

Departmental Disclosure Statement

Trans-Pacific Partnership Agreement Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Foreign Affairs and Trade (MFAT) in consultation with Ministry of Business Innovation and Employment, Ministry for Primary Industries, The Treasury, Ministry for the Environment, Ministry of Health (including Medsafe), New Zealand Customs Service, Te Puni Kōkiri, Ministry for Culture and Heritage and Parliamentary Counsel Office.

MFAT certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

9 May 2016

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Part One: General Policy Statement

The Trans-Pacific Partnership Agreement Amendment Bill (the **Bill**) is an omnibus Bill introduced in accordance with Standing Order 263(a). The amendments deal with an interrelated topic that can be regarded as implementing a single broad policy.

The Bill amends New Zealand law as part of the implementation of the free trade agreement named the Trans-Pacific Partnership (**TPP**) Agreement between New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States, and Viet Nam, signed at Auckland on 4 February 2016 (the **Agreement**).

Most of the obligations in the Agreement would be met by New Zealand's existing domestic legal and policy regime. However, a number of legislative and regulatory amendments would be required to align New Zealand's domestic law with certain obligations in the Agreement, and thereby enable New Zealand to ratify the Agreement. The Bill introduces amendments to the following enactments:

- the Agricultural Compounds and Veterinary Medicines Act 1997, so as to extend current data protection from 5 to 10 years for data provided in support of an application for marketing approval for a new agricultural chemical product, as required by the intellectual property chapter of the Agreement;
- the Copyright Act 1994, so as to extend the copyright term from life plus 50 to life plus 70 years, to provide a new regime for protection of technological protection measures, to provide new rights for performers, to provide additional protection for rights management information, to extend the border protection measures to allow the New Zealand Customs Service to detain exports of suspected pirated copyright works where a notice has been accepted from rights holders and to give ex officio powers to Customs officers to temporarily detain suspected pirated copyright works without a notice from rights holders, and to extend the protection of encrypted programme-carrying satellite and cable signals, as required by the intellectual property chapter of the Agreement;
- the Customs and Excise Act 1996, so as to allow the New Zealand Customs Service to issue advance rulings on the valuation of imports to TPP importers, exporters, or producers, as required by the customs administration and trade facilitation chapter of the Agreement;
- the Dairy Industry Restructuring Act 2001 (including Schedules 5A and 5B), so as to implement an export licence allocation system for the country specific quota access received for dairy products in the Agreement for the United States market;
- the Hazardous Substances and New Organisms Act 1996, so as to provide a 60-day comment period on proposed technical regulations that will need to

be notified to the World Trade Organization, as required by the technical barriers to trade chapter of the Agreement;

- the Legislation Act 2012, so as to ensure that New Zealand can promptly publish on a single Internet site all central Government subordinate instruments, together with an explanation of their purpose and rationale, to the extent required by the transparency and anti-corruption chapter of the Agreement;
- the Overseas Investment Act 2005, so as to provide a power to make regulations to implement higher investment screening thresholds for overseas investments in significant business assets in order to comply with New Zealand's obligations under the investment chapter of the Agreement and other related existing international trade agreements (being the Most-Favoured-Nation obligations in New Zealand's existing trade agreements with China, Chinese Taipei, Korea, and Hong Kong, and the CER Investment Protocol with Australia). Under TPP and existing most-favoured-nation (**MFN**) obligations the screening threshold for certain non-government investors will increase from \$100 million to \$200 million. The threshold for Australia is currently \$498 million for non-government investors and \$104 million for government investors (indexed for inflation), which will remain unchanged;
- the Patents Act 2013, so as to provide for the requirement to provide a 12-month grace period for patent applications and to allow for the granting of patent term extensions to compensate a patent holder if there are unreasonable delays in the Intellectual Property Office of New Zealand granting the patent, or an unreasonable curtailment of the patent term as a result of Medsafe's marketing approval process for pharmaceutical products, as required by the intellectual property chapter of the Agreement;
- the Tariff Act 1988, so as to enable regulations to be made which apply the preferential tariff rates agreed under the Agreement, to provide for the transitional safeguard mechanism required under the trade remedies chapter of the Agreement, and to provide for the emergency action (safeguards) mechanism and associated procedures required under the textiles and apparel chapter of the Agreement;
- the Trade Marks Act 2002, so as to provide authority to courts to award additional damages for trade mark infringement, to extend the border protection measures to allow the New Zealand Customs Service to detain exports of suspected trade mark infringing goods where a notice has been accepted from rights holders and to give ex officio powers to Customs officers to temporarily detain suspected trade mark infringing goods without a notice from rights holders, and to require the courts in trade mark infringement cases to order the destruction of counterfeit goods except in exceptional cases, as required by the intellectual property chapter of the Agreement;

