

REPORT OF THE
Trade for All Advisory Board

NOVEMBER 2019





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Acknowledgements

This report is the output of many meetings, workshops and interviews. These were all conducted under the Chatham House Rule under which views and information may be referred to but individuals are not identified implicitly or explicitly. We are very grateful to all who took part.

Published in November 2019 by the
Trade for All Advisory Board
www.tradeforalladvisoryboard.org.nz

ISBN: 978-0-473-50649-0

This document is available on the Trade for All Advisory Board website:
www.tradeforalladvisoryboard.org.nz.

Foreword

The Trade for All Advisory Board (TFAAB) was established by Cabinet in November 2018 to produce specific directives for future trade policies and negotiations to advance the Government's objective of making trade policy work for all New Zealanders. Its membership was selected to cover many perspectives and reflect, as much as possible, the diversity of contemporary Aotearoa New Zealand.

TFAAB met on 11 occasions between Wednesday 12 December 2018 and Thursday 24 October 2019. We also communicated regularly between meetings on specific issues and general themes.

We engaged three writers and researchers to assist us. They conducted many interviews and prepared background papers. Through their work, as well as through presentations that were made direct to the Board, we have had access to the views of a wide range of knowledgeable New Zealanders.

This report has benefited from the involvement of Ministers and other Members of Parliament, representatives of Māori organisations, past and present officials, academics, and representatives of business and civil society. The Ministry of Foreign Affairs and Trade, New Zealand Trade and Enterprise and Te Puni Kōkiri also arranged a series of engagements with various of their respective stakeholders around the country. We are very grateful to all those who were willing to engage with us.

One question that recurred throughout our process was: *Where should we draw the boundaries around trade policy?* There is no perfect answer to this question. The country's trading prospects both depend on, and need to support, the success of domestic policies to improve productivity, sustainability and inclusiveness.

We were conscious, therefore, of the relevance of a lot of work underway or recently concluded, and tried as much as possible to build on what was being done by others rather than to duplicate it. Relevant groups and processes include:

- Small Business Council
- Tax Working Group
- Waitangi Tribunal
- Ministerial Groups that have been established to respond to Wai 262
- Welfare Experts Advisory Group
- Review of the Overseas Investment Act 2005
- Prime Minister's Business Advisory Council
- Primary Sector Council
- Industry Transformation Plans being established for various key sectors
- National Science Challenges
- New Zealand Infrastructure Commission
- Interim Climate Change Committee.

In some cases, these groups and processes had concluded, and we were able to analyse their reports. In other cases, we have consulted informally with them or followed developments through the media.

Some common themes are emerging from the work of these groups:

- the need to think broadly about the interconnectedness of productivity, sustainability and inclusiveness
- recognition of the breadth and scope of the type of transformation that is required to meet the challenges of the 21st century, especially climate change and rapid technological change
- a strong emphasis on the Government's partnership with Māori under te Tiriti o Waitangi/the Treaty of Waitangi
- the need for more work if the country is to capitalise on the opportunities that the country's increasing diversity offers.

We believe the findings of this report to be consistent with these themes. Trade has many policy dimensions, both external and domestic. There is strong agreement among TFAAB members on the need for our country to lift its trade performance, and on many of the things that can be done domestically to improve productivity. We also recognise that local adjustments to changing trade patterns affect people and communities unevenly, and that domestic policy measures will always be needed to address this.

Disagreement and debate has been largely about the content of trade agreements and their potential impacts on New Zealand's regulatory system. This is not unique to New Zealand. Trade policy has been part of a complex, and at times heated, debate about the broader impacts of globalisation. We have seen the challenges this has created in countries from the United Kingdom to the United States and, most recently, in Chile, where the 2019 Asia-Pacific Economic Cooperation summit had to be cancelled because of widespread unrest.

TFAAB members were very conscious of these developments. New Zealand's trade will always need to be underpinned by strong international rules and agreements that are entered into by the Government. When negotiators do their work on our behalf, it is vital that they do so with the solid support of the country behind them. The corollary of this is that they must always earn and renew the country's trust.

While the TFAAB, with the diversity of its views and interests, was never going to be able to agree on the details of every concern that has been expressed about trade agreements, we did reach strong agreement on what needs to be done differently to create policy that reflects New Zealand's values as well as its interests.

New criteria are needed to provide the framework for future negotiating mandates. Developing these criteria will require some new processes and approaches to engagement and evaluation, including to balance the country's short- and long-term trade interests.

Our report elaborates on all of the above themes. In all, this report makes 53 specific recommendations, drawing on 11 key findings.

It has been a privilege to chair such a talented and committed group of New Zealanders – with one Australian 'ring-in' – who have given freely of their time and knowledge. They have worked in a collaborative spirit throughout.

I trust that this report will be received as a constructive contribution to the debate on how to create a trade policy that benefits all New Zealanders.



David Pine
Chair, Trade for All Advisory Board
28 November 2019

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List of Abbreviations

ACCTS	Agreement on Climate Change, Trade and Sustainability
AERU	Agribusiness and Research Unit
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DFPRW	Declaration of Fundamental Principles and Rights to Work
ENZ	Education New Zealand
EU	European Union
FDI	foreign direct investment
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GPA	Agreement on Government Procurement
IAP2	International Association for Public Participation
ILO	International Labour Organisation
INZ	Immigration New Zealand
ICSID	International Centre for the Settlement of Investment Disputes
ISDS	Investor-State Dispute Settlement
KEA	Kiwi Expats Abroad
LSF	Living Standards Framework
MARPOL	International Convention for the Prevention of Pollution from Ships
MBIE	Ministry for Business, Employment and Innovation
MFAT	Ministry of Foreign Affairs and Trade
MfE	Ministry for the Environment
MP	Member of Parliament
MPI	Ministry for Primary Industries
NGO	non-governmental organisation
NIA	National Interest Analysis
NZQA	New Zealand Qualifications Authority
NZTE	New Zealand Trade and Enterprise
OECD	Organisation for Economic Cooperation and Development
PMBAC	Prime Minister's Business Advisory Council
SDGs	Sustainable Development Goals

SMEs	small and medium enterprises
TEC	Tertiary Education Commission
TFAAB	Trade for All Advisory Board
TNZ	Tourism New Zealand
TPK	Te Puni Kōkiri
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Commission on Trade and Development
UNEP	United Nations Environment Programme
WTO	World Trade Organization

Key findings

Our findings and recommendations are premised on the idea that 'Trade for All' means a trade policy that works for the benefit of all New Zealanders, contributing to increased wellbeing and sustainability. The trade policy framework as a whole should support those aims, using a 'triple bottom line' approach of social, economic and environmental objectives, and partnership with Māori under te Tiriti o Waitangi/the Treaty of Waitangi. Trade policy should be evidence based and developed transparently.

1. **Trade policy needs to be fit for the future; public confidence and trust in the Government's approach to trade negotiations and agreements is important and needs to be improved.** There have been long-term declines in New Zealand's tradable sector as a proportion of its economy, and in the country's share of world trade. These need to be addressed because trade is not simply about the earnings of our exporters and the choices that consumers have at home. Trade is a crucial generator of the country's wealth and economic wellbeing. A country's propensity to trade, both its imports and its exports, is closely correlated to its productivity. New Zealand's productivity ultimately depends on having the right policy settings domestically in order to deliver higher, more sustainable, standards of living and better jobs. Trade policy should support and build on this.

To generate enduring and widespread support, our trade policy also needs strong social foundations. It must reflect and support the country's values, its full range of interests – economic, social and environmental – and the partnership with Māori under the te Tiriti/the Treaty. There is widespread acceptance by New Zealanders of the benefits of international trade, but opinion is divided over whether current trade policy and trade agreements fully reflect New Zealand values and interests, with nationally significant organisations on both sides of this debate. Very little research has been done on the attitudes of New Zealanders more generally.

2. **New Zealand will continue to depend on the Government to secure market access for its exports and to advocate for other policies in New Zealand's interests, such as the removal of subsidies through trade agreements in an environment that has become more challenging.** Successive governments have succeeded in achieving greater access and influencing international trade law. Access for New Zealand exports has never been easy because a high proportion of what we produce is in sectors that are highly protected by other countries. This situation is unlikely to improve over the coming decades. TFAAB's work was predicated on a broadly shared view of trends that offer both opportunities and risks for New Zealand. These trends include:
 - a. a growing global population
 - b. a planet affected by climate change, which will necessitate restructuring of the world's economies and intensify pressure on, among other things water resources, food production systems, and biodiversity
 - c. increased economic volatility, pressure on the standard of living in Western democracies, and economic and social pressures in some developing countries severely affected by climate change
 - d. an increase in the number of countries engaged in global trade, offering New Zealand the opportunity to both increase its trade and diversify its trading partners

- e. rapid technological development, which has the potential to bring improvements to productivity and quality of life but which also poses significant challenges to regulation and employment
 - f. changes needed to decarbonise international transportation that will have costs. New Zealand, a small, distant market, is highly exposed to price changes in an international transportation market characterised by a small number of large players and limited competition
 - g. continued geopolitical competition that will affect trade patterns
 - h. questions over whether the large decreases in global poverty that have been supported by an open trading system can be maintained if the world moves to a less open one
 - i. international institutions coming under increasing pressure due to the above factors, competition for natural resources, and rising nationalism.
3. **New Zealand's current levels of access depend primarily on the international rule-based system of the World Trade Organization (WTO).**¹ This system, as well as the bilateral and regional agreements that are underpinned by it, is under unprecedented levels of strain.
- a. New Zealand benefits from the rules-based system and stands to benefit further from a stronger and more coherent network of international agreements that would address gaps in international regulation and a lack of enforceability of other international agreements.
 - b. New Zealand has a hard-earned reputation as an active participant and honest broker in international trade policy, but we need to be realistic about our ability to influence a world trading system of which we have a diminishing share. New Zealand needs to be selective about the issues it engages on, focusing on those that are most important and those it has a realistic possibility of influencing:
 - i. The immediate institutional priority for the WTO is to resolve the impasse on appointments to its Appellate Body. New Zealand is correct to be playing an active role on this issue.
 - ii. New Zealand's chairing of Asia Pacific Economic Cooperation (APEC) in 2021, and the preparations leading up to it, present a strong opportunity for New Zealand to influence the debate about the WTO and wider reform.
 - iii. New Zealand's interests are best met by a strong multilateral rules-based trading system. Negotiating free trade agreements (FTAs),² while a second-best alternative, will continue to be an important priority. Although New Zealand has agreements or negotiations underway with most of the countries with which we have significant trade relationships, there are some significant gaps in its FTA portfolio. FTAs must be negotiated in a way that supports a strong multilateral system.
 - iv. New Zealand needs to focus on sustainable trade in its international and trade relations. Sustainable outcomes would be helped by better dispute settlement mechanisms for relevant international environmental treaties, and by eliminating subsidies that cause environmental problems.
 - c. The use of non-tariff measures (NTM) by our trading partners is unlikely to decrease. Some cases will be able to be addressed under trade agreements and their dispute settlement mechanisms. The Government should continue to defend vigorously the rights of New Zealand exporters. In other cases, an NTM may be in place for a

legitimate reason, or simply not in violation of any rule. There will, therefore, be an important role for the Government's offshore network in providing timely market intelligence about impending regulatory changes that are likely to affect our exports. At present, the means for industry to give input to officials on what to look out for, and for distributing any information that is gathered back to those who need it, are underdeveloped.

- d. MFAT has looked to increase its emphasis on economic diplomacy, including improving capability in New Zealand. This already bearing some fruit, including through an increase in the utilisation of tariff preferences.³
 - e. While there has been an increase in diplomatic focus and development funding in the Pacific, there are further improvements that can be made to an integrated trade and development policy in a strategic environment that is increasingly less benign. These involve a number of steps to make the Pacific Reset policy work better through, for example, greater engagement with the Pacific diaspora community and using more effective partnership approaches with Pacific island communities, non-governmental organisations (NGOs) and companies operating in the Pacific. New Zealand should look to increase its ability to view the world through a Pacific lens. Immigration policies and the extent to which work is available in New Zealand also matter to Pacific Island countries, where remittance payments remain extremely important.
4. The primary concern from civil society about FTAs is about the breadth of issues covered in them and their relationship to domestic policy. Trade agreements have implications for New Zealand's future policy choices on a broad range of topics, including the Crown's partnership with Māori, the environment and climate change, health, education, investment, the protection of intellectual property and labour rights. As the range of subjects in trade agreements has expanded, negotiations have come to involve complex trade-offs with other governments that have important implications for our laws and regulations.

Other important concerns that have been expressed include:

- a. There is a lack of transparency in the way agreements are negotiated.
- b. The enforcement mechanism for international trade rules is not equipped to give effect to other international obligations in policy areas such as the environment and labour, with the result that these other obligations risk being overlooked or undermined in trade cases.
- c. The type of economic growth that trade agreements encourage is not truly sustainable in either an environmental or social sense.
- d. Trade agreements exacerbate inequalities across a range of issues from the digital divide to tax avoidance.
- e. Current policy settings risk inadvertently foreclosing future economic development paths. For example, when New Zealand makes trade-offs between access for its products against concessions on intellectual property, it is not clear that a robust analysis of the costs of the concessions has taken place.
- f. Policy choices on trade can raise questions of fairness in ways that changes to technology do not. For example, when producers in one country are required to meet environmental or labour standards that their competitors in other countries are not.

5. **Because of the broad range of issues covered under trade agreements, and their implications for domestic policy, trade policy needs an anticipatory governance framework.** Trade policy should always look to avoid putting future governments in a position where they would need to choose between implementing the policies they were elected on and remaining in international agreements to which the country has previously committed. While foresight is required in all policy areas that New Zealand negotiates on, TFAAB identified four critical areas where the Government's objective of maximising opportunities and minimising risks from trade agreements will require particular care:⁴
- a. The Government's partnership with Māori and its obligations under te Tiriti/the Treaty include considering how indigenous interests, perspectives and values can become part of the underpinnings of trade policy; reducing risks of policy conflicts; and exploring how indigenous frameworks can be utilised to determine the outcome of matters such as Wai 262 in trade negotiations.
 - b. Environment policy is particularly important, especially in the context of addressing climate change and freshwater management, where novel and innovative regulatory measures may be needed to ensure that environmental policy goals can be met in an environment that will involve significant economic transformation.
 - c. The ongoing digitisation of New Zealand's economy presents great opportunities for New Zealand to overcome the disadvantages of scale and distance, and to leverage its high levels of education. It also presents significant regulatory challenges that are not yet fully understood. The spread of digital technology into all aspects of life has advanced at a speed that governments and regulators have struggled to keep pace with. The speed and breadth of change, and the complexity of the issues, warrant further investigation and engagement.
 - d. The relationship between trade and investment policy needs to incorporate both how the country can attract the foreign capital it needs and the way that appropriate regulatory space is preserved.
6. **Better-defined criteria and stronger processes are needed to create trade policy that truly represents a balance of all of New Zealanders' interests and values.** TFAAB members, coming from very different backgrounds and representing different interests, are unlikely ever to agree precisely on the validity of each of the concerns set out in Finding 4, or on whether the benefits of trade liberalisation outweigh them. This is inevitable in a healthy democracy. We agreed unanimously, however, that the Government's objective of maximising the opportunities and minimising the risks around trade agreements needs to be underpinned by better-defined criteria and stronger processes. These processes should aim to produce a virtuous cycle: better engagement with stakeholders leading to better information; better information leading to better analysis; better analysis leading both to better policy and a firmer basis for future communication and engagement with stakeholders, and better overall outcomes.

Trade policy outcomes should be broadly assessed against triple bottom line criteria that address social, environmental and economic outcomes. The use of the United Nations (UN) Sustainable Development Goals (SDGs) and other frameworks should add greater detail to these criteria. The Crown's Tiriti/Treaty obligations to Māori are not negotiable in trade negotiations. Specific frameworks are needed for some subjects such as trade and the environment, trade and labour, and digital commerce.

To develop such criteria, changes to current processes and practices are needed:

- a. Currently too much is being loaded onto MFAT. It is being asked to identify and analyse New Zealand's interests in advance of negotiations, do the negotiations, and then to evaluate the results of its own work. This is neither fair on MFAT and its officials, nor conducive to good policy development. The Government needs to separate these three tasks and spread the load.
- b. The main tool for assessing trade agreements, the National Interest Analysis (NIA), is inadequate. New Zealand's trade policy should be aligned to supporting the development of industries which are highly productive, able to compete internationally, pay good wages with excellent working conditions, and support New Zealand's environmental objectives. The focus of NIA is too narrow, it comes too late in the process, and it is delivered under political and time pressures that are not conducive to the quality of analysis the subject matter deserves.
- c. Although MFAT has taken significant steps to modernise and improve its methods of engagement, it still has further to go. A consistent theme of the feedback we received was that people feel that MFAT is still in 'outreach' mode. Stakeholders feel that it approaches meetings with 'answers' rather than engaging in the kind of dialogue needed to extract a genuine understanding of people's knowledge and perceptions of opportunity and risk.
- d. New Zealand's increasing diversity, with the cultural and linguistic skills this brings, presents an opportunity to strengthen our international relationships. But, in trade policy, as in other areas of policy, the Government is not connecting consistently with communities in a way that allows them to participate fully. The same is true of women who are underrepresented in international trade relative to their presence in the rest of the economy. A more systematic approach to communication and engagement with superdiverse communities, with the regions and with women is needed. MFAT and other government departments need to value cultural and language skills in their employment and recruitment policy to help lift their capability.
- e. Engagement by other government departments on trade policy is uneven. TFAAB found evidence that some departments were finding that policy options they would have liked to consider were in conflict with trade agreements that they had not been involved in producing. Departments need to engage actively in trade policy to provide negotiators with a fuller picture of New Zealand's interests.
- f. Negotiations need to be conducted in a more transparent way. New Zealand will not be in a position to dictate terms to our negotiating partners. For short-term tactical reasons, it will be necessary to withhold some material – for example, the detail of New Zealand's bottom lines. But, at the very least, New Zealand should be making the case to negotiating partners for measures to improve transparency, including publication of negotiating texts and participation of non-government members in trade negotiations.
- g. Confidence in the outcomes of trade policy and trade negotiations would be helped by a dedicated, well-resourced Parliamentary Select Committee on treaties. This would provide a source of experience and expertise on treaties generally, but trade policy and treaties in particular.

7. **Building the number of export capable companies of all sizes is the primary challenge to improving New Zealand's export performance.** There is debate about the direction of causality: Does trade increase the productivity of companies and countries or do some

companies and countries trade more because they are more productive? In either case, however, the constraint on New Zealand's ability to trade is the relatively small number of companies operating at a scale that allows them to compete internationally. Trade policy alone cannot address these productivity challenges, but it can be better designed to support domestic efforts to meet them. TFAAB identified six areas where improvements can be made:

- a. The primary role of our trade negotiators is to ensure that our exporters have access to the best markets for the goods and services that the country is producing now. This needs to be done, however, without inadvertently locking the country into an economic model that may not reflect the most productive direction the country could grow towards in the future.
- b. The Government, primarily through NZTE, needs to continue to carefully target those firms that are ripe for export and capable of growth, seek to diversify firms, products and services for export, and grow and target firms that are not yet ready but have potential.
- c. The Government acceded to the WTO Agreement on Government Procurement (GPA) in 2015 primarily to create new opportunities for New Zealand exporters. There have been some instances of New Zealand companies winning significant contracts overseas. But there is at present no systematic collection of data that would allow a proper evaluation of the success of the policy.
- d. Recent adjustments to New Zealand's policies to recognise that government procurement can and should be used to support wider social, economic, cultural and environmental outcomes are broadly consistent with Trade for All thinking. Some of our trading partners are also using procurement as a way of lifting the prosperity of indigenous groups. Potentially this creates new opportunities for partnerships between Māori and other indigenous groups.
- e. Most regional participation in trade is through large value chains – primary produce or tourism. In thinking about regional development and trade, Government needs to focus on what trade can do for regional development, and how to help regions develop trade opportunities. Supporting the capability development of pre-export companies in the regions is important.
- f. Better use could be made of NZ Inc resources onshore and offshore. New Zealand has wide reach in most of its important markets through business councils, chambers of commerce, friendship societies, and the Kiwi Expats Abroad (KEA) network. These can supplement the in-market support provided by Government, including by providing contacts and advice on local business conditions. There is potential for this to be done better by strengthening the linkages of these organisations with Government, with New Zealand private sector counterparts, and with each other.

