MINISTRY OF
FOREIGN AFFAIRS & TRADE
MANATU AORERE

10 October 2011

Minister of Trade
Minister of Health

For action by 14 October 2011

TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS: US
PROPOSALS ON PHARMACEUTICALS AND MEDICAL DEVICES

Submission: Issues
Purpose: To update you on US pharmaceuticals and medical device proposals in the Trans-Pacific Partnership (TPP) negotiations.

Comments: The ninth round of negotiations will be held on 19-28 October in Lima.

There is no clarity on when TPP might be concluded. The most sensitive issues are unlikely to be resolved until...

Recommended Referrals
Prime Minister
Minister of Finance
Minister of Commerce
Minister of Foreign Affairs

For information by 19 October 2011
For information by 19 October 2011
For information by 19 October 2011
For information by 19 October 2011

Contacts
Mark Sinclair
TPP Chief Negotiator, MFAT
Group Manager, Sector and Services Policy, MoH
Negotiator, Trade Negotiations Division, MFAT

Ministry of Foreign Affairs and Trade
Ministry of Health (HR 20111244)
RELEASED UNDER THE OFFICIAL INFORMATION ACT
Key Points

- Pharmaceutical issues are among the most sensitive in TPP. At the eighth round of negotiations (6-15 September) the US tabled specific pharmaceuticals and medical device proposals.

- Work is still underway to analyse the proposals.

- Withheld:
  - Specific data
  - Confidential information
  - Detailed analysis

RELEASED UNDER THE OFFICIAL INFORMATION ACT
TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS: US PROPOSALS ON PHARMACEUTICALS AND MEDICAL DEVICES

Recommendations

It is recommended that you:

1. Note that the US has tabled specific proposals on Yes/No pharmaceuticals and medical devices

   withheld:
   - 56(b)(a);
   - 56(b)(2)(v);,
   - 57(a)(2)(C);
   - 59(2)(C).
Mark Sinclair
TPP Chief Negotiator, Ministry of Foreign Affairs and Trade

David Wood
Deputy Director-General (Acting), Ministry of Health
TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS: US PROPOSALS ON PHARMACEUTICALS AND MEDICAL DEVICES

Report

In the last few weeks the shape of US requests on pharmaceuticals and medical devices in TPP has become clearer. At the eighth round of negotiations (6-15 September) the US presented specific proposals (\textcolor{red}{\textsuperscript{6(4)}}).

\textcolor{red}{\textsuperscript{6(4)}}

These proposals and intellectual property issues more generally are discussed in a separate paper (Trans-Pacific Partnership Negotiations: Intellectual Property Update).

Pharmaceutical issues are among the most sensitive in the TPP negotiation. While work is still under way to analyse the intellectual property and regulatory proposals that were tabled at round eight,
RELEASED UNDER THE
OFFICIAL INFORMATION ACT
The negotiating process in TPP

withheld:
- § 6 (a);
- § 6 (b) (i);
- § 6 (b) (ii);
- § 6 (c) (iv);
- § 6 (e) (i);
- § 6 (e) (ii);
- § 6 (e) (iii).
Mandate for TPP negotiations

Redacted: 
56(9), 56(8)(v), 77(2)(A), 76(2)(g).
Public Messages and Stakeholder Consultation

26 There is a high degree of interest among various New Zealand stakeholders in the pharmaceutical-related issues being discussed in TPP. Requests for more information on the US proposals and New Zealand's position are likely to increase following the public release of a USTR “access to medicines” white paper at round eight and as TPP negotiations intensify into 2012.

27 To date Ministers have taken the lead in responding to such enquiries, primarily through the media and ministerial responses. Officials will continue to direct general enquiries to publicly available ministerial statements. However, we also judge that it will be necessary for negotiators to begin providing general briefings, on request, to appropriate groups (e.g. District Health Boards, New Zealand medical and clinician groups). Requests for media comment will continue to be managed in consultation with the Minister of Trade’s Office.
TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS: US PROPOSALS ON PHARMACEUTICALS AND MEDICAL DEVICES

- The Government has been very clear on its position in relation to Pharmac and the TPP negotiation. We are not about to negotiate the fundamentals of New Zealand’s public health system, or Pharmac in TPP.