- the Wine Regulations 2006, so as to introduce a standard that restricts the export of grape wine labelled as “ice wine” which is not made from grapes frozen on the vine as required by the wine and distilled spirits annex of the technical barriers to trade chapter of the Agreement.

A copy of the Agreement can be found at <https://www.tpp.mfat.govt.nz/text>

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
See Appendix 1.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>This Bill seeks to give effect to the free trade agreement named the “Trans-Pacific Partnership Agreement” between New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States and Viet Nam, signed at Auckland, on 4 February 2016 (the Agreement). The text of the Agreement is available at http://www.tpp.mfat.govt.nz/text.</p> <p>The Bill also seeks to give effect to the WIPO Performers and Phonograms Treaty (WPPT). The Agreement requires New Zealand to accede to the WPPT. The text of the WPPT is available at http://www.wipo.int/wipolex/en/details.jsp?id=12743</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	YES
<p>The “Trans-Pacific Partnership National Interest Analysis” dated 25 January 2016 (NIA) was prepared by the Ministry of Foreign Affairs and Trade in consultation with other relevant government agencies. A copy of the NIA can be accessed through the Parliament website and from http://www.tpp.mfat.govt.nz/resources#nia.</p> <p>The following national interest analyses were also prepared for four intellectual property treaties which TPP requires New Zealand to accede to. These were prepared by the Ministry of Business Innovation and Employment in consultation with other relevant agencies. Copies can be accessed through the Parliament website and from http://www.tpp.mfat.govt.nz/resources#nia.</p> <ul style="list-style-type: none"> • “Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977 National Interest Analysis” dated 25 January 2016. • “WIPO Copyright Treaty National Interest Analysis” dated 25 January 2016. • “Berne Convention for the Protection of Literary and Artistic Works National Interest Analysis” dated 25 January 2016. • “WIPO Performances and Phonograms Treaty National Interest Analysis” dated 25 January 2016. 	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The NIA prepared by the Ministry of Foreign Affairs and Trade in consultation with other relevant government agencies is an extended NIA incorporating the regulatory impact statement requirements. The NIA can be accessed through the Parliament website and from http://www.tpp.mfat.govt.nz/resources#nia.</p> <p>The Ministry of Business Innovation and Employment has prepared a document entitled “Regulatory Impact Statement - Analysis of Options Relating to Implementation of Certain Intellectual Property Obligations Under the Trans-Pacific Partnership Agreement” dated 8 April 2016 (MBIE RIS). The Regulatory Impact Statement can be accessed from http://www.treasury.govt.nz/publications/informationreleases/ris.</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>Treasury reviewed the extended NIA for the Agreement (which incorporated the regulatory impact statement requirements) and considered that the information meets the quality assurance criteria.</p> <p>The Regulatory Impact Analysis Team (RIAT) has reviewed the RIS prepared by MBIE and associated supporting material, and considers <i>“that the information and analysis summarised in the RIS meets the quality assurance criteria. RIAT notes the proposals (mostly) do the minimum necessary to implement the TPP IP obligations with the preferred options balancing the interests of New Zealanders with the interests of right holders to achieve net benefits for New Zealand. RIAT also notes the timeframes for decisions have not allowed for a full assessment of the potential impacts or risks of some of the proposals. Further work is needed with stakeholders to ensure the proposals are workable and any unintended consequences are mitigated if Ministers wish to reduce the risk of substantive amendments being required as a result of information emerging from stakeholder consultation at the select committee stage.”</i></p> <p>As detailed in the RIS, the proposals do not generally do more than necessary to implement the TPP IP obligations. One exception to this is the proposal that a performer’s moral rights apply to both the audio and visual aspects of a performance and to the live communication of a performance. TPP only requires a performer’s moral rights to be provided in relation to audio aspects of a performance and to the live communication of a performance. The RIS also notes the intention of officials to meet with certain submitters in preparation for the select committee process concerning the Bill.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
See Appendix 1.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</p> <p>The Bill implements new standards for the protection of copyright (extending copyright term of protection), technological protection measures, rights management information, encrypted satellite and cable programme signals and performer's rights. The benefits of these new standards for copyright owners, performers, and their licensees will be depend on the extent that these parties pursue civil action to enforce those their rights where breaches of the new standards occur.</p>	
<p>(b) the nature and level of regulator effort put into encouraging or securing compliance?</p> <p>The new standards for the protection of copyright, technological protections measures, encrypted satellite and cable programme signals and performers rights includes criminal offences under the Copyright Act 1994 where a person breaches the new standards in the course of business. Responsibility for enforcing criminal offences generally falls on the Crown and its enforcement agencies. Action by the Crown and its enforcement agencies under the Copyright Act will be predicated on what civil action, if any, rights holders have taken to ensure compliance with the new standards and the wider public interest in using the criminal offence provisions to ensure overall compliance with the new standards.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Bill makes the amendments to New Zealand law necessary for it to ratify the Agreement and the WPPT. MFAT has worked with relevant domestic agencies in order to identify those amendments, and prepare the Bill. MFAT considers that the policy given effect by the Bill is consistent with New Zealand's international obligations, including for example arising from the WTO agreements, and those arising from ratifying the Agreement, and joining WPPT.