8. **The Government's vision to move the country's economic output from 'volume to value' is consistent with 'Trade for All' thinking.** The challenge, however, is how to create this value in the first place. There are a number of sectors – digital science, agro-science, tourism and education – where this type of thinking is needed. TFAAB focused on two broad priority areas where active leadership could make trade policy more supportive of the Government's vision:

- a. *Building New Zealand's brand by supporting the development, use and marketing of credence attributes.* This is an area of great potential, but New Zealand efforts remain fragmented. There is emerging evidence that customers in international markets,

especially in Asia, are willing to pay for attributes that they cannot necessarily detect in the product. The vision should be that all exports from New Zealand should have embedded value – cultural, environmental, health – backed by high quality research and robust systems of traceability and verification. There is a clear role for the Government in catalysing, coordinating and nurturing the development of NZ Inc strategies in this respect, such as we are seeing through the Industry Transformation Plans and National Science Challenges.

- b. *Taking Te Ao Māori to the world.* Many qualities contribute to New Zealand's international reputation: excellence in food production, high quality education systems, natural scenic beauty, to name just a few. But Te Ao Māori – the language, values and cultural practice of tangata whenua – stands alone as the unique part of our country's offering to the world. There is undoubted potential for all of New Zealand to benefit from encouraging and developing greater Māori leadership of our country's international engagement, especially as the pattern of New Zealand's trade has broadened from traditional Western partners to a more diverse range of countries. In TFAAB's view, three interrelated things are required to realise this potential:
 - i. strengthening of the Māori-Crown partnership, both in the development of trade policy and through participation in the negotiation of trade agreements to better reflect Māori tino rangatiratanga, interests and values, as well as in the promotion of Māori trade on the basis of such policy. MFAT's existing Māori engagement strategy has been unevenly implemented. The newly formed Taumata engagement model⁵ is a potentially useful means to help invigorate engagement.
 - ii. resolution of some outstanding issues, particularly around Māori cultural and intellectual property. Māori have exercised significant international leadership concerning the protection and promotion of indigenous intellectual and cultural property through initiatives like the Mataatua Declaration, the UN Declaration on the Rights of Indigenous Peoples, and the communique of the Nga Tāonga Tuku Iho Conference. Successful resolution to Wai 262 and Wai 2522 represent an opportunity for New Zealand to develop a world-leading model for the protection and promotion of indigenous intellectual and cultural property rights based on an indigenous framework.
 - iii. strengthening the Crown's capability to reflect Te Ao Māori offshore.

- 9. **New Zealand needs, and will continue to need, capital in many industries.** The Government should continue to negotiate for investment arrangements through trade agreements and other international agreements, both to encourage investment in New Zealand, including early stage capital and technology investment, and to make it easier for New Zealand companies to invest offshore. The Prime Minister's Business Advisory Council (PMBAC) has recommended that the Government undertake a serious review of its offshore investment models based on a more proactive approach to the identification of sectors with comparative advantage and working to create scale.

But the ability to invest in New Zealand should always be subject to some restrictions in New Zealand's interests, relating to whether:

- a. the investment will grow the value of NZ tradeable sector and/or contribute towards New Zealand's economic or social outcomes, through either introducing new technology or access to new markets, and lead to better employment, social and environmental outcomes

- b. the investment, especially when it will compete with existing New Zealand industries, is made on a commercial basis or is being made because of a subsidy or other anti-competitive action
- c. investment in export-focused industries will be consistent with New Zealand's high value export strategy and broader national and international and climate change environmental obligations.

As part of its trade and investment policy, the Government has decided to oppose the inclusion of Investor-State Dispute Settlement (ISDS) in FTAs. But New Zealand remains exposed to potential ISDS action under several of its existing trade and investment agreements. It is, therefore, surprising that New Zealand has not engaged more in international processes to reform arbitration provisions in investment treaties. The same lack of engagement in the United Nations Commission on International Trade Law (UNCITRAL) is also surprising, given our country's broader interests in arbitration.

10. **Tourism is a significant contributor to New Zealand but faces some large challenges.** Faced with the implications of climate change, and the reality that the trend of steep increases in visitor arrivals is not sustainable indefinitely, the tourism sector will also need to move from 'volume to value' and adopt its own version of the credence attributes for the New Zealand tourism brand, supported by ongoing investment in infrastructure to support tourism. The transparency with which international air services agreements is developed and administered needs to improve.
11. **New Zealand needs better infrastructure, which is essential to our trading and tourism sectors.** The needs of our tradable sector must be kept clearly in view when decisions are made about meeting infrastructure needs, whether for transport or the digital economy. New Zealand needs a clear long-term plan for trade-related infrastructure that includes considering the impact of climate change and the need for resilience in the face of it, international transport trends and decarbonisation, and the alignment of 'in the country' and 'at the border' trade infrastructure. Infrastructure investment must anticipate needs rather than be reactive. As part of the response to infrastructure needs, competition policy and other regulatory settings will need to be reviewed and updated.

Recommendations

Measures to Address Public Confidence and Trust and Modernise Trade Policy

The Government needs to ensure that FTAs support its policy objectives and do not foreclose regulatory space. In defining New Zealand's trade objectives, MFAT should develop better mechanisms to provide the foresight that will enable it to take an 'anticipatory governance' approach.

1. The Government should direct MFAT and the Ministry for the Environment (MfE) to lead work on a new Whole of Government Framework for Trade and Environment, and to involve other departments with policy interests including the Ministry for Business, Employment and Innovation (MBIE), the Ministry for Primary Industries (MPI), and Treasury. A new framework, based on the SDGs, should take into account the urgency of climate change and the economic transformation it implies, and advances in knowledge since 2001, to create a stronger basis for evaluating the direct and indirect impacts of trade agreements on the environment. Clear direction should be given to New Zealand's trade negotiators to open up and maintain regulatory space for the type of policy tools to support climate change policy and address environmental matters that may arise in the future.
2. A thorough review of New Zealand's interests in the digital trade negotiations should be carried out involving the Government Chief Digital Officer, Callaghan Innovation, Productivity Commission, the Privacy Commissioner, MBIE, MFAT, and the APEC Business Advisory Council, as well as representatives of Māori, business and civil society. In the interim, we recommend against locking New Zealand into any fixed negotiating positions.
3. Using Māori-led and designed frameworks and principles, the Government should incorporate the protection and promotion of indigenous intellectual and cultural property rights into New Zealand's trade agreements, and facilitate the opportunities that we in Aotearoa New Zealand have to lead the development of international trade rules that meet indigenous peoples' rights and aspirations on this key issue.
4. MFAT and MBIE should be directed to work with social partners to redevelop the 2001 Cabinet Framework for Trade and Labour, including to assess possible improvements to the model trade agreement labour chapter. This work should also include an assessment of whether both the Framework and New Zealand legislation to address modern slavery are sufficient, given international trends.
5. A strong, rights-based, approach to health should always be a pillar of New Zealand trade negotiating mandates. In particular the Government should maintain a strong defence of Pharmac's philosophy and its right to develop its evolving model and practices.
6. Intellectual property provisions should be evidence based, with clear measurement and modelling. Any future trade negotiations on intellectual property should be transparent to allow for full communication and engagement with interested parties, including over the text of the agreement.

7. New Zealand should continue to negotiate for arrangements consistent with our national interest that encourage investment here and make it easier for New Zealand companies to invest offshore, consistent with the recommendations in this report, including ensuring that there are net benefits to New Zealand. The Government should:
 - a. progress the PMBAC's recommendation of the to undertake a serious investigation of offshore investment attraction models
 - b. ensure NZTE gives particular focus to the needs of the early stage capital, venture and technology investment markets.
8. TFAAB supports the reform of investment arbitration systems. The Government should:
 - a. swiftly complete and implement the Wai 2522 recommendation for an ISDS Protocol
 - b. take a more active approach to international processes to reform arbitration arrangements and consider alternatives to ad hoc arbitration, particularly in the UNCITRAL Working Group and the United Nations Commission on Trade and Development (UNCTAD)
 - c. seek membership of UNCITRAL at the next available opportunity
 - d. review current arrangements in trade agreements with its partners as new arrangements become available.

Improving Policy and Foresight through Better Evaluation, Assessment, Engagement and Inclusion

Better Processes for Evaluation and Assessment

9. NIAs for FTAs should be conducted by an independent body under better-defined criteria, taking into consideration the following:
 - a. Trade policy outcomes should be assessed against a triple bottom line framework – they need to meet social, environmental and economic objectives, and be consistent with the Crown's partnership objectives and obligations to Māori under te Tiriti/the Treaty.
 - b. The SDGs, the Treasury Living Standards Framework – which would be enhanced by the inclusion of a Te Ao Māori perspective – and other government wellbeing indicators should be used as a way to help assess trade policy outcomes.
 - c. There should be guidelines for minimum and maximum periods of consultation so that the public has ample opportunity to provide views.
10. The independent body assessing FTAs should also conduct forward-looking trade policy outcome assessments on a five-yearly cycle to check that trade policy is well aligned with the Government's broader economic, social and environmental objectives, and with te Tiriti/the Treaty. This should be evidence and research based, able to be fed into anticipatory policy and engagement processes, and allow the assessment of alternatives before trade negotiating proposals are developed.
11. A well-resourced Parliamentary Committee for Treaties, with a similar mandate to that in Australia, should be established. This would provide a dedicated, experienced and knowledgeable body to consider all treaties, and their domestic impacts, including in relation to trade policy and trade policy negotiations.

Better Engagement

12. MFAT should provide an options paper to the Minister for Trade and Export Growth that considers a wider range of tools to engage with stakeholders, drawing on the options set out in Chapter 3 of this report.
13. Within the constraints of negotiating processes, the Government can, and should, do more to keep the public engaged, including during negotiations. Special attention is needed to making information more accessible to communities that are hard to reach. Whenever it negotiates trade agreements, the Government should:
 - a. seek agreement from negotiating partners to release draft negotiating texts
 - b. review, in conjunction with stakeholders, the composition of delegations to trade rounds, to ensure appropriate representation from outside Government, including Māori as its Tiriti/Treaty partner
 - c. enhance efforts to inform the public, including making greater use of different media to reach wider audiences and using plain language, with the aim of communicating the big picture and values around trade to all New Zealanders
 - d. review Official Information Act policies and practices so that they conform to best practice, and embrace proactive transparency principles.
14. MFAT should regularly commission surveys of public views of trade and trade policy.
15. MFAT and NZTE should consider measures to strengthen the utility of New Zealand's offshore network of business councils, chambers of commerce, friendship societies, and the KEA network.
16. Beyond MFAT and NZTE, the Government should ensure that other ministries prioritise and resource trade policy to ensure that their departments are actively working to ensure that New Zealand's trade policy settings are negotiated in full consideration of current and future policy space.
17. MFAT should engage creatively with the Taumata model in the planning and development of trade policy, negotiation and agreements. The terms of reference agreed between MFAT and the Taumata should be publicly available and be reviewed for their effectiveness by MFAT and Taumata members on an ongoing basis, starting in the next 2–3 years.
18. MFAT should implement its existing Māori Engagement Strategy pending further advice and recommendations from the Waitangi Tribunal concerning the Crown's obligations to engage with Māori as part of Phase 2 of the Wai 2522 inquiry. The Strategy will need to be reviewed for compatibility with, and may need to be adjusted to give effect to, the Tribunal's recommendations. Consistent with its obligations under te Tiriti/the Treaty and the status of Māori, the Government should provide resources to enable fuller Māori engagement on trade policy.

Better Processes for Inclusion

19. Because New Zealand has a population that is increasingly diverse, culturally and linguistically, MFAT needs to develop and apply a superdiversity lens to all consultation and engagement processes. Engagement on trade must be consistent with guidance from the International Association for Public Participation (IAP2) and in line with the New Zealand Open Government Partnership commitments. This needs to be done with genuine openness to the diversity of ideas about trade policy and its implementation.

20. MFAT and other government agencies involved in trade and trade-related activities should assess their human resources policies to ensure that they contain a superdiversity focus and that cultural and language skills are fully recognised in performance assessment frameworks and opportunities for career progression.
21. As part of the improvements to its engagement process, MFAT should develop a policy for engaging with 'hard to reach' communities, including through improved knowledge and cultural understanding, the use of ethnic media and social media, and culture-specific means.
22. New Zealand should seek provisions in FTAs that protect the rights of women and advance their economic, social and environmental interests. It should also continue to participate actively in the WTO's efforts to improve its gender balance and inclusiveness. To develop policy in this area, the Ministry for Women needs to be more closely engaged in trade policy. It is not currently resourced for this. One option could be through the use of secondments from MFAT.
23. In addition, the Government should direct MFAT and NZTE to work with the Ministry for Women to:
 - a. provide specific, targeted support for women doing business internationally
 - b. study models that are presently being used by Canada and Australia with a view to adopting successful initiatives in New Zealand
 - c. provide resourcing and thought leadership for NZ Inc initiatives to increase women's access to procurement opportunities inside multinational companies and global value chains
 - d. monitor and publish data on the participation of women in government-led business delegations, with a view to lifting their rate of participation.
24. MFAT should pay careful attention to the career progression of women working in the trade area, taking into account the State Services Commission gender pay principles.⁶

Advancing New Zealand Interests in an Enhanced International System

25. In a challenging international environment, New Zealand's top trade negotiation priority should be to strengthen, reform and enhance the WTO, while recognising that good quality open plurilateral agreements and bilateral FTAs, negotiated with a multilateral system in mind, also provide benefits. New Zealand should:
 - a. prioritise this theme in its economic diplomacy, especially in preparations for chairing of APEC in 2021
 - b. continue to participate actively in the Ottawa Group and efforts to reform the WTO dispute settlement system.

Sustainability

26. New Zealand should actively encourage the WTO and other international organisations to meet future challenges, including meeting the SDGs, by:
 - a. promoting strong and binding dispute settlement mechanisms for all international relevant organisations, including under the United Nations Environment Programme (UNEP) treaties.

- b. advocating for inclusion in the WTO dispute settlement processes that have implications for other policy areas and subject matter experts with relevant skills, and seek to achieve a balanced approach to dispute settlement where there are conflicts between the WTO or FTAs and other treaties
 - c. promoting and supporting sustainable trade through continued work for the elimination of subsidies for fossil fuels, fisheries and agriculture
 - d. building support within the WTO and the UNEP for the updating of the important joint study that they produced in 2009.
27. The Government should ratify Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) as a matter of urgency.

Market Access

28. New Zealand should work to protect, enhance and build on its current market access arrangements using negotiating policies and approaches that are consistent with the values and direction set out in this report. This should include:
- a. continuing current negotiations (the European Union [EU] FTA, Pacific Alliance, and the Regional Comprehensive Economic Partnership⁷)
 - b. concluding FTA upgrades currently underway with China and the Association of South East Asian Nations (ASEAN), Australia and New Zealand FTA
 - c. negotiating an agreement with a post-Brexit United Kingdom.
 - d. looking to improve over time other existing FTAs (with Australia, Hong Kong-China, Korea, Malaysia, Thailand, Singapore, the Trans-Pacific Strategic Economic Partnership, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership).
29. New Zealand should always look to maintain a productive relationship with the United States to improve access for New Zealanders and New Zealand exports to this important market, and to encourage it to play a constructive leadership role in the world trading system.
30. MFAT and other government departments should build their capacity and foresight mechanisms to create and develop the quality of political relationships that will be needed to underpin the economic relationships of the future. This has been done well in the Pacific, Asia and South America, but Africa, in particular, needs more focus.
31. MFAT and NZTE should use their diplomatic access and country knowledge to provide early warning of regulatory and other economic changes likely to affect New Zealand export interests. Better mechanisms are needed to communicate with the businesses likely to be affected.

The Pacific and Trade

32. The MFAT Partnering for Impact approach needs greater clarity on:
- a. how New Zealand can help build capacity of Pacific partners to absorb more funding and implement their own development
 - b. how organisations that help deliver development resources to the Pacific need to change, and what skills will they need.

33. The Pacific Reset initiative needs to be improved through:
- a. greater engagement with the Pacific diaspora community in New Zealand
 - b. greater public education about Pacific trade and development to ensure continuation of the 'social licence' for development programmes
 - c. a more effective partnership approach between the New Zealand Government, NGOs, the Pacific diaspora, companies operating in the Pacific, and the Pacific Island communities themselves
 - d. greater linkages between overseas development assistance and trade policy, especially with small Pacific Island companies to improve their export readiness
 - e. greater government support for the work that Māori organisations are doing in working alongside Pacific governments to look at trade and development opportunities.
34. The New Zealand Government should commit to work with Pacific partners to address the limitations with, and implementation of, the PACER Plus agreement, especially recognising the importance of the New Zealand labour market and remittances to Pacific Island economies.

Aligning Trade Policy with Improving Productivity and Sustainability

Trade policy should be developed using a triple bottom line framework – it needs to meet social, environmental and economic objectives – and be consistent with the Crown's partnership objectives and obligations to Māori under te Tiriti/the Treaty. This triple bottom line thinking should be applied to all recommendations in this section.

Credence Attributes

35. The Government needs to develop a clear and integrated plan for legitimising, catalysing, coordinating and nurturing the use of New Zealand's credence attributes for trade, tourism and export education. This should involve:
- a. a coordinated effort by MFAT, MBIE, New Zealand Trade and NZTE, MPI, Tourism New Zealand (TNZ), TPK, Education New Zealand (ENZ), and other relevant departments and agencies, in collaboration with businesses and Māori
 - b. a vision for all exports from New Zealand having embedded credence values relating to culture, environment, health and innovation
 - c. further research and analysis into measurement of credence values for New Zealand.

Taking Te Ao Māori to the World

36. Immediate measures should be taken to strengthen the international dimensions of the Māori-Crown partnership, including:
- a. improving and supporting engagement and participation, and the incorporation of Māori interests and values, as discussed above; this should advantage New Zealand's trade uniquely with consumers who share these values internationally
 - b. including frameworks for indigenous to indigenous partnerships in trade agreements with countries with indigenous populations, recognising and encourage indigenous partnerships for procurement, and ensuring that there is adequate resourcing to bring these partnerships to life

- c. discussing the drafting of the 'Treaty of Waitangi exception' used in New Zealand FTAs with Māori, as recommended by the Waitangi Tribunal in Wai 2522; decisions made on the future text of the exception should only be made following that dialogue.
- 37. There should be an increase in the frequency and resourcing of Māori-led, government-supported activities, cultural and trade missions, and participation in trade shows and other international engagements. These should be done in a programmed and strategic way.
- 38. Better use should be made of existing resources (korowai, whakairo and other taonga) at New Zealand's offshore posts. All staff should be trained in their use and be able to articulate their stories and meaning.
- 39. MFAT should explore opportunities to develop and expand internship programmes for Māori in order to strengthen Māori capacity in the foreign affairs and trade arenas. This should be done through engagement with Māori, including through the newly formed Taumata engagement strategy and other organisations representing Māori. MFAT should continue to strengthen efforts to recruit Māori staff, and update its performance assessment framework to reflect the importance of cultural competency concerning Te Ao Māori to its mission.

Education

- 40. The international education market will be helped by greater coordination and collaboration. This includes better support by MFAT offices to ENZ and international education providers, and better coordination with Immigration New Zealand (INZ).
- 41. ENZ, the New Zealand Qualifications Authority (NZQA), the Tertiary Education Commission (TEC) and INZ should collectively work together to ensure that the quality and integrity problems in international education are resolved, that the quality of international education provided in New Zealand is high, that the student experience in New Zealand is positive, and that immigration status and representations made to international students are clear.
- 42. There should be a coordinated approach by New Zealand agencies (ENZ, MFAT, NZTE) to communicate with and develop New Zealand-educated alumni.
- 43. ENZ should lead a research and investigation programme into online and offshore delivery of New Zealand education.