- The US has tabled a proposal which includes disciplines that would affect Pharmac. All TPP members have agreed that proposals tabled in the negotiation should be kept confidential. We need to respect that. But New Zealand’s response to the US will be fully consistent with the position that Ministers’ have already articulated. New Zealand is not prepared to negotiate rules that would have a fundamental impact on our health system or Pharmac.

29 In respect to TBT and intellectual property issues, officials would propose to draw on the following points:

- TBT: The US proposals relating to pharmaceutical and medical device regulatory approval frameworks were only tabled at the last negotiating round. We will need to consider them carefully, particularly in light of changes the Government is currently considering in respect to the Medicines Act and progression of the ANZTRA. There may be a number of areas where New Zealand policy aligns with US thinking, but we will need to consider each proposal on its merits. The Government is not prepared to consider any proposal that would undermine safety and efficacy requirements embedded in New Zealand’s current market authorisation processes.

- Intellectual property: US patent proposals were only tabled at the last negotiating round. We need to study them and will consider the proposals on their merits. But New Zealand is particularly sensitive to any proposal which could have an impact on pharmaceutical prices and budgets as a result of changes to New Zealand’s patent regime.

Consultation with external agencies

30 The Ministry of Economic Development, The Treasury and Pharmac have been consulted on this submission.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

PURPOSE
To seek approval from delegated Ministers on three technical regulatory and services issues where outcomes under negotiation in TPP could fall outside current mandates.

Recommended referrals
Prime Minister
Minister of Finance
Minister of Commerce
Minister for the Environment
Minister of Economic Development
Minister for Arts, Culture and Heritage
Minister for Primary Industries
Minister for Communications and Information Technology
Minister of Health
Associate Minister of Finance

For concurrence by 18 July 2013
For concurrence by 18 July 2013
For concurrence by 18 July 2013
For concurrence by 18 July 2013
For information by 18 July 2013
For information by 18 July 2013
For information by 18 July 2013
For information by 18 July 2013
For information by 18 July 2013
For information by 18 July 2013

Contact details
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Deputy Secretary
Unit Manager

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Not approved while travelling
15/07/2013

OFFICIAL INFORMATION

SEEN BY PM
Date: 17/07/13
Comments: PM approved after oral briefing on key issues in Auckland on 12 July.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

Key points

- TPP members are aiming to conclude negotiations on a number of chapters at Round 18 next week (15-25 July in Malaysia).

- New Zealand's current Cabinet mandate means that negotiators are well placed to advance this objective in most areas. For a small number of technical issues, however, officials judge that updated mandates will be needed to close chapters on technical barriers to trade, cross-border trade in services and financial services. This paper seeks the approval of delegated Ministers to changes in these areas.

...withheld...
- S 6 (Ca) ,
- S 6 (202) ,
- S 9 (202),
- S 4 (202) ,
- S 9 (402) ,
- S 4 (902) ,

...withheld...
- S 6 (Ca) ,
- S 6 (203) ,
- S 9 (203) ,
- S 9 (903) ,

Out of Scope

Recommendations

It is recommended that you:

1. Agree that New Zealand can accept a package of outcomes in the technical barriers to trade chapter that fall outside existing regulatory practice:

...withheld...
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

1. [Withheld]
   - S 6 (a);
   - S 6 (c)(v.i);
2. [Withheld]
   - S 9 (2)(c)(ii);
   - S 9 (2)(c)(j);
   - S 9 (2)(e)j;
3. [Withheld]
4. Out of Scope
5. Out of Scope
6. Out of Scope

7. Note that officials will provide an update to Ministers on the status of key Yes / No issues in the negotiation in advance of political-level engagement on TPP in the margins of the APEC Leaders meeting in early October.

Rupert Holborow
for Secretary of Foreign Affairs and Trade
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

Report

This paper seeks approval from delegated Ministers\(^1\) on three technical aspects of the negotiation - technical barriers to trade, cross-border trade in services and financial services - where likely outcomes, based on the current trajectory of negotiations, would fall outside New Zealand’s current Cabinet mandate for TPP.