MFAT has also considered how implementing the Agreement triggers most-favoured-nation (MFN) obligations in New Zealand's existing trade agreements. As a result, the Bill amends the Overseas Investment Act 2005 to provide for a power to make regulations to implement higher investment screening thresholds for overseas investments in significant business assets in order to comply with the Investment Chapter of the Agreement, as well as obligations in New Zealand's existing trade agreements with China, Chinese Taipei, Korea and Hong Kong, and the CER Investment Protocol with Australia. The Bill also takes into account New Zealand's MFN obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

See Appendix 2.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice has considered whether the Bill is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and has provided advice on this to the Attorney-General. The Advice provided to the Attorney-General, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice and reports are accessible on the Ministry's website at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</p> <p>Clause 38 of the Bill amends the Copyright Act 1994 (Copyright Act) to include an offence for distribution of an illicit recording that is not in the course of business, to such an extent as to affect prejudicially the performer.</p> <p>Clause 42 of the Bill amends the Copyright Act to provide for new criminal remedies against people circumventing Technological Protection Measures.</p> <p>Clause 42 of the Bill also amends the Copyright Act to extend the protection of encrypted program-carrying satellite and cable signals, including providing criminal offences for manufacturing or trafficking devices or systems knowing they are intended to be used to decode such signals and for knowingly assisting a person to fraudulently receive such signals.</p> <p>Clause 93 of the Bill amends the Trade Marks Act 2002 (Trade Marks Act) to provide, in relation to civil remedies for trade mark infringement, provision for the courts to order additional damages against an infringer after having regard to particular circumstances of the infringement such as the flagrancy of the infringement and other benefits that may have accrued to the infringer.</p> <p>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</p> <p>Clause 94 of the Bill amends the Trade Marks Act to require the High Court, in trade mark infringement cases, to order the destruction of counterfeit goods, except in exceptional circumstances.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