Creative Industries

- 44. A range of policies should be implemented to improve the ability of creative industries to compete internationally:
 - a. More sector development plans with high level buy-in should be developed, such as the ten-year plan for the screen sector that has been agreed and is supported by the Prime Minister.
 - b. Assistance should be provided to cluster similar firms and skills, such as is occurring around the screen industry in Wellington.
 - c. Opportunities for larger and more successful enterprises to share knowledge and contacts with up and coming companies should be created.
 - d. NZTE should review the support it provides to creative industries.

Tourism

45. TNZ, and tourism industry organisations and companies, should develop a strategy for the sector that uses the work carried out in recommendation 36 above on credence attributes, and combines that with an assessment of the impact of climate change on tourism, and of trends in aviation and land transport fuel technologies.
46. The Government should maintain an honest and more transparent liberal air services approach for aviation services to New Zealand.

Technology

47. NZTE should keep under review the way that it interacts with and supports the technology sector, given that sector's growth and changing dynamics.
48. The Government should invest in activities that help New Zealand businesses, in particular small and medium enterprises (SMEs), improve their cybersecurity awareness and capabilities.

SMEs

49. NZTE should:
 - a. make market research and its in-market immersion programmes available more broadly beyond its 'build and focus' users to smaller firms
 - b. consider expanding its introductions to trusted partners in markets, and trade mission attendance, to smaller firms that are 'export ready'
 - c. consider increasing focus on smaller firms through advanced digital techniques and personalised customer services.

Regions

50. Export NZ, Chambers of Commerce, the Government, and local government, using existing networks where possible, should coordinate resources to better support the development of clusters of like firms in regions. This will support their preparedness for identifying and participating in export markets.
51. The Government (involving NZTE, MFAT, and NZTE) should coordinate work on micro-exporting to:
 - a. identify barriers in each region, and efficient ways to overcome those barriers, including through shared resourcing and platforms
 - b. ensure that trade agreements make micro-exporting possible.

Infrastructure

52. The Infrastructure Commission should develop a clear long-term plan for trade-related infrastructure (including e-commerce), including:
 - a. the steps necessary to catch-up and develop infrastructure for the future
 - b. funding sources
 - c. adjustments that will have to happen because of climate change
 - d. ensuring that the trade-related infrastructure in the country and at the border are aligned.

53. The Government, including the Infrastructure Commission, should focus closely on the needs of New Zealand's tradable sector in its review of the long-term provision of infrastructure and associated regulation. This must take into account the impacts on trade of climate change, trends in shipping and air services provision, regional development, and competition policy.

Chapter 1: Introduction and Context

Background

1. TFAAB was established by the Government to contribute to a forward-looking conversation amongst New Zealanders about the role of trade policy. Its mandate is to provide practical, implementable recommendations that support and give effect to the Government's key principles for trade policy.⁸
2. These principles broadly provide for open trade and the pursuit of better market access for our exporters, within a sustainable and inclusive national framework. The Government wants trade policy to hear, acknowledge and address public concerns that were expressed during the process to negotiate the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).
3. The Government has set out a vision to build a 'productive, sustainable and inclusive economy' (Appendix 3). A successful trade policy is critical to the Outcomes and Policy Focus Areas that have been set out to realise this. We relate our recommendations to this vision, and also incorporate assessment of trade policy against relevant frameworks, including the UN SDGs and relevant government wellbeing frameworks.

Why We Trade, and How We Should Trade

4. This first chapter of this report discusses three large trade policy challenges that New Zealand faces: 1) improving New Zealand's productivity and competitiveness, 2) dealing with new complexities in the negotiating environment, and 3) giving effect to the partnership with Māori under te Tiriti/the Treaty.
5. The economic theory of comparative advantage has long driven trade policy. It shows that all people and nations can gain from trade if each country specialises in producing what they are relatively more efficient at producing and imports the rest. Other values and interests also underpin why we trade, including the fostering of relationships and innovation.
6. Pragmatically, New Zealanders need to trade with producers, distributors and consumers in other countries because many of the products and services that New Zealanders take for granted – from mobile phones to medicines – are not produced locally. To pay for these, the country must produce a surplus in other sectors. In New Zealand's case the surpluses are generated largely by exports of our primary products, education services and tourism. These will continue to be the mainstays of our exports for the foreseeable future. But our export base is becoming increasingly diverse: it ranges from rapidly growing creative and tech sectors⁹ to established industries in food and beverage and health technology. Modern economies also increasingly use sophisticated supply chains and manufacturing processes that use imported goods as a key part of their exports.
7. Another reason why successive governments have prioritised the development of New Zealand's trading relationships is the clear correlation between a country's propensity to trade and its economic growth and productivity. Trade is one of the factors that influence higher national average incomes and productivity.¹⁰ The relationship between productivity and trade holds for imports as well as exports.

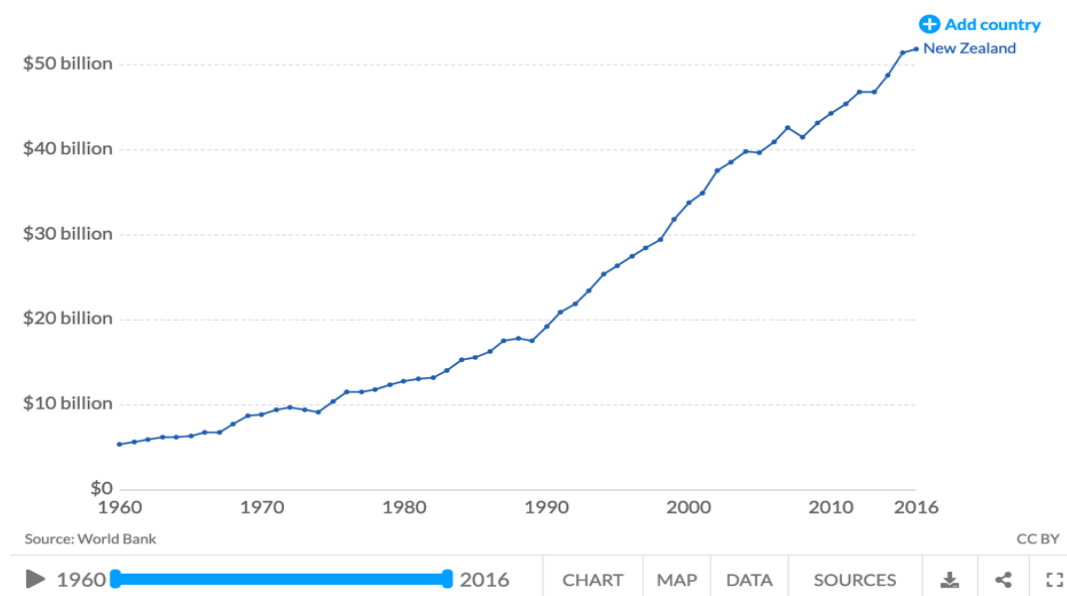
8. The way New Zealand trades affects all parts of society, as well as our relationships with other countries. Our trade, and the agreements that the Government enters into that underpin it, should reflect the values that we have as a country. Chapter 2 of this report looks more closely at this subject.

New Zealand Faces Three Large Challenges

The First Challenge: We Don't Trade as Well as We Think We Do

9. We New Zealanders think of ourselves as a trading nation. The reality of our performance, however, is mixed. Figure 1 shows that over the last 57 years the value of New Zealand's exports of goods and services in real terms has steadily increased.

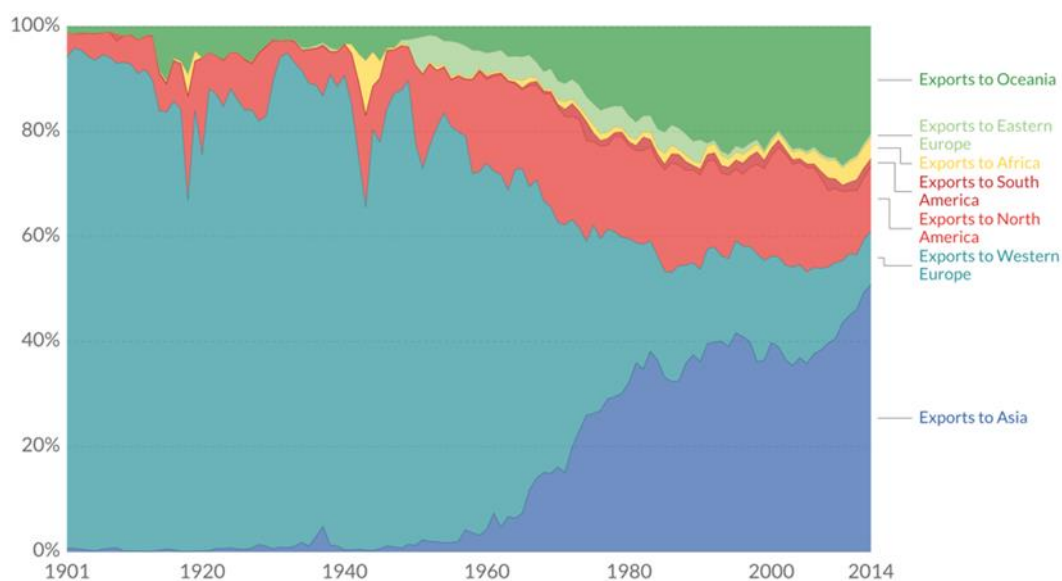
Figure 1: Exports of goods and services (constant 2010 US\$) – New Zealand



Source: Our World in Data.

10. New Zealand has also diversified with regard to the countries it trades with, as demonstrated by Figure 2. Exports to Oceania (predominantly Australia but also to the South Pacific) and Asia have increased while, proportionately, exports to Western Europe have declined.

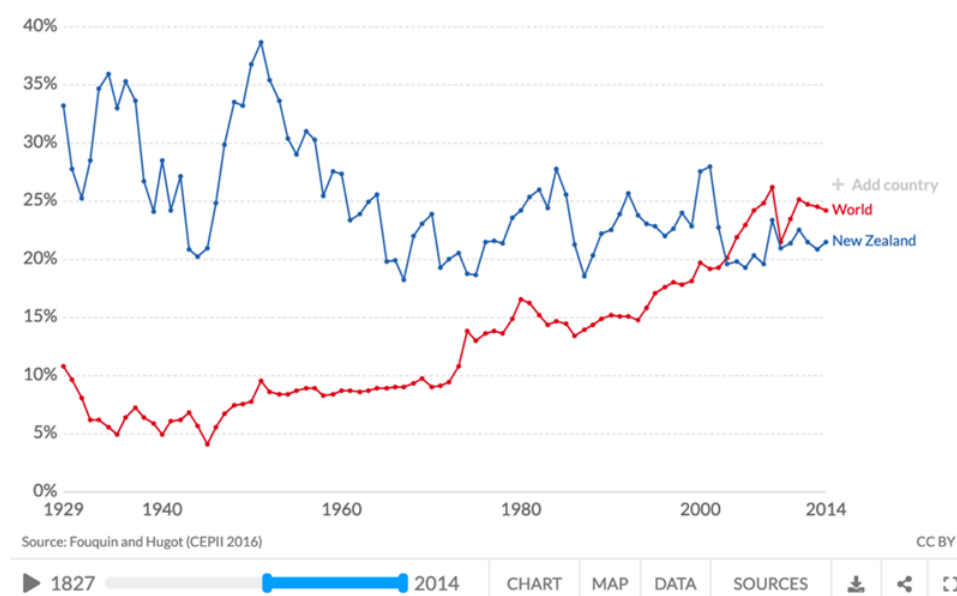
Figure 2: Merchandise exports by continent of destination, New Zealand



Source: Our World in Data.

11. While the value of New Zealand's exports has steadily increased, it has not kept pace with growth in the non-tradable part of our economy. This is the opposite of the global trend. Figure 3 shows that while exports of goods as a proportion of gross domestic product (GDP) have been growing rapidly in the rest of the world, they have been in long-term decline in New Zealand. Since early in the 21st century, New Zealand's propensity to export goods has been lower than the global average.

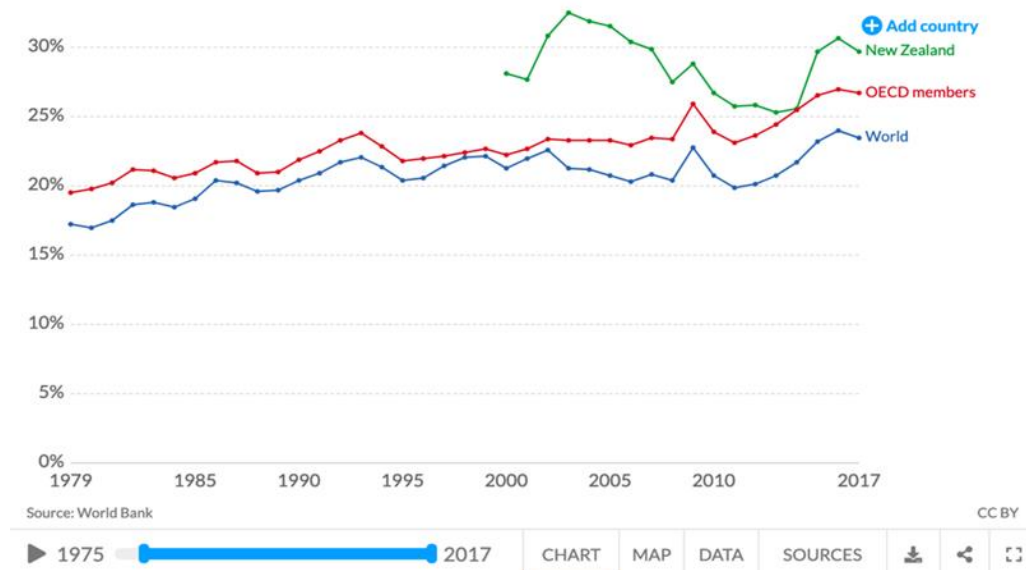
Figure 3: Value of exported goods as share of GDP



Source: Our World in Data.

12. New Zealand's trade in services, compared to other countries, is positive. As shown in Figure 4, New Zealand's performance in trade in services as a share of total exports is above that for the rest of the world, and above the average of Organisation for Economic Co-operation and Development (OECD) countries.

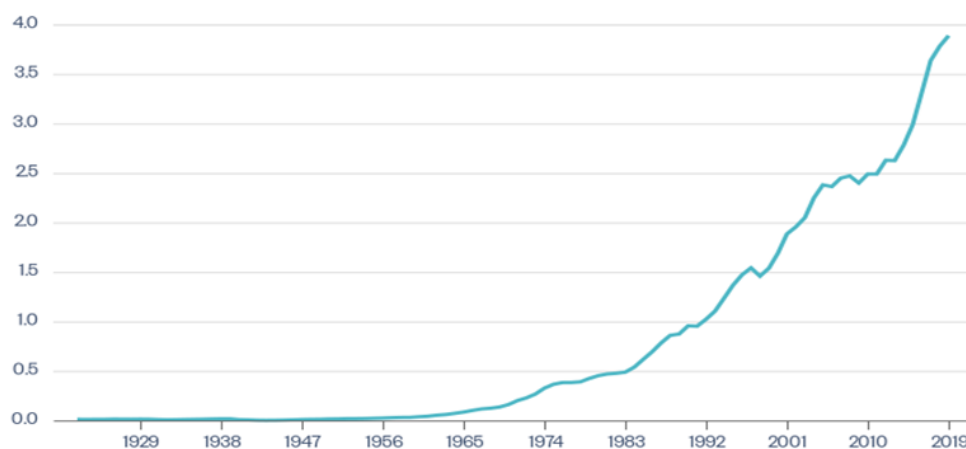
Figure 4: Share of services in total exports



Source: Our World in Data.

13. Growth in tourism and international education are the main reasons for the services sector performance. This is illustrated in Figure 5 which sets out the rise of international visitor numbers. This rate of growth is not sustainable indefinitely.

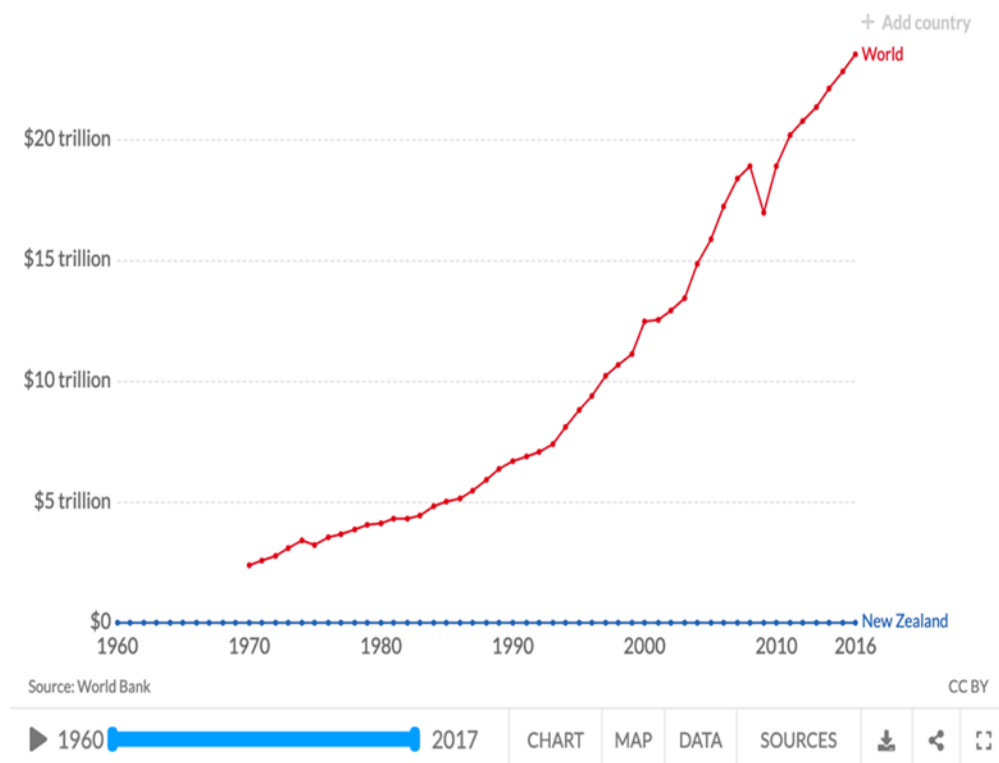
Figure 5: International visitor arrivals to New Zealand, year ended June 1922–2019 (millions)



Source: Figure.nz.

14. For most of the second half of the 20th century international trade was dominated by developed countries. Consequently New Zealand, as a developed country, enjoyed a disproportionately large share of that trade. Today, developing countries trade much more both with each other and with developed countries than they did before. This has contributed to great reductions in poverty globally.
15. As more countries have entered the world trading system it was inevitable that New Zealand's share of it would decline in relative terms, as Figure 6 confirms in stark terms. The implications of this change in the world's economic structure are not in themselves necessarily good or bad for New Zealand but they do need to be kept in mind when thinking about how much influence New Zealand can expect to have on the world trading system.

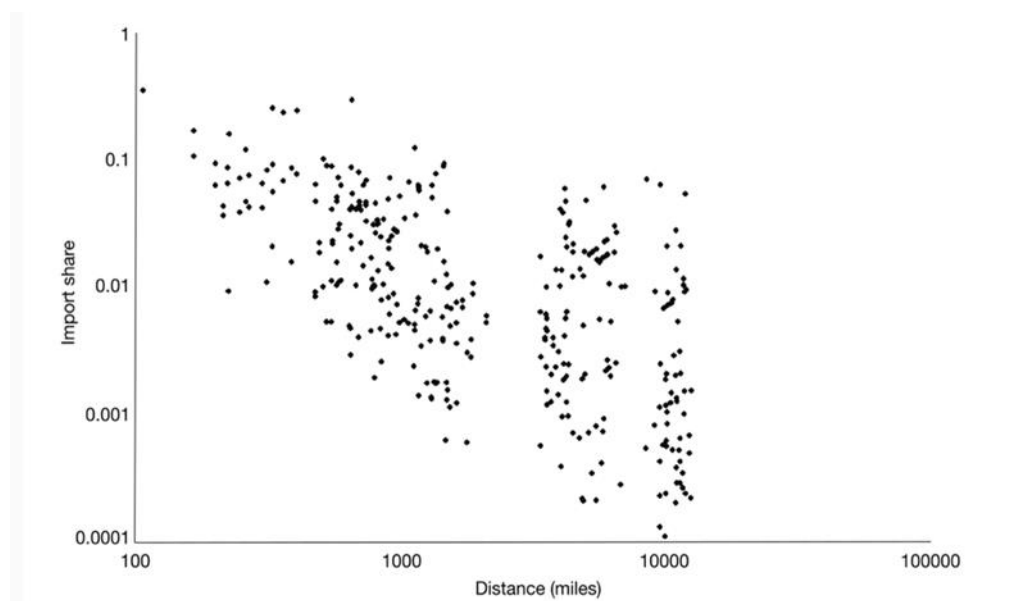
Figure 6: Export of goods and services (constant 2010 US\$) – worldwide



Source: Our World in Data.