Out of Scope

Overview comment

2 Negotiations have intensified over the last eight months following the announcement by TPP Leaders that negotiators should be aiming to conclude an agreement in 2013, ideally in time for the October APEC Leaders meeting.

Updated mandates

Technical barriers to trade:

\(^5\) The majority of the technical barriers to trade (TBT) chapter text has been agreed, falls within existing policy settings and is consistent with New Zealand’s current

\(^1\) CAB Min (12) 30/12, EGI Min (12) 7/6 and EGI Min (11) 11/10 include scope for delegated Ministers to take decisions on the technical barriers to trade, cross-border trade in services and financial services issues covered in this paper.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES
mandate (EGI Min (11) 11/10). There are, however, several outstanding issues.

- Notification to the WTO of all technical regulations (TRs) and conformity assessment procedures (CAPs) that may have a significant effect on trade.
- A single website per country where all proposed and final TRs and CAPs would be published.
- Making publicly available certain regulatory decision-making information, which for New Zealand would usually be included as part of a regulatory impact analysis.

Notification to the WTO

6. Our existing WTO TBT Agreement and FTA obligations require New Zealand to notify TRs and CAPs but only where they are not based on international standards and may have a significant effect on trade.

These are outlined in further detail in Annex 1 but can be broadly summarised as follows:

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2 Technical regulations (TRs) are documents which lay down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. They may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

3 Conformity assessment procedures (CAPs) are any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

withheld:
- < 6 (a);
- < 6 (b)(i).

Single website

withheld:
- < 6 (a);
- < 6 (b)(i);
- < 6 (c)(i);
- < 6 (c)(ii);
- < 6 (c)(ii).

Decision-making information

12. The final element, 6(a), relates to the publication of information related to regulatory decision-making documents. 6(a), 6(b)(i) a range of information should be made publicly available when the final version of a TR or CAP is published.

The TBT-IMS is a publicly available database of transparency information provided by WTO Members. It is maintained and hosted by the WTO TBT Secretariat and funded from regular WTO Member contributions.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

- An explanation of regulatory objectives and how the final TR or CAP achieves them.
- A regulator's response to significant and substantive issues presented in comments received on the proposed measure.
- Upon request, a description of alternative approaches considered, the merits of such approaches and/or a description of any significant revisions made in finalising the measure.

13 We generally produce this type of information in the preparation of regulatory impact assessments (RIA), though not all TRs and CAPs are subject to a RIA process.

15 The Ministry of Health, Energy Efficiency and Conservation Authority (EECA), Ministry of Primary Industries, Ministry of Justice and the Environmental Protection Agency have been consulted on these proposals. For some agencies, the proposals already reflect current practice and are unlikely to have a significant impact. For other agencies, concern was expressed about the scope of the proposals and that changes would be required in their regulation-making processes. As noted above, the costs involved with these changes are expected to be low given only small number of TRs and CAPs are likely to be affected by these obligations.

Cross-border trade in services; domestic regulation provisions
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

(withheld)
- $6\,(\text{a}),\,$
- $6\,(\text{b-c});\,$
- $6\,(\text{d});\,$
- $9\,(\text{a});\,$
- $9\,(\text{b});\,$
- $9\,(\text{c});\,$

Financial services:
- $6\,(\text{a}),\,$
- $6\,(\text{b-c});\,$
- $6\,(\text{d});\,$
- $9\,(\text{a});\,$
- $9\,(\text{b});\,$
- $9\,(\text{c});\,$

Update on other issues

Out of scope

Questions 9 to 12 are also out of scope.
The following agencies have been consulted in the preparation of this submission: the Energy Efficiency and Conservation Authority, Environmental Protection Agency, Ministry of Business, Innovation and Employment, Ministry of Consumer Affairs, Ministry for Culture and Heritage, Ministry for the Environment, Ministry of Health, Ministry of Justice, Ministry for Primary Industries, Ministry of Transport, Overseas Investment Office, Reserve Bank and The Treasury.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES
Annex 1: Potential costs and risks associated with the proposed approach on technical barriers to trade

WTO notifications

Expanding the scope of notifications would have implications for the regulatory processes of New Zealand agencies. In particular, the potential costs of this proposal relate to: the time and cost of making a notification to the WTO, and allowing TPP Parties 60 days to provide comments in writing and taking those comments into account.

