and therefore qualifies for tariff preference</td>
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<td>Safe Harbour</td>
<td>A term that means reducing or eliminating a party's liability under law. In this paper it refers to the actions an ISP can take to indemnify itself under New Zealand copyright law</td>
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<tr>
<td>Acronym/Term</td>
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<tr>
<td>STEs</td>
<td>State trading enterprises</td>
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<tr>
<td>Tariff differential</td>
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<td>In this paper, a term used to describe a possible situation where a country may extend different tariff phase-out commitments to different TPP members which therefore leads to temporary differentials between countries</td>
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<tr>
<td>Tariff-rate quota</td>
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<td>A mechanism that provides for a reduced tariff rate for a specified quantity of imported goods</td>
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<td>TPMs</td>
<td>Technological protection measures</td>
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<td>TRIPS</td>
<td>WTO agreement on intellectual property</td>
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<td></td>
<td>(Agreement on) Trade-Related Aspects of Intellectual Property Rights</td>
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<td>WTO-plus</td>
<td>World Trade Organization</td>
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<td></td>
<td>Rules (text) or market access outcomes that build on the standards agreed at the WTO</td>
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