16. Many factors explain these changing patterns of world trade and New Zealand's place in it. Comparative advantage is one important driver of world trade but there are others.
17. As global trade and the sophistication of value chains has increased, the significance of geography has become clearer. The propensity of countries to trade with each other diminishes over distance (see Figure 7).

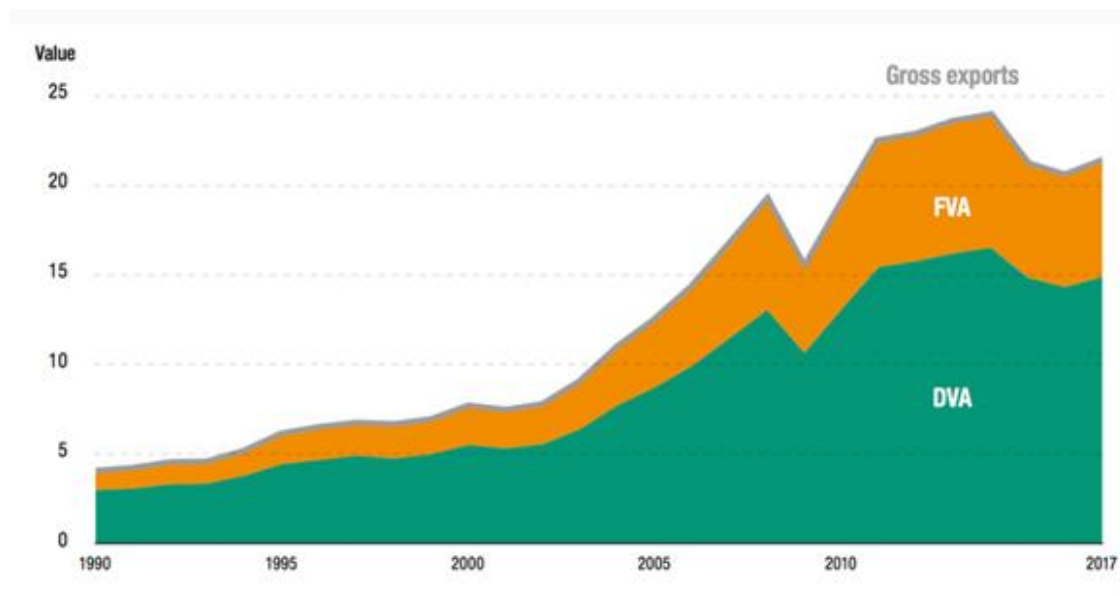
Figure 7: Import share and distance between country pairs, OECD, 1990



Source: Our World in Data.

18. A lot of international trade comes about because specialisation allows countries and firms to reap greater benefits from scale. This insight is highly relevant to understanding the way that global value chains have emerged.
19. As Figure 8 illustrates, since the 1990s trade in the rest of the world trended towards economic integration as imported goods and services were increasingly used as inputs into a country's exports. Globally, the proportion of the value of exports that were created overseas (FVA) has increased relative to that of those created domestically (DVA). In New Zealand, the proportion of exports that are unprocessed has remained the same, while the proportion of elaborately transformed goods exports from New Zealand as a proportion of total exports has declined from 26% to 12% from 2003 to 2019.¹¹ New Zealand is not following global trends towards economic integration.

Figure 8: Proportion of foreign content in exports globally



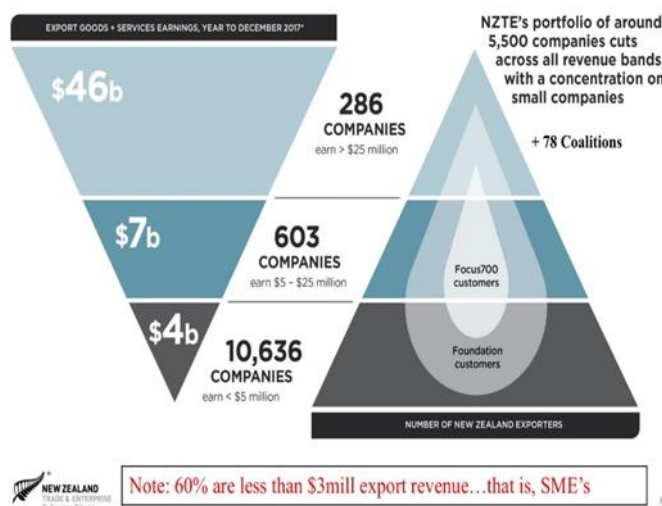
Source: UNCTAD.

20. The combination of these trends presents particular challenges to New Zealand. Our firms are further from markets than their competitors, a low proportion of transformed goods means that transport costs tend to be higher again than for countries with more developed industries, and the small size of our domestic market makes it difficult for businesses to grow the critical mass domestically that would allow them to compete internationally.
21. Exporting successfully requires investment of capital and time, usually over an extended period. According to NZTE, the chief constraint on the growth of New Zealand's exports is the number of companies that are capable of exporting (see Figure 9). While market access is important, New Zealand needs to do more to increase its exports than merely rely on improved market access.

Figure 9: Our export customers – deal flow \$2.4b per annum

Our export customers...deal flow \$2.4bill p.a

"The constraint to growth is the number of companies capable to export"



Source: NZTE.

The Second Challenge: A More Complex Negotiating Environment

22. New Zealand as a small trading nation has benefited from a well-functioning, rules-based system. Most of the countries we trade with are larger and more economically powerful than we are. If we had to rely on bargaining power alone, our options would be limited.
23. New Zealand's approach to trade, as in other areas of international policy, has been to work with others to build strong international institutions with fair rules and the means to enforce them. New Zealand has been an active participant in the world trading system. Its negotiators have built a strong reputation for the country as a constructive player and an honest broker. New Zealanders have filled key roles in international trade organisations and negotiations.
24. When the WTO was formed in 1994, power in the international trading system lay primarily with a small group of developed countries comprised of the United States, EU, Japan and Canada, collectively known as the Quad. Although New Zealand objectives, particularly in agriculture, were never perfectly aligned with those countries, our overriding interest in a well-functioning rules-based system was well served by the commitment that the Quad, led by the United States, had to building it. New Zealand was able to look to other partners for support in pursuing its specific interests, such as agriculture.¹²
25. This system is now under unprecedented strain. As the pattern of world trade changed, the membership of the WTO expanded. This has undoubtedly made the organisation more representative, but it has also made decision-making more challenging. In July 2008, efforts to implement a broad programme of reforms and tariff reductions while allowing special and differential treatment for developing countries broke down. Progress on the WTO's negotiating agenda since then has been limited.

26. At the same time, there has been a backlash in several developed countries against the established order, evidenced most strongly in the United Kingdom's decision to leave the EU and the way that the United States has limited its commitment in international organisations, including the WTO.¹³ There have been increasing instances of WTO members, including its most powerful, unilaterally reintroducing tariffs that they had legally undertaken to remove.
27. The turbulence in the WTO reflects deep structural changes to the global balance of political and economic power that are currently underway. The environment shaping trade policy over the coming decades is likely to be characterised by a mix of the following trends that offer both opportunities and risks for New Zealand:
- a. a growing global population
 - b. a planet affected by climate change, which will necessitate restructuring of the world's economies and intensify pressure on, among other things, water resources, food production systems, and biodiversity.
 - c. increased economic volatility, pressure on the standard of living in Western democracies, and economic and social pressures in some developing countries severely affected by climate change
 - d. an increase in the number of countries engaged in global trade, offering New Zealand the opportunity to both increase its trade and diversify its trading partners
 - e. rapid technological development, which has the potential to bring improvements to productivity and quality of life but which also poses significant challenges to regulation and employment
 - f. changes needed to decarbonise international transportation that will have costs. New Zealand, a small, distant market, is highly exposed to price changes in an international transportation market characterised by a small number of large players and limited competition
 - g. continued geopolitical competition that will affect trade patterns
 - h. questions over whether the large decreases in global poverty that have been supported by an open trading system can be maintained if the world moves to a less open one
 - i. international institutions coming under increasing pressure due to the above factors, competition for natural resources, and rising nationalism
28. New Zealand's ability to influence these broader trends is limited. But we are not alone in the way we are affected by them. Our trading relationships are built on strong diplomatic relations, particularly with our neighbours across the Tasman, in the South Pacific and in the wider Asia-Pacific region. In challenging times, we need to work with others to defend and enhance a rules-based global trading system that facilitates open trade within a framework of international relations that protects and enhances New Zealand's values, security and economic wellbeing. Changes to the way that international institutions (such as the WTO) function is part of this framework.
29. New Zealand has pursued bilateral and regional trade deals to supplement its market access through the WTO. However, helping to maintain a well-functioning multilateral system should be the priority. The combination of the agreements and the variety of different ('noodle bowl') standards, rules and provisions in them still fall short of the consistency and gains that might be possible from a fair multilateral system.

30. New Zealand has, however, managed to negotiate trade agreements that cover most of our main markets and has negotiations underway or in prospect to cover the others. In some cases, high quality FTAs have been of great benefit to the New Zealand export sector and have been a defining feature of the global trade landscape over the last 20 years.
31. If multilateralism is challenged, there are still opportunities for New Zealand to seek high quality open plurilateral and bilateral FTAs. Dairy, for example, remains one of the most protected globally traded products. New Zealand has FTAs with only 13 out of the top 20 trading partners for dairy by value. Even where agreements in place, they often have long phase-out periods or exclusions for key dairy products – in the CPTPP dairy products still face quota tariffs in excess of 200% in Japan and Canada.
32. Fonterra estimates that current dairy tariffs are suppressing the value of New Zealand's dairy products by \$1.3 billion annually, and that New Zealand only has access to around 12% of global dairy consumption at tariff rates of less than 10%. Improving FTAs is therefore still important, particularly if the multilateral system is not functioning well.
33. It would be a mistake to assume that trade negotiation work would be 'complete' if and when FTAs are concluded with those partners with which New Zealand does not currently have agreements. Many of these agreements contain provisions that New Zealand would like to see improved. Most FTAs have mechanisms for review and the forces listed above will almost certainly be reflected in the positions of the governments we negotiate with. TFAAB has assumed that its advice would apply equally to such upgrade negotiations as well as to new agreements.
34. The domestic regulatory environment in some of our important markets is also showing some volatility. Our exporters are likely to encounter new non-tariff measures in some markets, both because of increasing protectionist pressures and also for legitimate reasons – for example, as the need for regulators to address climate change becomes more pressing.
35. Where New Zealand exporters are negatively affected by new regulations the Government should continue to ensure that their legal rights are being upheld. Often, however, new barriers to trade may not be breaching any legal obligations, and in such cases the ability of New Zealand officials to influence the situation will be limited. At a minimum, they should be able to provide good advice and early warning of changes to regulation affecting the interests of exporters.

Discontent with Globalisation

36. While support for globalisation remains popular in most parts of the developing world, its impacts have come into question more in developed countries.¹⁴
37. A durable trade policy that can survive across time needs to reflect a solid social consensus. There is scant data on public attitudes to trade and trade policy in New Zealand. For most of the post-World War II period there seems to have been general acceptance of the trade policy that the New Zealand Government pursued. Over the last 20 years, as the range of issues covered by trade and investment agreements has expanded, that consensus has been increasingly challenged, particularly since the 2008 financial crisis.
38. Many opponents of trade agreements are not opposed to the idea of an open trading system, but they criticise what is often referred to as 'hyperglobalisation'. There are variations on what is meant by this, but the main themes include arguments that:

- a. Trade agreements unreasonably constrain the ability of governments to regulate in the public interest.
 - b. Trade agreements can prevent policies that governments could otherwise undertake to strengthen their local economy, and increase productivity and local employment.
 - c. The system allows multinational companies to avoid tax and compliance with the rules and regulations of nation-states.
 - d. There is damage to the environment because market prices do not reflect the cost of externalities.
 - e. Trade law dispute mechanisms systematically put trade interests above environmental and social policy objectives.
 - f. There is weak international governance and intergovernmental organisations – for example, a lack of a global competition framework.
 - g. Capital flows are unfettered with little or no international institutional safeguards to underpin international financial markets.
 - h. There has been a rise in inequality, with no or few domestic programmes to offset or redistribute the benefits from trade to those groups that suffer long-term losses in income from free trade.
39. Some of these themes have been echoed in New Zealand.¹⁵ The Trade for All consultation process showed a strong belief in the benefits of trade and support for the rules-based system and the WTO. There were, however, significant levels of concern about:
- a. the impacts on New Zealand's ability to regulate, including in relation to the Crown's ability to implement its Tiriti/Treaty obligations
 - b. negotiating positions being developed in secret, without genuine engagement with interested parties and civil society
 - c. the perceived loss of sovereignty – including through ISDS mechanisms
 - d. the long-term environmental sustainability of our current economic model and how that is reflected in trade (and domestic) policy.
 - e. the lack of a level playing field – for example, multinational avoidance of tax, lack of competition oversight globally, concern that some overseas investors are treated more favourably than New Zealand investors and businesses
 - f. the impact of trade agreements on inequality.
40. Other submitters were looking to the Government to:
- a. negotiate better access for New Zealand exporters through lower tariffs and elimination of non-tariff barriers
 - b. improve consultation mechanisms
 - c. protect Māori rights and interests, including in respect of property, taonga and culture, and involve Māori in negotiations commensurately with te Tiriti/the Treaty
 - d. support a more diverse range of New Zealanders to participate in international trade, with areas where more focus is needed including gender, ethnicity and regional development.

The Third Challenge: The Māori Economy and the Partnership under te Tiriti/the Treaty

41. The Māori economy already represents a large share of New Zealand's export and capital base. This is likely to grow over time. A forward-looking trade policy framework needs to recognise this and build on it. There are opportunities around international trade for a creative and a collaborative approach to the partnership between the Crown and Māori that will benefit the country as a whole. These are explored in Chapters 3 and 4.

Chapter 2: Making Trade Agreements Work for All

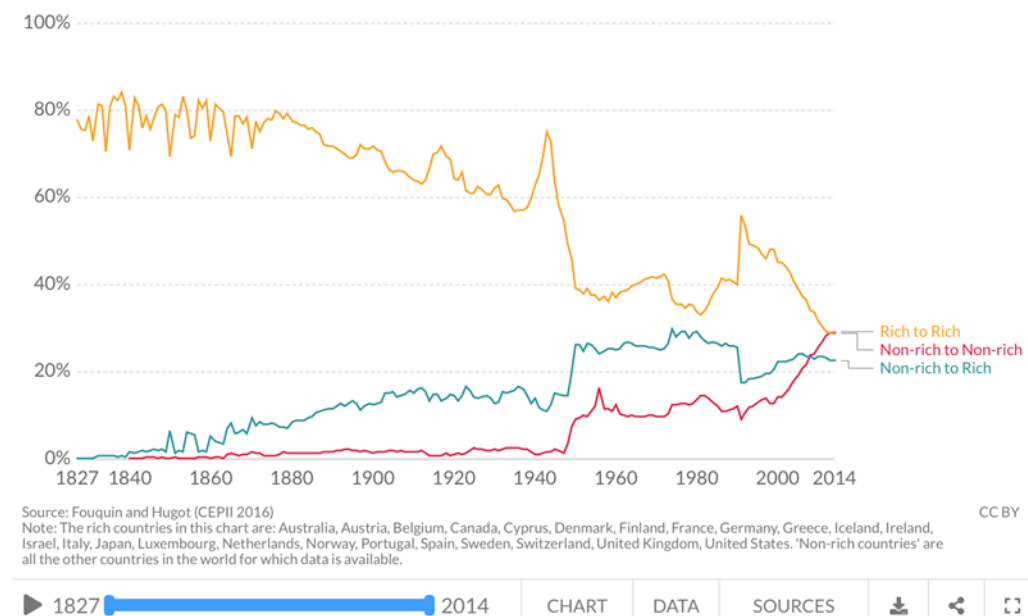
Background

42. The international trading system is not built on a politically unified global economy. It has been built by, and on, a system of nation-states. Those states, in turn, have vast differences in culture, norms and levels of economic development, which are embodied in their respective systems of laws and government.
43. There is inevitably some tension between the role of markets in providing efficiency and innovation, and the role of states in providing the legitimacy, infrastructure and stability that make it possible for countries, including their markets, to function. In international trade negotiations this tension is amplified: markets are global but the rules that govern them are domestic.¹⁶

A Changing Trade System

44. When the current system was first developed after World War II, international trade was dominated by a small number of wealthy countries. Today, trade among the world's developing economies is as large as trade among the world's richest (see Figure 10 below).

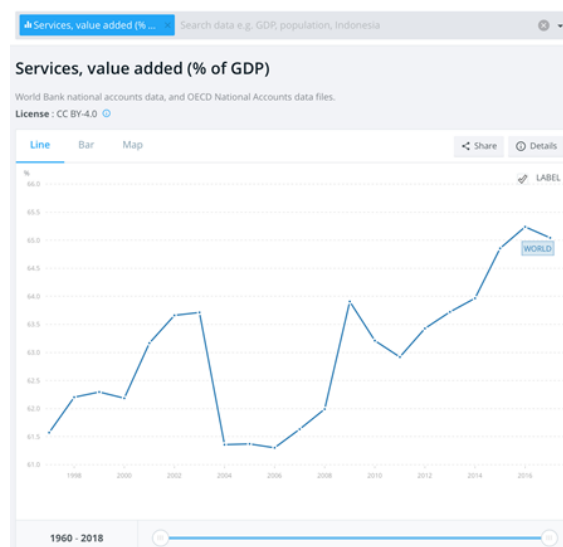
Figure 10: Exports between rich and non-rich countries (% of global exports)



Source: Our World in Data.

45. Another important economic change that has impacted on trade has been the transformation of the world's economies away from goods and towards services. This trend has been happening worldwide, including New Zealand (see Figures 11 and 12).

**Figure 11: Services, value added (% of GDP)
– worldwide**



Source: World Bank, n.d.

**Figure 12: Services, value added (% of GDP)
– New Zealand**



Source: World Bank, n.d.

46. Reflecting these changes, many more countries have become members of the international trading system,¹⁷ and the range of subjects that trade agreements cover has broadened.

Hyperglobalisation: Has It All Gone Too Far?

47. When the General Agreement on Tariffs and Trade (GATT) was established in 1947, its focus was, as its name would suggest, on reducing tariffs in goods. The post-war liberalisation of trade saw unprecedented economic growth among the ever-increasing number of countries that became members of the GATT. From the mid-1960s onwards, the range of subjects covered under trade agreements began to expand, as the agreements reached more broadly and deeply into many aspects of the way the world is governed.
48. Trade agreements now significantly influence what and how governments regulate, as well as how they spend their revenues. They cover services sectors such as health, education, water and waste services, retail and distribution, tourism, communications and broadcasting, financial services; intellectual property rights (patents and copyright); investments including licenses, permits, acquisitions (including land); biosecurity, product labelling, regulations on genetically modified foods and a range of other regulations affecting trade; and the cross-border movement of workers.
49. The expanding influence of trade rules on domestic law has brought with it new sets of concerns about the content of trade agreements and the way they are negotiated, with critics asking questions such as:
 - a. Has globalisation gone too far, so that the economic benefits are outweighed by social costs from deeper divisions in society, greater inequality and the undermining of social contracts?
 - b. Are trade agreements unduly limiting the right of governments to regulate as they see fit on a range of issues like environmental protection, labour standards, and the rights of indigenous peoples?