2 Notification to the WTO involves providing a description of the proposal, explaining the objectives and how the proposal would address those objectives, and providing a link to relevant documents (e.g. discussion documents).

3 Typically when a notification has been made, WTO Members must normally allow 60 days for other Members to provide comments in writing, and take those comments into account. For some agencies this could pose difficulties as it may slow down the regulatory decision-making process in some cases. Some agencies have indicated that rather than undertake broad public consultation on a proposal, they tend to carry-out targeted consultation with relevant stakeholders.

During 2011-12, we submitted a total of 22 notifications (13 notifications on seven discrete TRs in 2012; nine notifications on eight TRs in 2011).

5 Agency feedback on the number of notifications they expect to make under this proposal is varied.

This is the process used in the energy safety area for example, when the gas and electricity regulations are reviewed and updated. Notification to the WTO of proposed amendments and allowing 60 days for comments would therefore require some regulators to adapt their processes to allow for these requirements.
TPP: UPDATE ON REGULATORY, SERVICES AND INVESTMENT ISSUES

withheld s 6 (a)

Single website

9 The feedback we have received from regulators is that approach proposed in this paper is not likely to impose significant costs as using the TBT-IMS as New Zealand’s ‘single website’ would allow us to meet this obligation by simply providing links to relevant documents or websites. It would not be necessary to upload the entire text of proposals or final regulations to the TBT-IMS. This has the benefit of maintaining New Zealand’s current practice of posting proposed regulations on regulators’ individual websites and final regulations to the legislation.govt.nz site or the Gazette.

withheld s 6 (a)

Annex 2 (pages 16 and 17) are not reproduced as they are out of scope.
TPP: CLOSING PHASE LANDINGS AND MANDATE ADJUSTMENTS

PURPOSE
TPP negotiations are in their closing phase with planning underway for a
concluding meeting of TPP ministers in March.

Delegated Ministers are also asked to consider mandate adjustments for a small number of investment
and services, government procurement and customs issues.

Minister of Trade
Minister of Foreign Affairs and Trade
Minister for Economic Development
Minister for Climate Change
Minister for Primary Industries
Minister for Small Business
Minister for Courts
Minister for Fisheries
Minister for Energy and Resources
Minister for Food Safety
Minister for Local Government
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Key points

TPP is in its closing phase. Chief Negotiators are scheduled to meet over 9-15 March to resolve as many outstanding issues as possible, and frame up choices/decisions that Ministers will need to make in what is intended to be a closing Ministerial (currently slated for late April/May).

New Zealand is well placed across the substance of TPP's 'rules' agenda and the technical mandate adjustments sought in this paper, it seems likely that we will be able to conclude the chapter text within existing mandates.

Out of Scope

This paper also seeks approval for mandate adjustments in the following areas:

- 3 6 (a), 3 6 (c), 3 5 (c), 3 9 (c), 3 5 (a), 3 9 (b).
Recommendations

It is recommended that you:

1. Note that TPP negotiations are in their closing phase and that what is Yes/No intended to be a final Ministerial meeting is being arranged for late April/May;

Out of Scope

6. Agree to the following mandate changes:

- $s \in (\nu)$
- $s \in \mathcal{V} (V)$
- $s \in \mathcal{V} (G)$
- $s \in \mathcal{V} (a)$
- $s \in (G)$

withheld:
- s 6 (a);
- s 6 (c) (cvi);
- s 9 (2) (c);
- s 9 (2) (a).
Report

This paper provides an update on TPP negotiations as the process enters its final stages. It is split in three parts:

**Out of Scope**

- Section 3 (page 12) seeks technical adjustments to the negotiating mandate for various investment and services, government procurement and customs issues.

**Out of Scope**

All of pages 6 to 11 are also out of scope.
withheld in full:

- S 6(a);
- S 6(b)(i);
- S 6(e)(v.);
- S 9(b)(d);
- S 9(c)(2);
Investment and services - technical changes to New Zealand's market access offer

- S 6 (e), S 6 (e) (vi)
- S 6 (e) (vi)
- S 9 (2) (a)
- S 9 (2) (c)

Pages 17 and 18 are also withheld in full on the same grounds of the OIA.
Mandate adjustment sought.