3.5.1. Was the Privacy Commissioner consulted about these provisions?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
See Appendix 2.	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
<p>While no specific testing has been completed, the negotiation of the Agreement was conducted by an inter-agency team led by MFAT. The inter-agency team comprised officials from the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Health, the New Zealand Customs Service and the Ministry for the Environment. Other relevant departments and agencies (including the Treasury) were also regularly consulted during the negotiations in the preparation of New Zealand's position.</p> <p>In addition, the Bill was prepared by Parliamentary Counsel Office, MFAT and those agencies that administer the particular enactments which are the subject of the Bill.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>Clause 81 of the Bill amends the Tariff Act 1988 (Tariff Act) to enable Orders in Council to be made to: identify the TPP countries for the purposes of the Tariff Act; and amend the 'Tariff' (as defined in that Act) to enable the application of the preferential tariff rates agreed in TPP.</p> <p>Clauses 82-88 of the Bill amends the Tariff Act to provide for:</p> <ul style="list-style-type: none">• a general safeguards mechanism and associated procedures under the TPP Trade Remedies Chapter. This would allow a TPP Party to, during a transition period after the TPP's entry into force, apply a transitional safeguard measure with respect to another Party's imported goods (which involves temporarily raising the tariff applying to the imported goods) in certain circumstances;• an emergency action (safeguard) mechanism and associated procedures under the Textile and Apparel Goods Chapter. This would allow a TPP Party to, during a transition period after the TPP's entry into force, apply an "emergency action" under the Textiles and Apparel Chapter to imported goods (which involves temporarily raising the tariff applying to the imported goods) in certain circumstances.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	YES
<p>Clause 3 of schedule 4 of the Bill declares that the Overseas Investment (Australia) Amendment Regulations 2013 are valid and have always been valid (they came into force 1 March 2013).</p> <p>Given the range of parties impacted by the increased screening threshold arising from the TPP Agreement, the Government has determined that the best approach for implementing this change is to amend the Overseas Investment Act 2005 to provide a specific regulation making power. This provides the wide range of parties affected with more certainty that the increased screening thresholds apply. It also provides greater transparency and better access to law, as it would be clear in the Act that higher screening thresholds may apply under regulations. However, that approach differs from the approach taken to implement the increased screening for Australian investors arising from the Investment Protocol to the Australia New Zealand Closer Economic Relations Trade Agreement. The validation provision confirms the Overseas Investment (Australia) Amendment Regulations 2013 are valid and have always been valid.</p>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
Clause 42 of the Bill amends the Copyright Act to provide a range of circumstances where certain individuals, the Crown and not-for profit entities may circumvent a technological protection measure without civil remedies and criminal offences applying.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
Clauses 20 to 42 of the Bill amend the Copyright Act to create new moral and property rights for performers, for issuers of works protected by technological protection measures against unauthorised circumvention of such measures, additional protections for rights management information and encrypted satellite and cable programme signals. These rights may be enforced through the courts and the usual safeguards provided through the court rules apply to the court's decision-making powers.	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
See Appendix 3.	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
Clause 2 of the Bill provides that the Bill comes into force on a date appointed by the Governor-General by Order in Council. One or more Orders in Council may be made bringing different provisions into force on different dates.	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Two

Published reviews or evaluations – question 2.1

On 6 October 2015, Trade Ministers of the 12 Asia Pacific countries negotiating the TPP announced the successful conclusion of negotiations. On 4 February 2016, TPP was signed by Ministers of the TPP countries in Auckland. The full text of the Agreement along with further background and additional material was made available in the period following the conclusion of negotiations at www.tpp.mfat.govt.nz.

MFAT commissioned an external study to estimate the economic impact of TPP, focussing on New Zealand. Based on the modelling the New Zealand Government's assessment of the overall impact of TPP on New Zealand's economy, once key outcomes have been fully implemented, was that New Zealand's real GDP would be projected to increase by at least 0.9%, or NZ\$2.7 billion annually, by 2030. This study has been released and is available, with further detail at <http://www.tpp.mfat.govt.nz/resources#modelling>.