- c. Do the positions governments take in negotiating trade agreements reflect the influence of powerful individuals and corporations at the expense of other citizens and groups?
50. These questions are important, but they are also by their nature broad and abstract. Responses to them inevitably reflect the beliefs, opinions and interests of the people answering them; there will always be different interpretations of evidence and research. Rather than tackling these questions directly, TFAAB agreed that a better approach is to think about the processes that would be needed to allow people with fundamentally different views to reach agreement, at a different level of detail, on what policies would make for a better balance between New Zealand's trade and other social, cultural, environmental and economic objectives.

Trade and Inequality

51. There is far more economic inequality between different countries than within them. A person who belongs to the bottom 5% of earners in one of the world's richest countries is vastly better off than most people in the top 5% of the poorest countries.¹⁸ The greatest contribution of trade to development and the reduction of poverty has been its role in closing the gaps in wealth and income between the world's richest and poorest countries.
52. The World Bank estimates that the number of people living in extreme poverty was reduced by a total of 1 billion over the 25 years from 1990 to 2015. Many factors have contributed to this astonishing success: improvements in governance, urbanisation, high savings rates, education, healthcare and environmental protection have all been part of a virtuous circle. But none of it would have been possible without the economic growth which, in all countries concerned, was accompanied by increased exports.
53. The economic history of the last 50 years has shown that there is no single recipe for economic success. Some countries that have challenged trade policy orthodoxy have succeeded in reducing poverty more rapidly than others that have embraced such policies less critically. Countries like China, Korea, India and Vietnam have each used their own mix of openness and protection to develop their export capabilities.¹⁹ But what is unarguable is that the open international trading system, underpinned by the WTO, has made possible the export-led strategies that have been at the heart of global poverty reduction.
54. While inequality has been decreasing between countries, since the 1980s it has been increasing within countries.²⁰ Most economists attribute these increases to the rising importance of capital earnings, technological change and political structural changes, for example to income tax rates, benefit levels, or workers' rights. The relationship between these factors and globalisation is complex.
55. Although trade may not be the most significant contributor to inequality, it differs from other factors because it raises questions of fairness in ways that, say, changes in technology do not. If better technology comes along most people would see any consequent economic adjustments as reasonable. But when companies are being undercut by global competitors who do not have to match the same labour or environmental standards there may be cause for a legitimate complaint.²¹

56. Moreover measures of whether inequality is increasing or decreasing overall in a country mask the impacts on individuals and on particular groups and regions. Trade economists have always recognised that the impacts required for trade liberalisation are unevenly felt across economies and societies. One of the criticisms of trade policy is that governments have not paid sufficient attention to the types of adjustments and support that are needed to allow everyone to participate in or share the benefits from a more globalised system.

Trade Agreements and Domestic Regulation

57. New Zealand takes its international commitments seriously. When the country signs and ratifies an international agreement, New Zealand governments have taken great care to ensure that all the necessary domestic laws and regulations to implement it are in place. They have also taken care subsequently when new laws and regulations are introduced to check that these are consistent with existing international commitments. How then, can New Zealanders be assured that the commitments their country enters into under trade agreements will not cut across the intentions of future governments?
58. In one important sense the Government's right to regulate, a core part of its sovereignty, is always preserved. Governments retain the right to withdraw from trade agreements. But withdrawal is a complicated process that takes time and comes with serious economic and reputational risks for the country. A wise trade policy should always look to avoid putting future governments in a position where they would need to choose between implementing the policies they were elected on and remaining in international agreements to which the country has previously committed.
59. It would be simplistic to view trade agreements as if they implied that other countries or international organisations are being given a right to dictate policy to New Zealand. The rules in trade agreements are a mix of measures that New Zealand has accepted as requests from other governments and measures it has actively promoted for its own national interest. New Zealand has, for example, been at the forefront of countries calling for stronger rules limiting expenditure on domestic support and export subsidies in agriculture. When those measures affect our own policy choices, it is not a case of external rules being imposed on us. It is simply a case of New Zealand being held to its own standards.
60. Trade agreements set clear rules, but the framework is not absolute. There are reasons for governments to act outside these commitments. Examples include national security and emergency safeguard measures, and specific rules for sanitary and phytosanitary measures. There are areas in trade agreements where New Zealand has decided not to make a commitment. Most New Zealand FTAs create an exception for the New Zealand Government in relation to Tiriti/Treaty issues (the Treaty of Waitangi exception).²²
61. Trade agreements set out general exceptions to the rules. Article XX of the GATT (and a similar although not identical Article XIV in the General Agreement on Trade in Services (GATS)) provides general exceptions, and FTAs that New Zealand has entered into contain similar provisions. This general exceptions regime is not without difficulty. On only two occasions since the WTO Appellate Body was established has a country succeeded in defending a measure under Article XX.
62. More recent FTAs also contain new chapters to recognise concerns about particular policy outcomes for labour and environmental matters. These provisions are not in WTO agreements.

63. The jurisprudence of the WTO's Appellate Body has over time developed so that countries can increasingly take steps with environmental or other social goals,²³ but there must be a clear link between the policy objective and the regulation, and they must be consistent with the non-discriminatory provisions of WTO agreements – these conditions can be difficult to meet.²⁴ There are also concerns that conflicts between trade rules and other international agreements are addressed within a trade law framework leading to a favouring of the approach behind trade rules where there is conflict between those agreements.
64. Over the longer term New Zealand should seek to use its influence to advocate for a stronger and more coherent network of international agreements that would provide a range of influences on the environment within which trade is carried out. There are currently gaps in international regulation – taxation, competition policy, digital – and a lack of enforceability of other international agreements (e.g. climate change, International Labour Organization [ILO] conventions). While provisions in FTAs have been used to cover some of these gaps (e.g. labour chapters), these are not always the most satisfactory way of addressing such issues. Better alignment between trade agreements and other international agreements is needed to address outcomes in other policy areas.
65. A separate but related concern is that there will be limited flexibility to regulate as markets and technologies change in ways that were not anticipated by negotiators. No government will ever have a perfect vision of the future. And there is in all systems of government a tendency to tilt decision-making towards short-term interests and underinvestment in preventative measures. Policy problems that emerge gradually, with cumulative effects, such as climate change, are notoriously difficult to address effectively. Social attitudes also change over time, such as towards social media, and governments are elected on policy platforms that reflect changes in attitudes.
66. When making commitments under trade agreements, the Government needs to make sure that it is not foreclosing opportunities to regulate in New Zealand's best interests in the future. In TFAAB's consultations, concerns have been expressed by officials that some departments have considered trade agreement commitments only against current law and practice, and without sufficient future focus.
67. In this context, TFAAB supports the Waitangi Tribunal's ruling on Wai 2522 which recommends that Māori and the Crown discuss the drafting of the Treaty of Waitangi exception used in New Zealand's FTAs. Decisions on the future text of the exception should only be made following the dialogue, as recommended by the Tribunal.
68. One of the factors that does prevent future flexibility is the use of 'standstill and ratchet'²⁵ clauses, which are tools used to facilitate liberalisation. Not all agreements have both of these clauses, and some agreements exempt certain sectors from them. Standstill clauses are one way of ensuring that countries continue to meet their agreed commitments. Ratchet clauses can prevent 'experiments' in regulatory approaches and stop poor regulation from being corrected. Ratchet clauses also mean that other countries may get benefits in the future that were not envisioned during the negotiation.

Regulatory Chill

69. The concept of regulatory chill refers to the idea that governments who wish to enact certain regulatory or public policy measures will not legislate out of concern that doing so may be perceived as anti-trade and/or is in breach of trade rules. Internationally, there has been

concern that national policy autonomy has been unreasonably constrained in areas such as the environment, public safety and health, and human rights.

70. In theory, regulatory chill extends beyond regulation and includes suppression of other forms of government action. Reasons that have been advanced as causes for it include:
 - a. the fear of capital flight
 - b. the influence of lobbying, in particular action taken by large multinationals concerned at the precedent effect of new regulation in a market
 - c. a 'race to the bottom' on, for example, environmental regulation to maintain trade competitiveness
 - d. uncertainty by officials and governments about the extent to which trade agreements allow particular regulation.
71. Internationally, there have been empirical studies into the extent or otherwise of regulatory chill,²⁶ but the findings of this research have not been consistent. In New Zealand, proponents of the theory have expressed two sets of concerns. The first is that there are some policies that New Zealand might want to pursue that are inconsistent with its commitments in trade agreements. Their examples include:
 - a. government funding schemes to firms (including Māori firms or sectors with a large Māori commercial presence) engaged in exporting that other countries could view as prohibited export subsidies. This has arguably led to less than efficient means of providing assistance – for example, through the use of loans for small amounts of money rather than grants.
 - b. local content requirements in broadcasting
 - c. introducing a royalty on exports of bottled water.
72. There are also some views that a combination of factors is leading to a degree of regulatory chill in certain sectors. Some groups internationally advance tobacco regulation (or delays to it) as an example of regulatory chill.²⁷ In New Zealand there are a number of other areas where concerns have been raised about regulation and other government interventions. These include:
 - a. intellectual property, where despite some flexibility in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) there are concerns over the extent to which matters such as the Government response to Wai 262 might be handled, despite some flexibility in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
 - b. the Treaty of Waitangi exception provisions that have been included in FTAs (but not in the WTO agreements), which are as yet untested. While the exceptions are broad and have consequently been hard to negotiate, their exact parameters are at least open to contest by other countries. In some circumstances an unwillingness to have them tested could lead to some policy options not being available.
 - c. the ability of the Government to regulate investment in housing and land, with urgent legislation having to be passed prior to New Zealand joining the CPTPP to allow government policy to be put in place.
 - d. industry support, with a number of tools not being available because they either run counter to trade agreement provisions or are in a grey area and there is a reluctance to be seen to be 'bending the rules'
 - e. the development of government procurement policies.

73. Further, there is a perception that MFAT, in looking to preserve New Zealand's positive trade policy reputation, can sometimes be conservative in the way that it assesses possible policies against trade agreement provisions.
74. It is difficult to distinguish between regulatory chill, policy choices and delay by governments. For example, in agriculture there are forms of support that the Government might wish to introduce that would need to be listed in New Zealand's 'amber box'²⁸ at the WTO. New Zealand has never provided support that would require an amber box listing, and its general attitude towards such support has been to oppose such measures by other countries. This is not a legal restriction; it is a policy choice.
75. It is clear, though, that processes could be improved to identify regulatory options and set out more clearly out the costs and benefits of proceeding with regulation or other support. Greater transparency and evaluation of trade and regulatory options will be important factors. Some of the other recommendations in this report (e.g. those dealing with anticipatory governance, evaluation and engagement) will assist in this.

Improving Foresight to Get Better Agreements

76. Improving the Government's foresight is an important part of what is known as 'anticipatory governance'.²⁹ There are some well-established principles that apply generally to the ways in which governments try to improve their foresight and their ability to manage uncertainties. Some of these principles are highly relevant to the way we should think about trade agreements:
- a. Active measures are needed to counter 'presentist bias' by shifting the time horizons of decision-makers towards the future. Part of the solution is to embed a concern for the future within policy processes.
 - b. As a general rule it is better to build on, improve, and strengthen existing institutions, policy frameworks and processes than to build entirely new ones.
 - c. Multi-stakeholder forums³⁰ can play an important role in helping policy-makers to access the information they need to make more robust policy, including the way that trade policy and domestic priorities are addressed. These are discussed further in Chapter 3.
77. Foresight is critical to all areas of policy. TFAAB did not have the time and resources to focus in depth on all of them. But we did look at three critical areas where trade and regulatory policy intersect: trade and environment (with a particular emphasis on climate change), digital trade, and investment.

Environment and Climate Change

78. This section of the report focuses mostly on climate change because of its obvious importance. But much of the underlying analysis applies equally to trade and environment issues more broadly.
79. In theory there is no reason why a free and open trading system must be incompatible with a low carbon economy and environmental protection. In such an economy, with externalities priced correctly, an open trading system would continue to play important roles in allocating resources efficiently and dispersing new technologies. But the world has not arrived at a low

carbon economy; it is trying to get to there. As the economist Kevin Gallagher has pointed out, *'universally reducing trade barriers regardless of their climate impacts – as in the case of oil and gas imports – only further accentuates current patterns of economic activity that contribute to climate change'*.³¹

80. The global focus on climate change will almost certainly grow if, as seems likely, the world fails to reach the Paris Accord milestones and targets. Even if the targets are met, the impacts of climate change are projected to become greater over time. We should expect the international focus on agreeing and enforcing climate change-related commitments to grow over time.
81. Policy changes to address climate change will be uneven and unpredictable globally. This is likely to contribute to an unsettled global trading environment as divergent interests drive tensions globally. For example, we could expect to see some nations prioritising food security, others seeking to enforce climate change disciplines, while still others adopting nationalist agendas as their standards of living come under pressure.
82. The New Zealand economy is highly exposed to emissions-related commitments through its two largest export-earning sectors: food & fibre and tourism. The food & fibre sector is particularly exposed to its ruminant protein businesses of dairy and meat; the tourism sector through the carbon emissions of air travel.
83. Where and how emissions are accounted for is of high interest to New Zealand. Currently emissions are accounted for at the production end rather than at the consumption end, which has implications for environmentally efficient producers. Carbon sequestration rules are also of high interest to New Zealand, as is the operation of global carbon markets.

A Framework for Trade and the Environment (including Climate Change)

84. Climate change policy intersects with trade and investment in both direct and indirect ways.³² The direct impact is through transportation-related emissions. Because most of the world's merchandise trade is transported by sea,³³ the direct impacts of trade on the climate are generally considered to be far less significant than the indirect impacts.
85. That said, the maritime sector does have an important part to play in reducing emissions. Internationally, standards for this are set by the International Maritime Organization. Annex VI of MARPOL regulates emissions that are harmful to public health, deplete the ozone layer and contribute to climate change. In addition, the direct impacts of trade in some parts of the services economy, such as tourism and education, represent a significant proportion of the carbon footprint of those sectors.
86. Not all of the environmental implications of trade are priced or regulated; the impact of economic externalities is well accepted. The standard framework for thinking about indirect impacts of trade on the environment was developed in 1993 by Gene Grossman and Alan Krueger at the United States National Bureau of Economic Research.³⁴ This framework identifies three mechanisms by which trade and investment have impacts on the environment.
 - a. *Scale effects* occur when liberalisation causes expansion of economic activity. If the nature of the activity remains unchanged but the volume grows, there will be resource depletion and increases in pollution.
 - b. *Composition effects* occur as a result of specialisation when increasing trade directs economic activities towards areas of comparative advantage. Composition effects can

increase or decrease emissions depending on whether the sectors in which a country has an advantage are more or less greenhouse gas-intensive.

- c. *Technique effects* are changes in resource extraction or production techniques. They can lead to a decline in pollution through the transfer of technology to cleaner methods. But the spread of high emission techniques, for example new and better methods for extracting oil through fracking, could have the opposite effect.
87. Beyond these three effects, economists have also identified a relationship between economic growth and wealth, and the wealth effects on environmental outcomes. When income levels increase, newly affluent societies tend to demand higher environmental standards. But to date economists have not been able to establish that this effect applies to the demand for measures to address climate change.³⁵
88. Trade policy can support emissions reductions through minimising scale effects and developing our comparative advantage in areas where the country enjoys environmental as well as economic advantages towards a zero or low emissions economy. Support should be considered for products and services that play a positive role in emissions reductions and increased resilience.
89. Relying on comparative advantage and market mechanisms alone will not guide us from a high emissions economy to a low emissions one. But New Zealand's efficient production systems provide a solid base on which, with the right mix of enterprise and pricing and regulation to reflect externalities, a truly sustainable form of comparative advantage can be built.³⁶

Trade Agreements and Climate Change Policy

90. Climate change represents a direct and urgent challenge to policy-makers and the public. It is not possible to think about trade policy without seeing it through a climate change lens. As the Prime Minister noted at the launch of the Agreement on Climate Change, Trade and Sustainability (ACCTS), '[T]rade policies, practices and rules have an important and substantive role to play.'
91. The debate about trade and climate change is not only about the economic impacts, direct and indirect, of trade on the environment. Trade rules should be designed to support measures to address climate change.
92. The best solution for addressing climate change would be an international agreement with universal membership, an agreed action plan and effective mechanisms for implementation, monitoring, review and dispute settlement. But such a solution is a long way off and governments, while they are working towards it, cannot afford to do nothing. Action is urgently needed. Governments, including New Zealand's, are looking to be creative and energetic in exploring policy options – sometimes collaboratively with other states, sometimes unilaterally. In these circumstances, some tension with trade policy rules, principles and objectives is inevitable.
93. Adding to the complexity of this issue, many measurement systems will not account for the relative greenhouse gas efficiency with which each country produces its exports. For example, if New Zealand produces less dairy produce here and the consequences are increased production in systems with less greenhouse gas efficiency, the outcome, all things being equal, would be worse for the climate.

94. Subsequent to the introduction of its Zero Carbon Bill, which aims to reduce emissions to net zero by 2050, the Government has released its response to the Productivity Commission's *Low Emissions Economy* report.³⁷ Policies to drive the transition to a low emissions economy have been identified in seven sectors. In addition to the New Zealand Emissions Trading Scheme, which remains the main tool for incentivising businesses and individuals to reduce emissions, policy tools that are stated or implied in the Government's response include subsidies, targeted procurement, and new regulatory standards.
95. Provided they are implemented in a non-discriminatory way, as proposed these policies are highly unlikely to be challenged under the WTO dispute settlement system.
96. But there are important caveats to this statement:
- a. New Zealand's Zero Carbon Bill sets out a 30-year timeframe. Our trade negotiators will need to be careful to preserve policy space for more aggressive measures that will be needed if current plans do not deliver the reductions in emissions necessary to meet climate change targets. Policy measures that may seem impractical or politically unsupported now, such as border tax adjustments, could well be viewed differently in the future. More space may also be needed for subsidies, and possibly local content requirements, than is currently provided for.
 - b. An important consideration is the potential role of measures traditionally considered protectionist in a WTO context, such as local content requirements. A high level report to the Secretary-General of the United Nations³⁸ recommended legitimising their use but only for limited and time-bound purposes.
 - c. Although WTO jurisprudence on environment measures has been tracking in a positive direction, the specific area of climate change remains untested. It is one thing to say, at a high level, that governments are free to regulate for the environment. But difficult issues will arise if and when governments start implementing trade restrictions, particularly if they need to do so unilaterally.
 - d. An abiding concern is the perception of an imbalance between the WTO's hard legal obligations and binding dispute settlement mechanisms on the one hand, and the relative weakness of treaties to protect environmental and social interests on the other.³⁹
 - e. Recall the strong likelihood noted above that measures to combat climate change will generate more complex and challenging issues for trade policy. This will include issues where the line between the WTO's expertise and that of other subject matter experts may be blurred. This raises two issues: the need to strengthen dispute settlement mechanisms in other fora; and the composition of future WTO panels where different types of expertise may be needed.
 - f. The WTO and UNEP have collaborated actively, but their last joint study was produced in 2009, which concluded that trade liberalisation most likely leads to increased CO₂ emissions. New Zealand should encourage more cooperation on trade and climate change.

New Zealand's International Response

97. MFAT '*leads New Zealand's international response to climate change through multilateral negotiations, our foreign and trade, and climate related support*'. Climate change is defined as a key strategic priority for MFAT, which is charged with representing and advancing the Government's international climate change priorities, including:

- a. improving the climate resilience of Pacific Island nations
 - b. increasing the availability of climate finance to developing countries so they can build resilient infrastructure and pursue low carbon economic growth
 - c. developing effective carbon markets which are transparent and environmentally sound
 - d. encouraging the international shipping industry to reduce emissions
 - e. promoting a level playing field for agriculture when developing global rules and guidelines for reducing emissions
 - f. ensuring all countries provide transparent, accurate and regular national greenhouse gas inventories.⁴⁰
98. The Government has recently announced that it is joining with Fiji, Iceland, Norway and Costa Rica to negotiate the ACCTS. The envisaged scope of the agreement is the elimination of tariffs on environmental goods and new commitments on environmental services, disciplines to eliminate fossil fuel subsidies, and the development of guidelines for voluntary eco-labelling programmes and associated mechanisms to encourage their promotion and application.
99. The vision is that ACCTS will demonstrate in practical terms how climate change can provide trade opportunities, and how trade rules can support climate and broader environmental objectives while generating momentum towards an eventual multilateral set of solutions.