59 As part of a final market access package put forward in TPP officials propose that the following changes could be made to New Zealand’s investment and services offer:
Government procurement withheld:
- 6(40);
- 6(5(i);
- 6(6); 6(vi);
- 9(2); (j);
- 9(2); (d)

Customs cooperation and verification provisions for textiles trade
- 6(5(i);
- 6(6);
- 6(6);
- 6(6); (vii);
- 6(6);

Specific textiles provisions on customs cooperation and verification 6(6)
- 6(6); 6(6); 6(6); (vii);
- 9(2); (j)

Consultation
65 The following agencies have been consulted in the preparation of this submission:
- Ministry for Primary Industries,
- Ministry of Business, Innovation and Employment,
Ministry of Health, New Zealand Customs Services, Reserve Bank, and The Treasury, ACC and Housing New Zealand Corporation have also been informed.

The Annex to this document (pages 22 to 24) is not reproduced because it is out of scope.
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

SUBMISSION

PURPOSE
To update and seek agreement from Ministers on the country-specific exceptions New Zealand is seeking to the TPP obligations relating to state-owned enterprises and designated monopolies, including an exception relating to Solid Energy.

Recommended referrals
Minister for State Owned Enterprises
Minister of Finance
Minister of Commerce
Minister for Economic Development

For concurrence by 8 May 2015
For information by 8 May 2015
For information by 8 May 2015
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Minister’s Office comments

Signed / Referred
Date: 4/3/15
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Key points

- Obligations with respect to state-owned enterprises (SOEs) and designated monopolies (DMs) are being negotiated as part of the TPP.
- New Zealand's approach to the governance of SOEs and DMs is generally consistent with the proposed obligations, and for the most part the obligations do not present issues for New Zealand.
- A number of exceptions are built into the SOEs text and apply to all TPP participants. TPP participants are also able to seek country-specific exceptions to address any additional sensitivities.
- Negotiators are seeking country-specific exceptions for New Zealand aimed at preserving appropriate future policy space for non-commercial assistance to SOEs. These exceptions are not specific to any SOE.

Agreement is sought to pursue an s 6(b) exception, s 6(c)
Solid Energy pursuant to a September 2014 indemnity for environmental remediation s 6(a).

Recommendations

It is recommended that you:

1. Note the current status of the negotiations of TPP obligations related to state-owned enterprises and designated monopolies.

2. Agree that negotiators should seek an exception for Solid Energy under the September 2014 indemnity

Martin Harvey
for Secretary of Foreign Affairs and Trade
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Report

1. In May 2012, Cabinet agreed that New Zealand
   - $6(x), $6(e)(v.3),
   - $q(e)(2)(a), $q(e)(c)j.

2. Officials provided updates to Ministers on the status of the SOE and DM negotiations in September 2013 and June 2014. The September 2013 report outlined the scope of the obligations and how the obligations aligned with New Zealand’s policies and practice with respect to SOEs and DMs. The June 2014 report provided an update on the agreed approach to addressing TPP Parties’ sensitivities and on the country-specific exceptions that New Zealand intended to pursue.
   - $6(e), $6(e)(v.3), $q(e)(2)(a), $q(e)(c)j.

3. The TPP obligations will apply to:
   
   • State-Owned Enterprises (SOEs): enterprises principally engaged in commercial activities in which the government owns more than 50 percent of the share capital, controls the exercise of more than 50 of the voting rights, or has the power to appoint a majority of members of the board of directors;
   
   • Designated Monopolies (DMs): entities designated as the sole provider or purchaser of a good or service in a market. These can be government-owned or privately-owned, but in the case of privately-owned entities, the obligations would only cover new designations after the TPP comes into force.

4. The obligations only apply to entities with annual revenue from commercial activities above a threshold amount, likely to be set at 200 million SDRs (currently around NZ$365 million). Annex 1 sets out the New Zealand entities that would be covered by the obligations, taking into account the threshold and other limits on scope set out below.