The Ministry of Economic Development (now the Ministry of Business, Innovation and Employment, MBIE) commissioned an external study to estimate the costs and benefits of copyright proposals that New Zealand anticipated would be tabled as part of the TPP negotiations on the Intellectual Property Chapter. Based on this research, the Government estimated that the average cost to New Zealand from the obligation under TPP to extend New Zealand's copyright period from 50 to 70 years would average around \$55 million per year. Details of the copyright analysis were publicly released on 5 November 2015, with the aim of contributing to public discussion, and are available at <http://www.tpp.mfat.govt.nz/resources#modelling>.

MFAT has released a note summarising analysis done by PHARMAC, based on advice from the Ministry of Health and the Ministry of Foreign Affairs and Trade, on the estimated impact of implementing the Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices Annex to the Transparency and Anti-Corruption Chapter of TPP. In summary, it estimated total costs of NZ\$4.5 million in one-off establishment costs, plus NZ\$2.2 million ongoing per year costs. The note is available at <http://www.tpp.mfat.govt.nz/resources#modelling>.

Extent of impact analysis available – questions 2.5(a) & (b)

(a) the size of the potential costs and benefits?

Cost – benefit analysis of the Agreement is included in sections 1, 3, 4, 7 & 8 of the NIA which can be accessed through the Parliament website and from <http://www.tpp.mfat.govt.nz/resources#nia>

(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?

The NIA comprehensively assesses the impact for New Zealand of meeting the Agreement's obligations (including as met through implementing legislation). No group of persons is identified as likely to experience any substantial loss of income or wealth as a result of the Agreement. The Agreement is estimated to result in a net economic benefit for New Zealand. There may be, however, a degree of variance between different sectors of the economy. For example, the

elimination of the remaining tariffs on imports from other TPP countries, and extension of the copyright period. The extent of these is assessed in detail in the NIA.

The NIA states (Section 7.1.2) that in the short term, it is possible for the sudden removal of import barriers – such as tariffs – to lead to adjustment costs as resources are diverted from that particular sector to other areas of the economy. This can be accentuated in sectors where a country has maintained particularly high barriers, although there are ways to minimise sudden changes in an FTA (e.g. through phase-in periods and the ability to impose a transitional safeguard measure if, as a result of the tariff elimination under the TPP, a sudden increase in imports causes serious injury to a domestic industry). These effects tend to be minimal for New Zealand, however, given our already largely open economy.

As stated in the NIA, under TPP New Zealand would be required to extend the copyright term from life plus 50 to 70 years. While some New Zealand copyright owners would benefit from copyright extension, overall it would impose a significant net cost – due to New Zealand consumers foregoing savings from works falling into the public domain earlier. Over the very long term, the average annual cost to New Zealand is conservatively estimated to be NZ\$55 million. The extension to copyright would have two key cultural effects: consumers and second-generation creators would need to wait longer before works were freely available (i.e. in the public domain) which may discourage re-use of works to create new works, while copyright holders would be able to derive benefit from works for longer.

Appendix Two: Further Information Relating to Part Three

Consistency with the government's Treaty of Waitangi obligations – question 3.2

During the negotiation of the Agreement, MFAT engaged with Māori through a number of mechanisms in addition to the wider stakeholder activities. The Ministry also met with the Māori Business Facilitation Service at Te Puni Kōkiri to confirm an approach for stakeholder engagement concerning Free Trade Agreements, and the Ministry applied this approach for TPP outreach. The Ministry has also reached out to the Federation of Māori Authorities to engage in consultation as well as to individual Maori business enterprises and specific iwi. There were also two calls for public submissions on the Agreement in 2008 and 2011. Some of the submissions received indicated the need for reference to the Treaty of Waitangi in the Agreement and also highlighted other issues of concern to Māori such as the protection of traditional knowledge.