Building a Sounder Domestic Base

100. The New Zealand Government produced a Framework for Trade and Environment in October 2001. Co-created by MFAT and MfE in consultation with various business groups, NGOs, and other government departments, it is a high level statement of principles.
101. It is a sound idea to have an agreed Whole of Government framework for trade and environment that has been widely consulted and put through a Cabinet process. There is no substitute for the legitimacy that this brings. But the current framework is showing its age. It needs to be updated in light of the environmental and political developments since 2001, as well as the significant advances of knowledge and understanding that have been made over that period. The Framework needs stronger analytical foundations to assess the effects, particularly the indirect effects, of trade on the environment. MFAT and MfE should lead work on a new Framework, and involve other departments with policy interests, including MBIE, MPI, and Treasury, NGOs and business.
102. An important part of a new framework will be giving clear direction to our trade negotiators on the need to maintain policy space for the types of actions that will be needed to address climate change in the years and decades ahead. This will in the first instance require a review of the flexibility that we do have under trade agreements and trade policy settings to regulate in respect of climate change. One example comes from the work of the Resource Management Review Panel, which is looking at how to bring climate change mitigation into the resource consenting and planning system. It may be that in the future companies will have to demonstrate how they intend to mitigate or offset greenhouse gas emissions in order to gain regulatory approval under a revised resource management system.

Active Leadership Internationally

103. As noted earlier, as the international trade policy space becomes more contested, it is likely that New Zealand's relative level of influence will reduce. This means that the country needs to be selective in engaging only on issues that are both important and which it has a realistic chance of influencing. Trade and environment is one such issue. It is critical to the future of humankind. The policy responses it requires will shape the whole economy, especially the agricultural and transport sectors, for decades. And New Zealand's strong record of contribution as a founding member of the UN, GATT and WTO means it will be listened to.
104. In the WTO, New Zealand contributes to the work of the WTO's Committee on Trade and Environment (CTE) which was established in 1994 with a twofold mandate:
- 1) Identify the relationship between trade measures and environmental measures in order to promote sustainable development.
 - 2) Make appropriate recommendations on whether any modifications of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.⁴¹
105. In general, New Zealand's environmental work in the WTO and ACCTS has been in areas that are a comfortable fit with its long-standing trade policy objectives. For example, New Zealand has:
- a. been among the WTO members pursuing an Environmental Goods Agreement. This seeks to remove trade barriers to facilitate the free flow of 'green goods'. Negotiations for an Environmental Goods Agreement began in 2014 but have been stalled since WTO ministers failed to reach agreement in 2016.
 - b. opposed subsidies for agriculture, fossil fuels and fisheries.
106. These are sensible things to be doing, but much more is needed. New Zealand should be taking positions in the CTE that reflect the significance urgency of the climate change challenge and prepare for the likelihood that WTO cases on climate change might need a deeper understanding of reasons for, and the technical detail of, particular domestic policies. Climate change considerations need to be embedded in trade policy.
107. As mentioned above, Annex VI of MARPOL regulates maritime emissions. New Zealand is one of only two OECD countries which is not party to this treaty.⁴² The Ministry of Transport has consulted on whether New Zealand should accede to Annex VI. A strong majority of 49 submissions received were in favour, with none directly opposed. Remaining outside this well-established treaty is glaringly at odds with New Zealand's general approach to sustainable development.

Digital and E-commerce

Background

108. There is no agreed definition of e-commerce or digital trade.⁴³ But by whatever definition is used both are growing at a remarkable rate. At present about 80% of global e-commerce sales occur within borders rather than across them. But that still leaves that a large and growing share of international commerce taking place on electronic platforms. The McKinsey Global Institute has projected that the global market for cross-border business to consumer e-commerce will top US\$1 trillion by 2020.⁴⁴

109. GATS applies to cross-border trade and is, in theory, technologically neutral.⁴⁵ But the sectoral commitments that WTO members have made under the GATS are uneven and there are no specific multilateral rules in the WTO regulating trade in e-commerce. Coverage of e-commerce is haphazardly spread across the rules agreed by some countries in their bilateral or regional trade agreements.
110. In January 2019 negotiations to put in place global rules on e-commerce were launched in the WTO, as an agreement between a subset of WTO members. Some of the stated objectives for the negotiations include:⁴⁶
- a. improving consumers' trust in the on-line environment and combat spam
 - b. tackling barriers that prevent cross-border sales
 - c. guaranteeing the validity of e-contracts and e-signatures
 - d. permanently banning customs duties on electronic transmissions
 - e. addressing forced data localisation requirements and forced disclosure of source code.

New Zealand's Position

111. By some measures, the tech sector is New Zealand's third largest export sector. Of this, traditionally hi-tech manufacturing, by companies such as F&P Healthcare, was the main revenue generator. However, in recent years the growth and sales have been coming from software and other digital exports. Last year the top 200 New Zealand tech exporters generated over \$11 billion in international revenues. It is expected that digital exports will continue to grow, so it is important that the Government is engaging proactively in international fora on issues critical for digital trade, including FTAs and data protection, privacy and sovereignty, and standards and protocols.
112. New Zealand has been part of the WTO negotiations on e-commerce since they began. In addition, in May 2019 New Zealand launched negotiations with Singapore and Chile towards a Digital Economic Partnership Agreement to help co-create and shape global norms for digital trade and to lead on important issues in the wider digital economy. MFAT has stated that *'the envisaged scope is wider than E-commerce chapters in FTAs and the WTO E-commerce negotiations and, at the same time, will safeguard our ability to regulate and address legitimate public policy interests'*.⁴⁷

What's at Stake?

113. Digital technology offers many opportunities to New Zealand: it can help overcome the disadvantages of distance from markets, assist businesses to increase their productivity, provide enjoyment to New Zealanders, and allow New Zealand to leverage its high levels of education. The spread of digital technology into all aspects of life has, however, advanced at a speed that governments and regulators have struggled to keep pace with. One forecast is that *'by 2035 the world will have a trillion connected computers, built into everything from food packaging to bridges and clothes'*.⁴⁸
114. Both the benefits and the risks that such a transformation will bring are impossible to calculate with any precision at this point. What we do know, however, is that given the ubiquity of digital technology, any negotiations on digital trade will affect a wide range of interests in New Zealand, both commercial and regulatory.

115. Commercially, the extent of the trade that would be affected by digital negotiations is broader than is sometimes realised. It is not just the information and communications technology sector that has interests at stake. McKinsey estimated in 2016 that 50% of trade in services and 15% of trade in goods is digitally enabled. These percentages are likely to continue to grow. New Zealand exporters are looking for secure market access through strong, predictable rules that are consistent around the world.
116. At the same time, the nature of the digital economy raises a range of both established trade policy issues and new issues and concerns that traditional trade negotiations have not previously needed to focus on to a great degree. These include:
- a. consumer and privacy rights
 - b. the implications for competition policy of the large first mover advantages that the digital sector can produce
 - c. impacts on employment and criminal law
 - d. net neutrality and competition
 - e. taxation equity issues
 - f. censorship and digital content
 - g. social impacts such as bullying, abuse of privacy
 - h. the digital divide and inequitable access
 - i. pornography
 - j. the facilitation of crime through the 'dark web'
 - k. technical requirements (e.g. local storage and processing of information, ISP liability, access to source codes).
117. Trade agreements may not be the best way to deal with some of the issues related to digital technology. Some issues are important for other than for trade and commercial reasons. Ideally, there should be a framework that allows all of these issues to be addressed in an international body that had broader aims than the WTO.

Prospects for International Negotiations

118. Progress towards international agreement is likely to be slow. There are significant gaps in the interests and positions of key players: the United States, the EU, China and India.⁴⁹ In the short and even medium term, progress is likely to be limited to the less contentious of the technical matters, such as the validity of electronic signatures, unsolicited contracts, and some forms of consumer protection from online fraud.⁵⁰
119. Even if progress is slow, New Zealand cannot afford to stand and watch while the world develops the rules on such an important sector without us. At the same time, however, the argument that New Zealand needs to be 'in the negotiating room' is largely undermined if our representatives are there without a clear idea of where our national interests lie.
120. The speed and breadth of technological change, and the range of concerns outlined above, makes any analysis of New Zealand's interests in these negotiations challenging. MFAT has run a process of consultation but this has generated only a thin response. Given the complexity of the issues and their importance to the country's future, far more investigation and engagement is needed.

121. New Zealand's interests in the negotiation are not clearly aligned with those of any of the major players. We will need to find our own path and identify like-minded partners who share our objectives. At present the country's position seems to reflect too much confidence that the type of thinking about the removal of trade barriers that might have applied to goods and more traditional services trade is transferable to a very different trading and regulatory environment in the digital world. This is a long way from the type of anticipatory governance thinking that TFAAB endorses. A thorough review of New Zealand's interests in the digital trade negotiations should be carried out, involving the Government Chief Digital Officer, Callaghan Innovation, the Productivity Commission, the Privacy Commissioner, MBIE, MFAT and the APEC Business Advisory Council, as well as representatives from Māori, business and civil society.

Investment

122. Stocks of foreign direct investment (FDI) in New Zealand are relatively low given our profile as a small, developed, open economy.⁵¹ This is despite New Zealand's strong reputation as a well-run democracy in which it is relatively easy to do business.⁵² TFAAB heard from NZTE that a main reason for low FDI seems to be a shortage of investment-ready propositions at appropriate scale for foreign capital to invest in.
123. There are many potential benefits to FDI. It can enhance New Zealand's access to export markets, improve integration with global value chains, and strengthen linkages with international knowledge networks. FDI:
- a. fuels productivity by bringing new technologies, processes and know-how to some industries and contributing to economic infrastructure⁵³
 - b. may create new jobs in 'greenfield' sectors and lift investment in human capital, including in the regions.
124. Success in attracting FDI will be especially important in the digital and technology sector. Access to more start-up capital, seed money and growth funds is needed to supplement local investment, both public and private, to help small New Zealand technology start-ups to grow and develop into export businesses. It is clear that significant gaps exist in the venture and early stage capital markets, which is hindering the chances for New Zealand entrepreneurs to succeed on the world stage. We believe there is a specific opportunity for the Government to focus on investment vehicles at different levels, which will grow the technology export sector and provide new opportunities for SMEs and the regions. The experience of Australia is likely to be informative as that country has used its sovereign wealth fund in partnership with global venture funds to fast-forward the development of a more globally competitive early stage capital market. This in turn has spurred the development of companies well placed to grow Australian technology exports. In New Zealand, the Government has established the Venture Capital Fund to address the gaps in early stage financing, and to keep growth companies in New Zealand for longer.
125. The PMBAC has drawn the Government's attention to the challenges and opportunities in developing New Zealand's early stage capital market.⁵⁴ It has recommended that the Government undertake a serious investigation of offshore investment attraction models, indicating a particular interest in the Singaporean model.
126. This model is based on a more proactive approach to the identification of sectors with comparative advantage and working to create scale. It aims to scale up SMEs to mid-tier status through a process of sector building. It envisages a more joined-up approach between Government and the private sector than has been evident in New Zealand to date.

127. A further challenge is the relatively low number of New Zealand companies that have the capability to invest in and export to offshore markets. Lifting the country's performance in this area is a key part of the productivity challenge.
128. For both of these reasons, New Zealand governments have chosen to include investment chapters in FTAs and have concluded separate investment agreements. Because investment agreements have implications for governments' legislative and regulatory functions, they are an important focus when thinking in a Trade for All context.
129. New Zealand has generally supported open investment policy and sought agreements with other countries which:
 - a. minimise discriminatory, cumbersome or arbitrary restrictions on inwards investment
 - b. reduce discriminatory policies, for example taxation arrangements, that discourage outwards foreign investment.
130. At same time, New Zealand's policy recognises sensitivities associated with some types of foreign investment in New Zealand, including categories of some land (farm, coastal), water resources and residential housing. At present the operation of the Overseas Investment Act is under review. Given that foreign investment can result in benefits or costs to the economy, it is important that Government has the powers to maximise the benefits from foreign investment and minimise the costs.
131. There is no doubt that New Zealand is, and will continue to be, capable of producing world class, investable companies. One of the factors that will be important in this is that such companies be able to access FDI.
132. At the same time, the trends identified in Chapter 1 – a growing population, a warming planet, and the pressures these will bring – create potential for tensions between what New Zealand wants from the world and why the world is interested in us. Control of natural resources will be increasingly attractive to foreign investors. The decisions of future governments will need to be clear-eyed about that. Commitments in our agreements need to leave appropriate space for future governments to make decisions in the national interest.

Investor-State Dispute Settlement

133. One of the most controversial aspects of investment agreements concerns their ISDS provisions. The general rule for international agreements is that only governments are able to exercise rights under them. ISDS is an exception to this rule. It is a dispute resolution method that allows foreign investors to initiate legal claims directly, without involving their own governments.
134. Various arguments are put forward as rationales for both ISDS and investment agreements more generally. Among the most common are that they:
 - a. promote investment flows through providing investors with additional protection
 - b. depoliticise disputes between states and investors
 - c. promote the rule of law.
135. Only foreign investors are able to sue under ISDS provisions. States are not able to sue companies under treaty clauses since the latter are not actually party to the treaties. Companies do not have the right to take their own governments to arbitral tribunals.

136. Arbitral panels cannot overturn local laws which are inconsistent with trade agreements. But they can award very large monetary damages to companies if violations of their treaty rights are established. The types of state conduct that are most frequently challenged range from alleged nationalisation of investments and contractual issues to failures to address civil strikes and local community protests.
137. In recent years, the ISDS caseload has increased exponentially and, at the same time, exposed weaknesses in the current approach. UNCTAD's *World Investment Report 2013*, for example, identifies problems concerning legitimacy, transparency, inconsistency of decisions, and arbitrator independence and impartiality.⁵⁵
138. One of the arguments against the need for ISDS clauses is the existence of alternatives. In developed countries such as New Zealand, there are strong courts and legal institutions with a proven record of independence in ruling on disputes between commercial organisations and Government. For investments in other parts of the world, options such as risk insurance may be available on commercially viable terms to provide the assurance investors need without the downsides of ISDS, such as overdetering legitimate regulatory conduct.
139. ISDS is often presented as a binary option of ad hoc arbitration or nothing. However, ISDS may encompass a range of mechanisms for addressing investment disputes. For example, options presented to UNCITRAL's Working Group have ranged from the Thai Government's proposal for an Advisory Centre to the EU's proposal for a Standing Court Mechanism.
140. Internationally, work to reform ISDS is taking place in several fora. UNCITRAL is considering procedural reform through one of its six Working Groups. ISDS reform has been a topic at UNCTAD's Investment Agreements Annual Conferences and sessions of its multi-stakeholder World Investment Forum, its Investment Commission and its Expert Meetings. The International Centre for the Settlement of Investment Disputes (ICSID) is in the process of amending its rules for supporting investment arbitration. ISDS has also been a focus of work at the OECD's Freedom of Investment Roundtable.

New Zealand and ISDS

141. New Zealand is party to six FTAs and two Investment Promotion and Protection Agreements which contain compulsory ISDS clauses. Although the Government accepted some form of ISDS in the TPP/CPTPP, it has renounced ISDS for future trade and investment treaties.
142. ISDS clauses in New Zealand's FTAs have various safeguards aimed at protecting the Government's right to regulate and prevent the abuse of ISDS by corporations, and to date no ISDS claim has been brought against the New Zealand Government under a free trade or investment agreement. Nor has any New Zealand company brought an ISDS claim against a foreign government.
143. There has, however, been one important ISDS contractual claim brought to an ICSID tribunal against the New Zealand Government. Ultimately, a settlement was reached in favour of Mobil Oil NZ Ltd in a dispute concerning rights that had been assigned to it by a previous government. The proceedings were held under conditions of confidentiality, and the terms of the settlement have never been disclosed.

Options for New Zealand

144. The main argument put by those advocating that New Zealand actively seek to include ISDS in its trade agreements is that it is potentially a useful tool for our investors offshore, and this can be viewed in the context of New Zealand ideally seeing more of its companies investing overseas. It could also be argued that ISDS supports the effectiveness of investor protections by making those protections enforceable. The potential for enforcement can influence state behaviour, whether or not claims are actually made. But the case under either scenario has limits when viewed in the current context of New Zealand.
145. No New Zealand business to date has ever used ISDS to resolve a dispute with a foreign government. This suggests it may be a tool of limited use. The legal costs of bringing an ISDS case typically run into millions of dollars. Most New Zealand investors simply could not afford this. Even for those companies that could afford it, the political costs of bringing an ISDS case would be likely to outweigh any benefit.
146. A good alternative to ISDS is available for New Zealand investors. Because relatively few New Zealand companies have significant offshore investments, they are able to secure diplomatic support when needed more easily than companies that come from larger countries with wider economic interests. New Zealand's trade diplomats have a strong track record in helping companies to resolve problems and disputes with foreign governments.
147. Nor does ISDS seem to be necessary to the Government's efforts to attract FDI. There is little evidence to suggest that any company considering making an investment decision would put particular weight on whether or not its own country had an ISDS clause in its treaty relationships with New Zealand. This country has a strong reputation for transparency and ease of doing business, and our courts and justice system enjoy a strong international reputation.
148. The downsides of ISDS for New Zealand are viewed by some as very significant. They hold that ISDS is fundamentally unfair, undermines the integrity of judicial systems, exposes governments to large fiscal risks, and contributes to regulatory chill. Dissatisfaction with ISDS was a major theme of anti-TPP protests. Whatever view one takes of the merits of the argument, there is little doubt that the inclusion of ISDS clauses in FTAs has damaged public trust and confidence in trade agreements.
149. It is one thing to agree on the undesirability of including an ISDS clause in FTAs. There is a further question, however, as to whether the inclusion of an ISDS clause should be enough to cause New Zealand to walk away from a concluded negotiation that is otherwise beneficial. And there is also the prior question of whether the preference of a negotiating partner to include an ISDS clause in an agreement should preclude New Zealand from entering into negotiations in the first place. Some TFAAB members consider inclusion of ISDS to be a clear red line, including for entering into negotiations; for others it is one element to be considered in an overall assessment of whether the agreement is in the national interest. They believe it should not prevent governments from negotiating an agreement that otherwise has broad benefits to New Zealanders.
150. There is a strong case for New Zealand to be more involved in the international process for ISDS reform. New Zealand remains vulnerable to ISDS proceedings under eight existing international agreements. Many of the alternatives under discussion – in the UNCITRAL Working Group in particular – merit serious consideration. Participation in UNCITRAL's Working Group on ISDS does not require New Zealand to be an UNCITRAL member.

MFAT has advised that it is scoping future engagement in the final phase of the process. At this stage, New Zealand maintains only a watching brief.

151. In its report on the TPP Agreement (Wai 2522), the Waitangi Tribunal recommended that the Crown consider, and develop in dialogue with Māori, a protocol on ISDS to set out the procedures that New Zealand would follow in the future if:
 - a. an investor took an ISDS case against New Zealand, and
 - b. the case was one which is likely to involve the Treaty of Waitangi exception that is included in New Zealand's trade agreements.
152. Consultation on the protocol took place in November–December 2018. MFAT is considering the feedback received, and using it to prepare a draft protocol.
153. We should also note that, given the country's interests in the field of arbitration generally, which are far broader than ISDS, it is remarkable that New Zealand is not among the 119 UN members to have served at least one term during the 53 years of UNCITRAL's existence.