5. The proposed obligations are outlined in Annex 2. The obligations relate to commercial activities, which excludes activities undertaken on a cost-recovery or not-for-profit basis. In addition the following activities are not covered or are excluded through agreed exceptions:
   
   • Services supplied in the exercise of governmental authority;

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1 Special Drawing Rights: a unit of account used by the IMF and based on a basket of international currencies.
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

- Government procurement (including procurement through public private partnerships);
- Temporary measures to respond to a global or national economic emergency;
- Certain types of entities such as sovereign wealth funds (for example the New Zealand Superannuation Fund); entities established for financial resolution purposes; and independent pension funds;
- Country-specific exceptions for SOEs and DMS at the sub-central level of government, associated with a "built-in agenda" (future negotiations) which provides that the Parties shall conduct negotiations within five years of TPP’s entry into force on extending the disciplines to sub-central entities;
- TPP-wide general and security exceptions (covering issues such as essential security interests and measures necessary to protect human, animal or plant life or health);
- Country-specific exceptions specific to a Party’s situation and sensitivities.

6. The obligations will be subject to the TPP dispute settlement mechanism. Where an arbitral tribunal finds an inconsistency or failure to carry out obligations, and the responding Party does not bring their measures into compliance, the complaining Party may retaliate by suspending benefits of equivalent effect until the violating Party comes into compliance.

7. The TPP obligations do not pose significant difficulties for New Zealand’s policies and practices relating to SOEs and DMS. Nevertheless, country-specific exceptions are being sought aimed at preserving future policy space. In addition, negotiators propose to seek an exception for Solid Energy pursuant to a September 2014 indemnity for environmental remediation.

Solid Energy
OFFICIAL INFORMATION ACT

REleased under the

TPP Disciplines on state-owned enterprises and designated monopolies

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WITHHOLD IN FULL
OFFICIAL INFORMATION ACT

RELEASED UNDER THE

TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES WITHHOLD

16. Negotiators are seeking country-specific exceptions aimed at preserving future policy space.
OFFICIAL INFORMATION ACT

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TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

WITHHELD IN FULL
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

Annex 1: New Zealand entities within scope of the obligations

SOEs

1. Air New Zealand
2. Genesis
3. Kiwibank (NZ Post subsidiary)
4. Kiwirail
5. Lotteries Commission
6. Meridian Energy
7. Mighty River
8. NZ Post
9. Solid Energy
10. Transpower
11. Subsidiaries of SOEs that meet the SOE definition and are above the annual revenue threshold

Annex 2: Obligations

- **Compliance with TPP obligations**: The government would be required to ensure that SOEs and DMs comply with TPP obligations, when exercising authority delegated by the government. This obligation already exists under customary international law.

- **Commercial considerations**: The government would be responsible for ensuring that SOEs act in accordance with commercial considerations (factors, such as price, quality, and availability, which normally guide commercial decisions), except when it is making a public service available (in a non-discriminatory manner) pursuant to a government mandate. Similarly, the government would be required to ensure that DMs act in accordance with commercial considerations when buying or selling goods or services, except when they are fulfilling the terms of their designation. This reflects the principles of New Zealand's SOE Act and reflects an existing WTO obligation on 'state trading enterprises' (a category of entity which to some extent overlaps with SOEs and DMs).
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

- **Non-discriminatory treatment:** The government is to ensure that an SOE, when it is purchasing a good or service, does not discriminate between goods or services supplied by a TPP Party and those supplied by a New Zealand enterprise or an enterprise from another country. Similarly, when an SOE is selling a good or service, the government is to ensure that the SOE does not discriminate against a TPP Party's enterprise. The obligation only exists when the SOE is engaging in commercial activities. DMs, when buying or selling a monopoly good or service, are also required to provide non-discriminatory treatment to the enterprise of another TPP Party or to the good or service of another TPP Party. This obligation reflects existing WTO obligations with respect to goods. New Zealand will also be committing, in the TPP services and investment chapters, to providing non-discriminatory treatment (through regulation) to the services and service suppliers, investors and investments of another Party, but subject to reservations. New Zealand has taken reservations against the TPP services and investment obligations, including in areas such as the provision of health, public education, public transport, and for research and development services. A provision has been agreed in the SOEs chapter which ensures that the non-discriminatory treatment obligation as it relates to SOEs and DMs does not undermine these reservations.