Departments have undertaken analysis of the nature, extent and relative strength of the Māori interest in implementation of the Agreement in the context of designing a strategy for engagement with Māori about implementation. Departments have come to the view, that the majority of legislative and policy obligations agreed to in TPP are of a general commercial nature (for example tariff rates and customs requirements) and will have no particular impact on Māori interests whether under the Treaty of Waitangi or otherwise. Furthermore, most of New Zealand's international obligations under TPP are already met by our existing domestic legal and policy regime and therefore will confirm rather than change current legislative and policy settings. Some of these obligations under TPP may require New Zealand to commit to maintaining these existing policy settings in the future. Policy-lead departments consider it unlikely that Māori interests will be specifically prejudiced by this type of commitment. Departments recognise that the Agreement contains a number of provisions that are of specific interest to Māori (for example, Article 29.6 – the Treaty of Waitangi exception discussed further below), and have identified a number of other areas where Māori interests are or might be affected by implementation of the Agreement, such as certain intellectual property obligations. Opportunities for Iwi/Māori, as the Treaty Partner, to raise their interests and concerns directly with the Crown is being provided through dedicated information Hui around the country.

Section 7.3.1 of the NIA addresses the content of the Agreement in relation to the Treaty of Waitangi. In summary, the main obligations in TPP have been designed to ensure legitimate public policy is not undermined and that governments can continue to regulate in the public interest. This approach helps ensure that the Government is able to take measures that are in the interests of Maori. In addition, the Agreement, as with all of New Zealand's other free trade agreements since 2001, includes a Treaty of Waitangi exception that states:

“TPP Article 29.6: Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, trade in services and investment, nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.

2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Article. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement.”

The Treaty of Waitangi exception in TPP applies to the entire Agreement. The exception ensures that successive governments retain flexibility to implement domestic policies that favour Maori without being obliged to offer equivalent treatment to overseas entities.

For the sake of completeness, although not included in the Bill, New Zealand will need to amend the Plant Variety Rights Act 1987 in order to comply with the obligation under Article 18.7.2 and Annex 18-A, within three years of entry into force of TPP, either to accede to the most recent 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 91), or under a New Zealand specific approach, implement a plant variety rights system that gives effect to UPOV 91. When implementing this obligation, New Zealand would be able to adopt any measure that it deemed necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi. The Bill does not implement this obligation. The amendments to the Plant Variety Rights Act 1987 would be enacted by passage of implementing legislation after the Agreement enters into force for New Zealand.

External consultation – question 3.6

Consultations during negotiation of TPP

The consultation process for TPP has been among the most extensive a New Zealand Government has undertaken for any trade negotiation. Throughout the negotiation process MFAT, together with other government agencies, has been active in engaging with a wide spectrum of stakeholders on TPP.

The objective of ongoing consultations on TPP has been to provide the opportunity for stakeholders to seek information and offer their views so that their interests are taken into account. Regular stakeholder sessions have provided a forum to share information about the progress of negotiations and to seek stakeholder input on negotiating goals and approaches. The “TPP Talk” internet column (on MFAT’s website) encouraged feedback on TPP from the public at any stage. As stated at section 3.2, during the negotiation of the Agreement, MFAT engaged with Māori groups through a number of mechanisms in addition to the wider stakeholder activities.

In undertaking consultations for TPP, the Government drew on an existing foundation of information from engagement with stakeholders over the course of previous FTA negotiations. Further information on consultations during negotiations is summarised in section 9 of the NIA.