Other Important Areas

Trade and Labour Rights

154. New Zealand has an existing framework for addressing trade and labour rights issues. The 2001 Cabinet Framework for Trade and Labour is a high level principles-based approach that recalls the commitments that member states of the ILO have made under the Declaration of Fundamental Principles and Rights to Work (DFPRW). The Framework was announced after consultation with the Government's social partners, Business New Zealand and the New Zealand Council of Trade Unions to set the parameters for the negotiations that were going on at the time: the WTO Doha Round and the bilateral that led to the Mainland and Hong Kong Closer Economic Partnership Arrangement.
155. A key principle of the 2001 Framework is that *'developing countries should not be denied legitimate comparative advantage of lower labour costs but this advantage should not be secured by deliberately neglecting fundamental labour principles'*.
156. The Framework commits the Government to seeking three labour outcomes in its trade negotiations:
 - a. a workplan of initiatives or objectives (i.e. cooperation and capacity building)
 - b. a mechanism for regular review of these initiatives
 - c. a mechanism for resolution of issues raised by parties or their social partners.

How Is It Working?

157. The Framework has successfully normalised the idea that seeking outcomes on labour would be part of any trade negotiation New Zealand is involved in; this was not the case before 2001. All New Zealand government departments, including MFAT, are aware of this before entering negotiations, as are negotiating partners.
158. The Framework has been flexible enough to allow an evolution of New Zealand policy (see comment on dispute settlement below) and to allow New Zealand to work successfully with a

range of different partners with very different objectives – from Thailand to the United States – in TPP negotiations. The Framework appears to be being used more as a framing device rather than as something that is referred back in order to define specific negotiating objectives.

159. The real constraints on New Zealand's ability to secure outcomes are less to do with the Framework. They come down to two things: the limits of New Zealand's bargaining power and how much resourcing all parties are willing to put into capacity-building programmes and their implementation.

Preferred Approach

160. The trade and labour agenda has a range of issues that are important for labour organisations and business stakeholders in New Zealand, including:
- a. the unfinished business of the US/Guatemala dispute, specifically how high the bar should be to qualify for access to a trade dispute settlement mechanism; this is a live issue in the EU negotiations
 - b. migration and labour supply
 - c. supply chain management
 - d. digital issues
 - e. relationship to ILO conventions (requirement to ratify and uphold ILO conventions as opposed to adherence to the principles of the DFPRW)
 - f. enforcement
 - g. relationship of labour rights to other provisions in an agreement, such as investment.
161. TFAAB recommends refreshing the Framework for Trade and Labour to catch up on the changes that have occurred in labour markets, and the issues that modern labour markets confront. These include the future of work discussions globally (e.g. in the ILO) and locally (e.g. the Future of Work Tripartite Forum), and the growth of the contracting/gig economy. It would also serve to make the Framework relevant for all parties. TFAAB did not come to a conclusion on the merits of the requirement to ratify and uphold ILO conventions as opposed to adherence to the principles of the DFPRW.
162. Refreshing the Framework for Trade and Labour would promote a better quality of dialogue between the Government and social partners on trade and labour issues. It would lead to, for example, better engagement by MFAT, and a more joined-up government engagement on trade and labour issues. Discussions on the Framework could also lead to engagement on whether the model labour chapter that has been included in recent FTAs (e.g. CPTPP) could be improved. There is ongoing debate about the way that these draft chapters function and their inability to seriously address labour standards.
163. Internationally there has been work done in the EU on improving labour chapters, including the draft model chapter discussion paper prepared under the auspices of Bernd Lange, Chair of the European Parliament's International Trade Committee.⁵⁶ This paper contains a detailed textual proposal for an enhanced labour chapter in future EU trade agreements. It is based on a number of key principles:
- a. integration and implementation of state of the art international rules and guidelines on labour protection

- b. powerful and well-balanced institutions for an effective participation of social partners and civil society
 - c. detailed cooperative and promotional activities, including a framework for continuous bilateral cooperation meetings between the parties in consultation with the social partners and organized civil society
 - d. effective dispute settlement between the parties and a collective complaint procedure. The model chapter provides for two different dispute settlement procedures. First, an interstate labour dispute settlement between the parties, and, secondly, a collective complaint procedure, allowing workers', employers' or other civil society organisations to directly enforce the agreed labour standards against a party.
 - e. improvements to existing agreements' existing and established text.
164. A further issue is the question of how to deal with modern slavery, which is endemic across a multitude of government and corporate supply chains throughout the world. The ILO reports that 40 million people are currently trapped in modern slavery,⁵⁷ with an additional 152 million children working around the world.⁵⁸ Women and girls are disproportionately affected by modern slavery, accounting for 71% of the overall total.⁵⁹
165. The Government should both review legislation for its adequacy to deal with modern slavery and consider within the review of the Trade and Labour Framework whether it sufficiently addresses modern slavery.

Intellectual Property

166. Trade-related matters of intellectual property are governed by TRIPS at the WTO. TRIPS was agreed in 1994 as part of the set of agreements that concluded the Uruguay Round of trade negotiations.
167. Intellectual property covers [copyright](#) and [related rights](#) (i.e. the rights of performers, producers of sound recordings and broadcasting organisations); [trademarks](#) including service marks; [geographical indications](#) including appellations of origin; [industrial designs](#); [patents](#) including the protection of new varieties of plants; the [layout designs of integrated circuits](#); and [undisclosed information](#) including trade secrets and test data.
168. The economic rationale for protecting intellectual property is that by allowing creators to obtain a greater share of the social benefits associated with their creation, intellectual property rights can help support efficient investment and an efficient exchange of ideas in society. But the protection of intellectual property rights also imposes costs in terms of reduced competition and potential monopoly profits. As there are both costs and benefits, the creation of an intellectual property regime needs careful balancing.
169. TRIPS has been controversial. It undoubtedly reflects the interests of the United States and the EU, driven by the lobbying of specific industries. Developing countries argue that they have been disadvantaged by TRIPS, and this is one of the factors that led to the stalling of progress in the multilateral trading system. Some economists question the lengthy periods given to intellectual property rights holders.⁶⁰
170. From a New Zealand perspective, TRIPS was one of a series of agreements signed up to as a package in 1994. It is not clear the extent to which there was any quantitative analysis made of the impact of TRIPS and how those costs and benefits were assessed against other costs and benefits from the overall package.

171. Negotiations over other trade agreements have raised similar tensions over intellectual property, such as those relating to copyright length in the TPP negotiations (now suspended by the CPTPP) and the role of Pharmac and generic drug use. There is now growing resistance internationally to further strengthening of intellectual property rules. Countries that import technology (particularly developing countries) are increasingly aware of the importance of intellectual property rights, and there is considerably greater interest and analysis from the media and consumer interest groups, civil society groups and academia, and the general public.⁶¹
172. There are a number of ways that New Zealand can improve its negotiating positions on intellectual property. These include:
- a. Any changes in the future to intellectual property provisions should be evidence based, with clear measurement and modelling.
 - b. Any future trade negotiations should be transparent to allow for full engagement with interested parties. The EU does this over trade agreements, and the World Intellectual Property Office draft texts are all public.
 - c. A new mechanism needs to be established for determining New Zealand's position on future intellectual property challenges.

Procurement

173. The OECD estimates that government procurement represents 14–20% of GDP in most developed countries. New Zealand has signed up to the GPA, which is a plurilateral agreement within the WTO meaning that not all WTO members are parties to it. The aim of the GPA is to open procurement markets up among its parties. Only those procurement activities that are carried out by covered entities purchasing goods and services of a value exceeding a specified threshold are covered by the GPA.
174. New Zealand entered by the GPA primarily to open access to procurement markets to New Zealand exporters.⁶² But there were also domestic policy reasons. The economic argument for open procurement is that increased competition from foreign suppliers can put downward pressure on costs for goods and services, give taxpayers better value, and encourage better allocation of resources across the economy. In some countries the greater transparency involved can also be a constraint on corruption.
175. Criticisms of international procurement rules include that they constrain governments from being able to facilitate 'buy local' campaigns, and that countries are no longer able to grow particular domestic industries to be 'export ready' through targeted procurement policies. There is debate in the economic literature as to whether this would be the case. Protection of domestic industry through procurement policy may not help local industry expand beyond the New Zealand market, because if they are not efficient enough to withstand overseas competition in New Zealand they may not be able to do so elsewhere.
176. The New Zealand government procurement rules are managed through MBIE. Under the New Zealand policy framework, *'businesses (New Zealand-based and offshore) are able to access all government contracting opportunities, and can expect that their bid will be assessed on its merits, not country of origin'*.⁶³ The rules require mandated government agencies to openly advertise contracting opportunities that are over a specified value threshold. The total value of government procurement contracts exceeds \$41 billion a year.

177. In addition, the rules permit internationally recognised methods of assisting SMEs, such as joint bidding, dividing contracts into lots, and minimum time periods to respond. They also set transparency and good practice requirements (e.g. feedback on unsuccessful tenders).
178. In 2019 the Government decided that while the government procurement rules were fundamentally fit for purpose, government contracts should be *'more explicitly leveraged to support the Government's economic strategy and broader outcomes. This entails leveraging contracts to achieve social, economic and environmental benefits that go beyond the immediate aim of purchasing goods and services.'*⁶⁴
179. A number of changes were made to procurement policy. The most relevant included:
 - a. setting four priority outcome areas that agencies are collectively required to leverage in targeted contracts: increase New Zealand businesses' access to government procurement; increase the size and skill level of the construction sector workforce; improve conditions for workers; and support the transition to a net zero economy and the Government's waste reduction goal. Each outcome will be initially targeted at specific industries/government contracts.
 - b. the requirement for agencies to be aware of Tiriti/Treaty commitments and how they relate to procurement activity
 - c. encouragement to deal with New Zealand companies, social enterprises, Māori, Pasifika and regional businesses for contracts below the threshold
 - d. a new definition for a New Zealand business as *'a business that originated in New Zealand (not being a New Zealand subsidiary of an off-shore business), is majority owned or controlled by New Zealanders, and has its principal place of business in New Zealand'*.
180. The Cabinet paper notes the tension between some businesses and sectors, including Māori enterprises, wanting explicit preferential policies, and the provisions of trade agreements.

Procurement Direction

181. New Zealand's procurement policies have not always recognised that there may be benefits to local businesses that may help them grow to scale and become more export-ready. The Government's procurement policy has recently shifted so that government contracts can be more explicitly leveraged to support the Government's economic strategy and broader outcomes while remaining within trade agreement provisions. This more strategic approach can also take into account the needs of Māori enterprises, as the Australian Government does for Aboriginal and Torres Island businesses. Similar policies are followed in the United States, Canada and South Africa.
182. From a trade perspective, making it easier for New Zealand firms to get contracts does not necessarily lead to more firms being able to take advantage of government procurement contracts elsewhere. As set out in Chapter 4, they would still need to be 'trade ready'. New Zealand does not, however, take as much advantage as it could from other countries' procurement processes. NZTE could play a bigger role in promoting and working in the procurement sector to get New Zealand's firms prepared.
183. Policies to use procurement to lift the prosperity of indigenous groups are now well established in several of New Zealand's trading partners, including Australia, Canada, the United States and South Africa. This important development should be looked at closely in New Zealand. It also creates new and exciting opportunities for Māori to participate in partnerships for joint tendering with other indigenous groups.

Health

184. With Vote Health making up approximately one-fifth of New Zealand's Government spending, trade negotiations cover critical procurement issues for our health sector. There are also some significant private sector import and export interests at stake.
185. Discussions relating to trade and health in New Zealand have usually been dominated by matters relating to Pharmac and its principles- and evidence-based framework for decision-making in respect to which medicines are purchased and procured for use in New Zealand.
186. Pharmac has an annual budget of approximately \$1 billion. It has saved the taxpayer billions of dollars over its lifetime. These savings have allowed New Zealanders greater access to a wider range of medicines, however in an ever-changing world Pharmac needs to evolve its practices while holding to its principles-based model. Pharmac also has an increasing role in the purchase of medical devices for all public hospitals in New Zealand.
187. There is also substantial trade in imports for medical equipment and devices for New Zealand's private health sector. Comparatively modest, but with substantial potential for growth, are exports by New Zealand companies manufacturing health devices and producing software solutions.
188. In New Zealand access to healthcare is seen as a fundamental right for all. There is an emphasis on equity of access and outcomes across the population. Pharmac's philosophy differs from the approach of the pharmaceutical companies it deals with. This difference is reflected in the approach that some of the governments of our trading partners bring to negotiations.
189. Trade negotiations need to integrate other issues that can adversely impact health and promote good health and wellness. Trade treaties should explicitly recognise and respect multilateral agreements on health. The framework of international standards for the promotion of inclusive public health should be strengthened and further developed.
190. Trade and investment treaties should ensure that Government has the right to regulate products and services with adverse implications for public health.
191. The development of new treaties should have inclusive processes with health experts to identify the potential impacts on different groups in society through undertaking health impact assessments to consider options at an early stage of negotiations.
192. The Māori concept of hauora⁶⁵ reflects spiritual aspects of health that are not easily accommodated within conventional trade policy frameworks. But hauora can be identified as a taonga and, as such, is protected under te Tiriti/the Treaty. Our trade negotiators need to be mindful of this.

Chapter 3: Beyond Consultation

Principles of Engagement

193. As we have seen in Chapter 2, the subject matter covered by trade agreements has broadened from reducing tariffs to reach ‘behind the border’. It has important implications for the way governments regulate. The scope of the public’s engagement with trade policy, however, has not always kept pace with this increased reach and ambition, creating the risk of a ‘democratic deficit’.⁶⁶
194. Policies pursued in a situation of democratic deficit are likely to lose support and legitimacy, rendering them unstable and leading to public opposition. Conversely, processes that involve citizens more deeply have been shown to increase trust in specific policies, politicians, and government in general.⁶⁷ To the extent that they draw on considered public opinion, such processes are likely to create better policy, because they harness the collective wisdom scattered widely among the public.⁶⁸
195. Participatory democracy goes ‘beyond consultation’ because citizens’ voices have greater weight, influence or power than they do in consultations. At its best, it enhances accountability and encourages active citizenship.⁶⁹ However, citizens’ input will be useful only if informed by good deliberation, which allows groups’ best ideas to be brought to the surface and makes the crowd smarter than the individual.
196. In most democracies, public expectations of involvement in policy-making have changed. There has been a movement away from a model where they are informed of decisions after they are made towards some type of ‘co-creation’ of policy.
197. There will always be practical limits to representative democracy: policy-making is complex and requires specialist knowledge. This is particularly relevant to trade policy. Not only is the subject matter complicated, but difficult judgement calls may be required. New Zealand is not in a position to dictate terms to its negotiating partners, which are usually larger and more economically powerful. In most cases, we are likely to need access to their markets more than they need access to ours.
198. But trade policy is not, and should not be, immune from the general trend in favour of greater public involvement in policy-making. Because there will be a need for confidentiality during negotiations themselves, the fullest practical participation by citizens in the early stages of trade policy formulation is especially important.
199. Good citizen engagement rests on the following qualities:
- a. *Education*. The public needs to be well-informed on trade issues.
 - b. *Transparency*. Where decisions are delegated to representatives, the public needs to know what they are doing and to have access to important information in readily comprehensible form.⁷⁰
 - c. *Accountability*. Citizens need to be able to hold representatives accountable, and impose sanctions for wrongdoing. The ultimate form of accountability is to remove governments at elections, but there are many other forms, including external audit bodies, the media, official information laws, and consultations.

- d. *Participation*. Citizens should take a direct part in decision-making where practicable, as part of a wider political system drawing on both this 'participatory' democracy and traditional 'representative' democracy where decisions are taken by Members of Parliament (MPs).⁷¹
- e. *Deliberation*. Citizens' input should be gained via deliberation – that is, high quality public discussion in which citizens (including government representatives) are encouraged to give reasons, confront the evidence, reflect on their own position, and adjust their views in line with stronger evidence or more compelling arguments.⁷²

Current Engagement Practices

- 200. Governments engage with many different groups on trade policy. Informal engagement – such as people writing to their local MP – occurs outside of planned government processes. Engagement can occur around general trade policy, FTAs, or other processes such as trade missions. The brief outline of current engagement practices below, which follows the chronology of policy development, shows that much more engagement occurs now than a decade ago, but not enough to meet modern expectations.

Trade and Trade Policy

- 201. Well before trade agreements are signed, countries need to establish a general stance on trade, in the sense of what values they want to underpin it, what outcomes they seek, and what trade-offs they are willing to make. Developing this stance is (at least) a two-way process: governments need to listen to citizens, but also have a responsibility to convey to them accurate information about trade.
- 202. The involvement of exporters and businesses affected by trade policy is critical. They are more likely than the Government to have detailed knowledge both of what commercially meaningful access looks like, and the implications of trade policy for New Zealand businesses.
- 203. Historically, the New Zealand Government has not engaged the public deeply on wider trade policy, but this has begun to change. In the Trade for All process itself, written feedback – via a dedicated website, email and letters – was sought on trade policy between August and October 2018. Officials organised 15 public meetings and 11 hui focusing on Māori views. The public meetings were conducted in both the main centres and regional centres. Officials estimate turnout at 60–100 people in the larger cities and up to 30 in the smaller ones, indicating a total turnout somewhere in the hundreds. Both a summary of the feedback received and many of the written submissions themselves have been made available online.⁷³
- 204. Formal engagement efforts are led by the Trade Policy Engagement Unit, established in August 2017.⁷⁴ It now has an estimated 3.5 full-time equivalents focused on engagement. The ministry's Māori Policy Unit has one further staff member focused on engagement around trade and foreign policy. Separately, MFAT is commissioning opinion polling to help it better understand the public's attitudes towards trade.
- 205. Targeted email and traditional media are also used to communicate with the public. The ministry says it increasingly seeks to share information '*in the places people go to talk or find out about issues that they care about*'. It also produces high quality YouTube clips featuring exporters in an attempt to convey the benefits of trade in a less formal and more compelling way.⁷⁵ In addition, the ministry conducts stakeholder engagement with civil society groups including the Council of Trade Unions, Forest & Bird, and the Council for International Development.

Engagement with Māori

206. Māori engagement with trade issues is essential because trade agreements can affect the ability of Māori organisations to control taonga and exercise tino rangatiratanga. More generally, the Tiriti/Treaty principle of partnership between the Crown and Māori requires Māori involvement in the co-creation of trade policy as an exercise of tino rangatiratanga in and of itself. The growing Māori economy also leads to more potential Māori exporters and greater opportunities to reach export markets that strongly value indigenous cultures.
207. However, there has been significant dissatisfaction with the level of Māori involvement in trade policy. As above, specific hui for Māori are now held, but there is a broad view that engagement is still too formulaic, and turnout at such hui is often low. Māori have told TFAAB that engagement should happen much earlier in the piece, and enable an ongoing relationship that brings indigenous worldviews to the fore. Māori organisations experience ‘consultation fatigue’ and struggle to respond to the now-numerous government consultations.
208. Separately, engagement efforts appear to be focused on traditional iwi structures, and it is not clear whether urban Māori, who make up roughly one-third of the Māori population, are adequately represented. Questions are also raised about central government capability and diversity. MFAT could do more to build a stronger body of knowledge about indigenous perspectives on trade, so that this knowledge could be transferred from one FTA to another. The Ministry is also seen as not being sufficiently representative of the country’s ethnic diversity.
209. In response, MFAT has numerous initiatives underway. MFAT’s Māori Policy Unit leads the implementation of a Māori Engagement Strategy, agreed in 2017. Officials told TFAAB that significant investment is being made in this work, and they are on track to implement the recommendations. A Māori-led body, or Taumata, has also been established to engage with Government on trade policy. This and other aspects of the Crown-Māori partnership in respect of trade are explored in Chapter 4.

Before Trade Agreement Negotiations Commence

210. Officials maintain they are now carrying out more consultation earlier in the process than was previously the case. On the EU-New Zealand FTA, for instance, public submissions were solicited in December 2015, before the Government issued the formal negotiating mandate that sets out the terms within which negotiators work.⁷⁶ Public meetings about the agreement were announced at the same time as formal negotiations were launched, in June 2018, but actually took place in September–November 2018, after negotiations commenced.
211. Officials also note that more information is published about agreements prior to negotiations. The EU-New Zealand FTA, for instance, has a dedicated webpage.⁷⁷ It contains a ‘Summary of Objectives’ paper, outlining broadly what New Zealand hopes to achieve from the agreement.⁷⁸ It also contains ‘Chapter’ papers providing details on New Zealand and EU approaches to specific areas.
212. The EU, however, publishes significantly more information, releasing all its negotiating mandates and its initial proposals, which constitute its opening suggestions for the text of the agreement. New Zealand does not publish either of these documents, although officials argue that the summary of objectives provides broadly similar information to the mandate.