- **Anti-competitive practices of DMs:** The government is required to ensure that DMs do not use their monopoly position to engage in anti-competitive practices in a non-monopolised market that negatively affect trade and investment. This obligation is in line with New Zealand competition policy and with an existing WTO obligation on monopoly service suppliers in sectors where New Zealand has made commitments.

- **Jurisdiction over foreign SOEs:** Courts are to have jurisdiction over civil claims against a foreign SOE engaging in commercial activities.

- **Impartial regulation:** The government is to ensure that any administrative body which regulates an SOE exercises its regulatory discretion in an impartial manner with respect to all enterprises that it regulates, including enterprises that are not SOEs. This reflects to some extent existing WTO obligations and also reflects New Zealand practice. Obligations of this type have been agreed in other parts of the TPP (for example the Telecommunications chapter).

- **Government "non-commercial assistance" to SOEs:** This obligation prevents a TPP Party from causing adverse effects to the interests of another TPP Party through non-commercial assistance (such as financing or loan guarantees on better than commercially-available terms or equity capital inconsistent with usual investment practice, provided either directly by the government or through another entity) that it provides to an SOE. There are a number of elements to the obligation:
TPP DISCIPLINES ON STATE-OWNED ENTERPRISES AND DESIGNATED MONOPOLIES

- The non-commercial assistance needs to be provided to the SOE by virtue of that SOE’s government ownership or control: where the non-commercial assistance is explicitly limited to SOEs, is predominately or disproportionately used by SOEs, or the government otherwise favours its SOEs in the provision of non-commercial assistance.

- The obligation is subject to an adverse effects test; adverse effects include displacing a competitor’s goods or services from a market (involving a significant change in market shares); the significant undercutting of a competitor’s prices; or significant price suppression, price depression or lost sales. The adverse effects test is based on the test used in the Subsidies Agreement.

- To be captured by the discipline, the non-commercial assistance must be provided with respect to the supply of goods or services by an SOE. Services that the SOE supplies in its own territory are excluded.

- Transparency: The proposal contains transparency requirements in respect of SOEs and OMs. Appropriate protections for confidential and commercially sensitive information will be provided so that the obligations do not disadvantage SOEs vis-à-vis their private competitors. New Zealand supports the principle of transparency and the proposed requirements align with existing WTO commitments and with our practices.
3 October 2015
Minister of Trade

TPP: FINAL MANDATE

SUBMISSION Issue

PURPOSE
To seek approval to agree final outcomes on discussions, which are expected to fall outside existing mandates. All other outcomes are expected to be concluded within existing mandates.

Recommended referrals
Prime Minister For concurrence by 4 October 2015
Minister of Finance For concurrence by 4 October 2015
Minister for Economic Development For concurrence by 4 October 2015
Minister of Health For referral by 4 October 2015
Minister of Foreign Affairs For concurrence by 4 October 2015
Minister for Primary Industries For concurrence by 4 October 2015
Minister of State Owned Enterprises For concurrence by 4 October 2015

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Sandra Unit Manager and TPP Deputy Chief Negotiator

Minister’s Office comments
Signed / Referred
Date: ___ / ___ / ___
TPP: FINAL MANDATE

Key points

We have entered what could be the final 24 hours of TPP negotiations.

A press conference, which could announce agreement, is tentatively scheduled for 4pm Sunday 4 October Atlanta time (9am Monday 5 October NZT).

In order for New Zealand to be able to agree to conclude negotiations, urgent guidance is needed from delegated Ministers on three outstanding issues where proposed outcomes fall outside current mandates approved by Cabinet/Ministers. These are:

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withheld:
  - s 6 (a);
  - s 6 (e) (v);
  - s q (e) (a);
  - s q (e) (j);
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The changes to mandates proposed in this paper do not alter our overall assessment that a TPP agreement has the potential to generate significant long-term economic benefits for New Zealand, and that the costs involved with new commitments in areas such as intellectual property and PHARMAC are manageable.