Consultations on Bill

The majority of the legislative amendments required to implement the TPP Agreement did not require significant policy development before they could be included in the Bill. However, some intellectual property obligations in the TPP Agreement provide significant flexibility in how those obligations are implemented. On 9 March 2016, the Minister of Commerce and Consumer Affairs announced the release of a consultation document seeking feedback on how the Government proposed to implement certain intellectual property changes required to ratify the Trans-Pacific Partnership (TPP) Agreement. The consultation document sought feedback on the implementation of the TPP obligations to provide:

- civil and criminal prohibitions against people circumventing technological protection measures, including what exceptions and limitations should be provided for;
- an extension of the patent term to compensate the patent owner for any unreasonable delay in the grant of a patent;
- an extension of the patent term, in respect of a pharmaceutical substance that is the subject of a patent, to compensate the patent owner for any unreasonable curtailment of the effective patent term as a result of Medsafe’s marketing approval process;

- a more extensive regime for performers' rights, including what exceptions and limitations should be provided for in relation to those rights;
- Customs with the power to detain suspected infringing goods on its own initiative (ex officio), without first having accepted a border protection notice from a rights holder.

The Ministry of Business Innovation and Employment received 55 submissions from the public on the consultation document. Submissions were received on all areas of the targeted consultation document, with the majority of submitters' comments focused on technological protection measures. A significant number of submitters also commented on performer's rights and patent term extensions. Overall there was support for the approach taken in the targeted consultation document.

The amendments to the Patents Act 2013 to implement obligations to extend the term of a patent were developed in consultation with Medsafe, the Intellectual Property Office of New Zealand and PHARMAC. The amendments for implementing obligations related to Customs powers at the border under the Copyright Act and Trade Marks Act were developed in consultation with the New Zealand Customs Service.

Appendix Three: Further Information Relating to Part Four

Powers to make delegated legislation- question 4.7

Clause 44 of the Bill amends the Copyright Act to provide a new regulation making power to enable the addition, modification, or narrowing of any exception to the technological protection measures prohibitions. This will enable the scope of the exceptions for the new technological protection measures regime to be refined in the context of changing technology and circumstances: such changes often being unforeseeable. The clause also includes a range of safeguards including:

- a) restricting exceptions to uses that do not infringe copyright or specified performers' rights;
- b) requiring the responsible Minister to:
 - i) consult the public;
 - ii) have regard to the purposes of the Act, and whether the proposed regulation may cause any actual or likely adverse impact on the use of a copy of a work that does not infringe copyright or specified performers' rights.

Clause 64 of the Bill amends the Legislation Act 2012 (Legislation Act) to introduce new publication requirements on certain defined central government entities. New section 36C(3) of the Legislation Act provides that the Governor General may, by Order in Council, prescribe any other instrument of the Crown for the purposes of the definition of central government entity in new section 36C(2). This power to make delegated legislation is necessary to ensure that, if there are any other relevant instruments of the Crown outside that definition, those instruments will comply with the new publication requirements in the Legislation Act, to the extent required by New Zealand's obligations under the Agreement.

Clause 69 of the Bill amends the Overseas Investment Act 2005 to provide a new regulation making power to provide alternative value thresholds set by regulations for certain overseas investments in significant business assets, other than the standard threshold of \$100 million contained in section 13 of the Act.

There are clear criteria for exercising the power. The alternative value threshold set in regulations can only arise from obligations in the Agreement and other related existed international agreements listed in the new regulation making power. Those agreements have proceeded through the parliamentary treaty examination process. Also, the Minister recommending regulations be made by the Governor-General in Council will not be able to propose value thresholds higher than those contained in the relevant international agreement.

The regulation making power is necessary as the specified international agreements require different screening thresholds to be applied to different types of investors. This requires detailed rules setting out technically complex matters that are more appropriately contained in regulations.

Clause 75 of the Bill amends the Patents Act 2013 to, among other things, enable an Order in Council to be made to provide for regulations to specify the period of times that must be disregarded for the purpose of granting extensions of patent term for unreasonable delay in granting of patents.

Clause 81 of the Bill amends the Tariff Act 1988 to enable the Governor-General to declare that a country that is a party to the TPP be specified as a TPP party for the purposes of the Tariff Act. This is necessary because the Tariff Act should only apply in relation to TPP countries that have brought TPP into force, and it is not yet known which economies will bring TPP into force and when.