Recommendations

It is recommended that you:

1. **Agree** that New Zealand can agree to conclude TPP negotiations on Yes / No the basis of outcomes which are consistent with this paper and previous Cabinet/Ministerial mandates;

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withheld:
  - s 6 (e);
  - s 6 (e) (v);
  - s q (e) (d);
  - s q (e) (j).
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REleased under the Official Information Act
TPP: FINAL MANDATE

withheld:
- S 6 (iv);
- S 6 (v)(a);
- S 9 (i)(d);
- S 9 (c)(j).

David Walker
for Secretary of Foreign Affairs and Trade
TPP: FINAL MANDATE

Report

Despite the mandate changes sought in this paper, our assessment remains that a TPP agreement has the potential to generate significant long-term economic benefits for New Zealand. The significant economic and strategic benefits of an agreement outweigh the costs incurred with a number of new commitments New Zealand will need to take on under TPP.

2 The benefits of TPP include:

- Economic modelling suggests significant positive GDP gains to New Zealand (latest estimates suggest US$2.7 billion in 2030, but including costs below).

- Estimated tariff savings of $251-259 million a year once TPP is fully implemented, almost exclusively from FTAs with the US, Japan, Canada, Mexico and Peru. Over 50% of this is expected to accrue from entry-into-force.

- Reduction of a range of non-tariff barriers which make it easier for New Zealand services exporters and investors to operate in the region, including greater opportunities to bid for government procurement contacts.

- Future expansion - we expect more economies will join TPP in the future.

3 We also recognise that TPP is not without cost. These costs have been previously considered by Ministers and judged to be manageable when viewed in light of TPP’s benefits. The most significant costs to New Zealand, are extending copyright term from 50 to 70 years ($51-59 million per year once fully phased-in) and administrative changes to PHARMAC to increase transparency ($4.5 million in up-front costs, with annual additional operating costs of $2.2 million).

4 An additional consideration is the counterfactual. The decision facing us at this point is not whether TPP will happen or not, but whether New Zealand wants to be part of a deal. If New Zealand was to stand aside, New Zealand business would risk marginalisation and competitive decline in the region.
Remainder of this document (pages 6 to 13) withheld in full under the following provisions of the DIA:

- S 6 (a);
- S 6 (b) (i);
- S 6 (c) (vi);
- S 9 (2) (d);
- S 9 (2) (i).
Trans-Pacific Partnership (TPP)

TPP is a negotiation to expand and build on the “P4” free trade agreement between Brunei, Chile, New Zealand, and Singapore to include four new members – Australia, Peru, the United States and Vietnam – to create a “P8.”

What will it mean for New Zealand?

An initial deal offering net benefits to New Zealand.

High quality – so that the agreement can over time become an efficient common platform for Asia-Pacific regional integration.

What are the challenges?

- s b(l);
- s b(e)(v);
- s q(e)(a);
- s q(z)(j);
- s q(z)(y)(z).
Trans-Pacific Partnership (TPP)
What's in it for New Zealand?

It's about our Asia-Pacific future

- Asia 33% of world GDP by 2014
- APEC 71% of NZ two-way trade 2009
- Asia 37%
- Other 29%
- Other

Changing face of business...
- Specialisation - supply chains that extend across multiple borders e.g. NAVMAN.
- Offshoring of production e.g. Fisher and Paykel, Icebreaker
- Outsourcing of input provision e.g. apparel and textile manufacturers
- Insourcing/outourcing services e.g. Telecom
- Global supply chains e.g. Fonterra

NAVMAN
Fisher & Paykel

- Services now represent a significant part of global trade. Investment is increasingly global.

... requires rules to fit the market place:
- Barriers to trade are increasingly behind the border
- As well as lower tariffs for goods, experts, business needs easier and less costly ways to operate, invest and trade in the region:
  - Efficient and transparent regulations
  - Consistent application of standards
  - Coordinated customs procedures
  - Liberal rules of origin

When?

- US want something to announce when Obama hosts APEC Leaders in Hawaii end of 2011.

Four rounds planned for 2010, Focus for political contacts will be APEC Ministers in June and M'bers/Leaders in November.