During Trade Agreement Negotiations

213. Engagement during trade agreement negotiations has also increased recently. During negotiation of the CPTPP, for instance, summaries of discussions were provided at the end of each round, and this practice continues for the EU-New Zealand FTA and the Regional Comprehensive Economic Partnership.⁷⁹ The current summaries are, however, at a very high level of generality, and there are calls for significantly more detail to be released, as they are, for instance, in the negotiation of UN conventions.
214. In addition, at least one of the lead negotiators on the EU-New Zealand FTA produces video clips after negotiation rounds.⁸⁰ Officials also note that they now routinely publish the dates and locations of trade negotiations, and typically hold at least one meeting for the public in parallel to the negotiation rounds that take place in New Zealand. On at least one occasion there has been a live-streamed public Q&A session. More engagement sessions are also held with NGO and business stakeholders.

Following Negotiations

215. Once negotiations conclude, an FTA is signed. Before it is ratified and enters into force, however, there is a process of parliamentary (and to some extent public) scrutiny, as follows:
- a. MFAT prepares a Cabinet paper and a NIA for Cabinet. If Cabinet approves the final text of the agreement, the treaty is agreed but not yet ratified.
 - b. MFAT formally 'presents' the treaty and NIA to Parliament.
 - c. The documents go before the Foreign Affairs, Defence and Trade Select Committee, which examines them and may call for public submissions.⁸¹ It then has 15 sitting days to report back to the House. If it makes recommendations, the Government must table a response within 90 days.
 - d. Parliament may hold a debate on the agreement; this happened, for instance, with the PACER Plus agreement.⁸² Parliament does not get to vote on the agreement as such, but if domestic legislation is required to implement it, Parliament does vote on that legislation. For the legislation enabling the CPTPP, for instance, the vote was in favour by 111–8.⁸³
 - e. If the enabling legislation passes, the agreement is ratified via a formal exchange of documents.⁸⁴
216. As discussed in Chapter 2, there are various criticisms of the adequacy of this process. Firstly, Parliament only sees the final text of the agreement at a relatively late stage, when it is very difficult to amend. There are concerns that MFAT, as the agency negotiating agreements, cannot reasonably provide an objective view of its strengths and weaknesses in an NIA. New Zealand select committees are relatively poorly resourced, compared to overseas counterparts, and the time allowed for public submissions can be very brief.

Towards Deeper Engagement

217. The above moves towards greater engagement are welcome. However, we would like to see more profound engagement, in line with international research into, and practical experience of, deeply democratic processes.

Formation of Trade and Trade Policy

218. The Government has set a goal of creating a genuine and enduring conversation around trade. It should aim to not just elicit one-off opinions but also build long-term trusting relationships with the public around trade. It should also attempt to encourage '*an energy amongst everyday New Zealanders*' to participate in these discussions.⁸⁵ This will involve both improving MFAT's standard consultations *and* going beyond them by designing and implementing new forms of engagement.
219. The IAP2, which sets global best practice in this area, has devised a spectrum of such forms of engagement, along with their implicit promise to the public (see Figure 13). Trade engagement policies should move, where possible, towards the 'Empowerment' end of the spectrum, although in most cases 'Collaborate' will be the deepest form of engagement that is practical or desirable.
220. Different forms of engagement will be appropriate in different situations, as Figure 13 suggests. Relevant factors include:
- public impact – the greater a policy's likely impact, the deeper the engagement should be
 - technical complexity – highly technical treaty-making processes, for instance, may require specific engagement with sophisticated audiences
 - depth and breadth – higher quality discussion may sometimes be easier in smaller groups
 - urgency – the speed of decision-making required may occasionally prohibit deep engagement
 - process stage – provided deeper engagement has occurred earlier, any later and more specific proposals may require only standard consultation
 - resourcing – the use of deep engagement forums will be limited by the available funds
 - sensitivity of information – issues of commercial or national confidentiality may limit engagement.
221. Within this broader framework, we have a number of detailed enhancements.

Figure 13: IAP2 Spectrum of Public Participation

INCREASING IMPACT ON THE DECISION					
	INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
PUBLIC PARTICIPATION GOAL	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision making in the hands of the public.
PROMISE TO THE PUBLIC	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.

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Source: IAP2.

Education

222. The public needs to be more deeply informed about trade and to better understand its importance to an economy that is both small and, geographically speaking, isolated. Current education efforts need to be enhanced through the following means:
- wider use of different forms of media, including video and podcasts; TFAAB's own podcast series on trade could serve as an example here⁸⁶
 - greater use of not just official voices but also less 'predictable' messengers for information about trade, such as innovative exporters or people who have 'walked in the shoes' of likely audiences
 - related to this, a focus on developing officials' skills as 'storytellers' or 'policy translators'
 - an effort to communicate trade issues in a language ordinary people can understand, and the use of both research and perspectives that discusses costs, benefits and risks of different options
 - a greater emphasis on communicating the big picture and values around trade
 - better explanations of what trade deals are, and are not, responsible for, and their scope
 - more communication directed at audiences outside of Auckland and Wellington.

Polling

223. MFAT needs to better understand public attitudes towards trade. It needs to commission regular polling on public attitudes towards trade; disseminate those findings widely; and regularly repeat the exercise.

Official Information

224. The Official Information Act is an important guarantee that stakeholders and citizens can obtain relevant government information, including on trade policy. However, dissatisfaction with official information practices is well canvassed. Potential reforms include, among other things, clearer responsibilities for the Ombudsman; an extension of the number of bodies covered by the Act; greater penalties for non-compliance; reductions in ministerial interference in requests; and a shift towards proactive and timely disclosure of information. While these issues are not specific to trade policy, they are certainly relevant. MFAT needs to ensure its policies relating to the Act conform to evolving notions of best practice, especially the shift towards greater proactive disclosure of information.

Internal Culture

225. MFAT needs to change internally, so that its people and practices better reflect New Zealand's diversity and it is better able to engage Māori and Pasifika businesses domestically and connect with ethnically diverse emerging markets.

Improving Consultation

226. There is ample scope for MFAT to improve its consultations. The Ministry should make its consultations consistent with guidance from the IAP2, in line with New Zealand's recent Open Government Partnership commitments.⁸⁷ More specifically, MFAT should:

- a. engage the public early on in the formation of trade policy before key decisions have been made. This would make use of the research and analysis produced during the regular trade policy reviews discussed in Chapter 2
- b. generate and examine alternative policies before finalising a negotiating mandate
- c. seek to build relationships and a genuinely relational rather than transactional approach
- d. engage in an open discussion about medium- and long-term (i.e. decades-long) goals
- e. make greater efforts to 'go where people are', including going into rural communities, workplaces, pubs and schools
- f. hold more forums targeted specifically at businesses where there is more focus on technical issues and firms will feel comfortable discussing commercially sensitive material
- g. reach out to traditionally disengaged and marginalised groups, where necessary by working with NGOs and trusted figures within those communities
- h. acknowledge that New Zealand is becoming rapidly more ethnically diverse and that this creates specific challenges. New Zealand residents increasingly come from cultures not used to being regularly consulted, and may have limited English. A 'superdiversity' lens needs to be applied to all consultation processes.⁸⁸ Those processes also need to adapt, for instance by advertising in ethnic media.
- i. engage other ministries earlier in the process, and more effectively. This includes building the capacity of other ministries to analyse the implications of trade agreements. Officials from other government agencies have suggested an 'opt out' approach, in which MFAT would have to engage early with agencies and provide information to dedicated agency email addresses, unless told to do otherwise.

Moving towards Collaboration

227. In the 'Collaborate' part of the IAP2 spectrum are processes often known as co-creation or co-design, in which public policy is created in partnership between citizens and Government. These processes can lead to more effective policies, greater perceived legitimacy, and reduced likelihood of the consultation fatigue created by multiple, narrowly focused consultations. They also enhance trust between decision-makers and the public, who are able to see policy creation 'up close' and indeed take part in it.⁸⁹
228. Examples of such processes and forums are outlined below. It will always be a matter of judgement as to which should be used, and when. These processes are also relatively new in the government context.⁹⁰ Accordingly, we strongly urge the Government to familiarise itself with them and to start using them as appropriate.
229. Deeper forms of engagement are inevitably costlier and more time-consuming upfront. However, they can also save time and money further down the track. The Government should regard this spending on what might be called 'democratic infrastructure' as just important as spending on more conventional infrastructure, such as roads, rail and ultrafast broadband.⁹¹
230. Options used by other governments include citizens' panels and stakeholders panels. The Government could, for instance, reinstate the Ministerial Advisory Group used by previous administrations. Such a group would ideally:

- a. include representatives of larger and smaller businesses, Māori, women and civil society, including NGOs, trade unions and academia
 - b. meet on a regular basis
 - c. receive confidential updates on trade policy
 - d. be funded to commission and publish independent research
 - e. take part in trade policy outreach programmes
 - f. participate in overseas missions and negotiating rounds.
231. Such an advisory group might also publish annual, publicly available recommendations. They would not be binding on Government and would not be as substitute for other engagement approaches. This could, as with many other democratic processes, usefully ‘raise the level of embarrassment’ for governments wishing to go against stakeholders’ advice. The effectiveness of this process would, however, depend on the level of government influence over the advisory group.⁹²

Online Deliberation Forums

232. Online processes can also be used to obtain considered public opinion. As opposed to simply collecting individual views through platforms such as Have Your Say, government agencies could use online software that is designed to encourage high quality discussion between citizens, such as Polis. This kind of software encourages citizens to put forward and discuss proposals, which get iteratively knocked back and refined until they reach 80% support. Such methods were recently used by the Government of Taiwan when it sought to regulate Uber in a way that retained its disruptive technological benefits while ensuring that it played by the same rules as domestic firms. A rapid but deeply deliberative Polis discussion generated seven recommendations that had the consensus support of participating citizens and which were largely accepted by the ride-sharing firm.⁹³

Co-creation

233. In co-creation processes, citizens/stakeholders and government officials design policy from a position of broad equality and with the initial parameters and goals left as open as possible. One recent local example comes from work at MBIE. The creation of a transitional economic plan for the Taranaki region was led not by the Ministry but by a 27-strong regional leadership team, including iwi representation. The team organised 29 independently facilitated co-design workshops across the region. Fewer elements of the workshops were pre-determined by government agencies, discussion was more wide-ranging and less technical, and the assumptions and outcomes of the plan were more open.⁹⁴ Although not all community groups supported or engaged with the process, the resulting Taranaki 2050 Draft Roadmap incorporated the views of thousands of residents. This co-creation was more costly than standard processes but helped generate greater community engagement with, and support for, the roadmap.

Other Options

234. Governments overseas have used a range of other options to get better engagement by citizens, and the New Zealand Government should consider whether these would be useful in a trade policy context. These options include:

- a. *Citizens' assemblies*: A group is selected by a polling company to be representative of the country and brought together during a week or a series of weekends to discuss an important issue. People are trained in how to deliberate, spend time interrogating experts and the evidence, discuss the issue in depth, and draw up recommendations that have at least 80% support.
- b. *National public policy conventions*: These are held initially at a city level size where anyone can speak. Recommendations are made and delegates elected to national level conventions where anyone can attend as an observer.

Free-trade Agreements: Overarching Engagement and Analysis

Greater Pre-negotiation Disclosure

- 235. The publication of greater information about FTAs, prior to negotiations commencing, through MFAT's 'Summary of Objectives' and specific 'Chapter' papers, is a positive first step. However, significant further steps in this direction are needed, as far as is consistent with protecting New Zealand's negotiating position.
- 236. It is useful to look at the way that the EU approaches disclosure. Ahead of negotiations, the EU publicly releases its mandate – the broad terms within which it can negotiate an agreement – and its initial proposals, which effectively set out how it would like the text of the agreement to read. The New Zealand Government does not release its equivalents of those documents, nor do the Summary of Objectives or Chapter papers provide that level of detail; indeed they are extremely general in nature.
- 237. In defence of New Zealand's approach, MFAT argues that larger trading partners can expect to largely get their way in negotiations. They do not substantially weaken their negotiating position by being transparent about its desires. New Zealand is not in the same position. It may need to hold back important proposals for later in the process. Furthermore, New Zealand will often be negotiating multiple agreements and may want some negotiating partners to be unaware of its position in other negotiations.
- 238. Against that, advocates of greater openness argue that these considerations are trumped by the imperatives of democracy and accountability, and that transparency will allow greater input from stakeholders whose knowledge and expertise will ultimately lead to better agreements.
- 239. Three further points are worth considering. One is that, in the words of one business representative, there is 'no mystery' about 95% of what New Zealand seeks from a given trade negotiation; only a handful of issues are genuinely up for grabs, albeit those are often the most sensitive and controversial.⁹⁵ The second point is that New Zealand does, in fact, declare its hand – from time to time and on an ad hoc basis – by saying that it has certain red lines, typically concerning issues like the Treaty of Waitangi exception and the protection of the Pharmac model. Clearly, some transparency as to New Zealand's red lines is possible. Thirdly, there is widespread support for greater transparency. Demands for openness come not just from NGOs but also from business representatives, albeit with significant differences.⁹⁶
- 240. In light of these complexities, thought should be given to how a careful shift towards greater disclosure might be made. Possible steps include:

- a. *Investigation of other countries' practices.* MFAT should carry out a fuller exploration of the practices of other countries in publishing negotiating objectives, bearing in mind the different situation of small and large countries and the potential risks involved.
- b. *Selective transparency.* At the very least, access to key documents, such as the negotiating mandate, should be provided to selected groups of people, such as MPs, if not publicly. Even if members of the public had not themselves seen key documents, they would have the assurance that, for instance, Pharmac had seen the relevant medicines provisions. Assuring confidentiality through the use of non-disclosure agreements and other mechanisms would of course be essential. Such steps were recommended by a recent Australian select committee investigation into FTA processes, and MFAT should investigate them.⁹⁷
- c. *Proactive disclosure.* To protect its negotiating advantage, MFAT should shift to a position of pursuing maximal disclosure with extremely limited carve-outs. This would be a shift from a position of 'don't disclose unless there is reason to do so' to a position of 'disclose unless there is reason not to'. This would be in line with a general government shift towards proactive disclosure. As part of this approach, there should be greater clarity about key red lines of democratic interest. While the parameters of disclosure would not be exactly defined, many areas of public policy – the 'reasonable steps' employers must take to secure health and safety, for instance – have elements open to interpretation yet remain perfectly workable. This approach would provide much greater transparency while retaining flexibility.

Greater Disclosure during Negotiations

241. Once negotiations commence, the most contentious point, in terms of engagement, is whether the draft negotiation text should be made publicly available at the end of each round. One principal counterargument is that a 'draft' text may not in fact represent the true state of play. Proposals may remain in a draft text that a country has no intention of accepting but has not had the time or energy to ensure are removed. Countries may also be using items in the draft text as bargaining chips for later negotiations. In these instances, publication of the draft text could, it is argued, prove misleading.
242. Against that, advocates for transparency argue that early information about the likely final text is essential, given the difficulties of changing an FTA's text once it is finalised. They argue that the draft negotiating text should be disclosed by using a practice common in other international negotiations, in which it is clearly signalled that some items are not yet settled and may very likely be altered or removed. This can be done by placing those items in square brackets or through some other mechanism.
243. A shift towards greater transparency here is desirable, but there is not universal agreement as to how it should happen. Furthermore, it would not be practical or desirable for New Zealand to unilaterally release draft negotiation texts without the agreement of partners. Our view is that MFAT should actively seek agreement from negotiating partners to release draft negotiating texts, and release the texts if such agreement is forthcoming. If there is no agreement, the parties should explain why not.
244. Separately, there are long-held concerns about the make-up of the delegations accompanying ministers and negotiators to FTA negotiation rounds. It has not always been clear which groups are invited to be part of delegations or under what conditions. MFAT needs to develop, in conjunction with stakeholders, a clearer, better-justified and more predictable

rationale for who is invited to be part of these delegations; provide greater transparency as to the invitations issued; and give greater consideration to which groups will need funding to attend rounds.

Greater Scrutiny Following Negotiations

245. Because of the difficulty in changing an agreement once it has been agreed by the various nations, the most important changes in engagement are those described above. Nevertheless, greater scrutiny by Parliament and the public is also possible in the period between an agreement being signed and its ratification. The following should also happen:
- a. The NIA should be prepared by an independent body, as discussed in Chapter 2, with significant resources and economic expertise, rather than by MFAT.
 - b. A specialist Select Committee on Treaties should be established, on the basis that such a committee is required to build up detailed knowledge about trade and trade agreements. Since 1996, Australia has had a Joint Standing Committee on Treaties dedicated to this purpose.
 - c. In line with recent expert analysis of New Zealand select committees more generally, the select committee dealing with trade agreements should be encouraged to make greater use of external expertise. Equivalent European and US committees employ their own trade experts as advisors.⁹⁸
 - d. There should be guidelines for minimum periods of public consultation, so that the public would have ample time to give its views on any agreement likely to have a 'significant' impact.⁹⁹

Evaluation and Assessment

246. How and when to measure the impacts of trade policy is a key issue in the Trade for All agenda. Currently, at the conclusion of each trade agreement negotiation¹⁰⁰ a NIA is developed by MFAT that assesses the agreement against 'its impact on New Zealand and New Zealanders'.¹⁰¹ These NIAs have changed over time, with increasing efforts being made by MFAT to quantify the economic impact of the agreement. The NIAs for the TPP in January 2016 and the CPTPP in March 2018 used economic modelling to try to quantify the costs and benefits to New Zealand in terms of the impact on GDP. The NIAs have got longer and more complex as MFAT has expanded their scope.¹⁰²
247. There are a number of problems with the way that NIAs are developed:
- a. In many respects they look like a legal compliance exercise with a significant portion being on the nature of the legal obligations.
 - b. While the enhanced use of economic modelling is a positive step, there is a heavy emphasis on the impact on GDP of the agreement.¹⁰³ In comparison, the treatment of social, gender, cultural, environmental, distributional and regional impacts is light.
 - c. Māori issues tend to be looked at defensively and focused on the role of the Treaty of Waitangi exception.
 - d. Computable general equilibrium models, which are used by economists to capture the effects of changing trade barriers on GDP, trade flows, national welfare and other variables, are sensitive to the assumptions made in them, and are not a full cost-benefit appraisal. The process of producing the models and an NIA does not allow the key assumptions made to be debated and challenged.

- e. The NIA does not transparently set out how the way that the costs and benefits of the different trade policy objectives have been weighed against each other, and how the benefits to New Zealand broadly compare to the benefits to other parties to the agreement – that is, what our deal looks like compared to what we have agreed for others.
 - f. There has not been the opportunity to engage with stakeholders on the assumptions and underlying framework of the NIA.
248. In addition, there are political and institutional pressures at the end of a fraught and highly pressured process of negotiation. There will inevitably be at the least tacit pressure for the NIA to show a positive national outcome from a process that has been agreed by Ministers and led by MFAT.
249. Moreover, while the NIAs provide an assessment of a particular trade agreement, there is no assessment of the cumulative effect of trade policy and the set of trade agreements that New Zealand has signed up to. There is a need for better ex-post analysis of the impact of trade that is both economy-wide and across the various groups in society that are affected by trade agreements. Such an analysis should also help to inform future trade and domestic policy development.
250. Finally, there is a deeper problem – there is an assumption made in NIAs in favour of prevailing competitive advantages. There is a risk that trade agreements negotiated on the basis of current strengths can reinforce path dependencies that lock the economy into a suboptimal future. NIA analysis, as currently structured, would not reveal this.
251. MFAT is already taking significant steps to broaden its evaluations. It is in the process of developing a vastly more advanced framework for assessing the impact of trade agreements. This welcome development sets MFAT up well to contribute strongly to a broader process of evaluation. But placing responsibility on MFAT to be the judge of its own work is unfair on the Ministry and at odds with one of the most fundamental principles of natural justice. This needs to change.

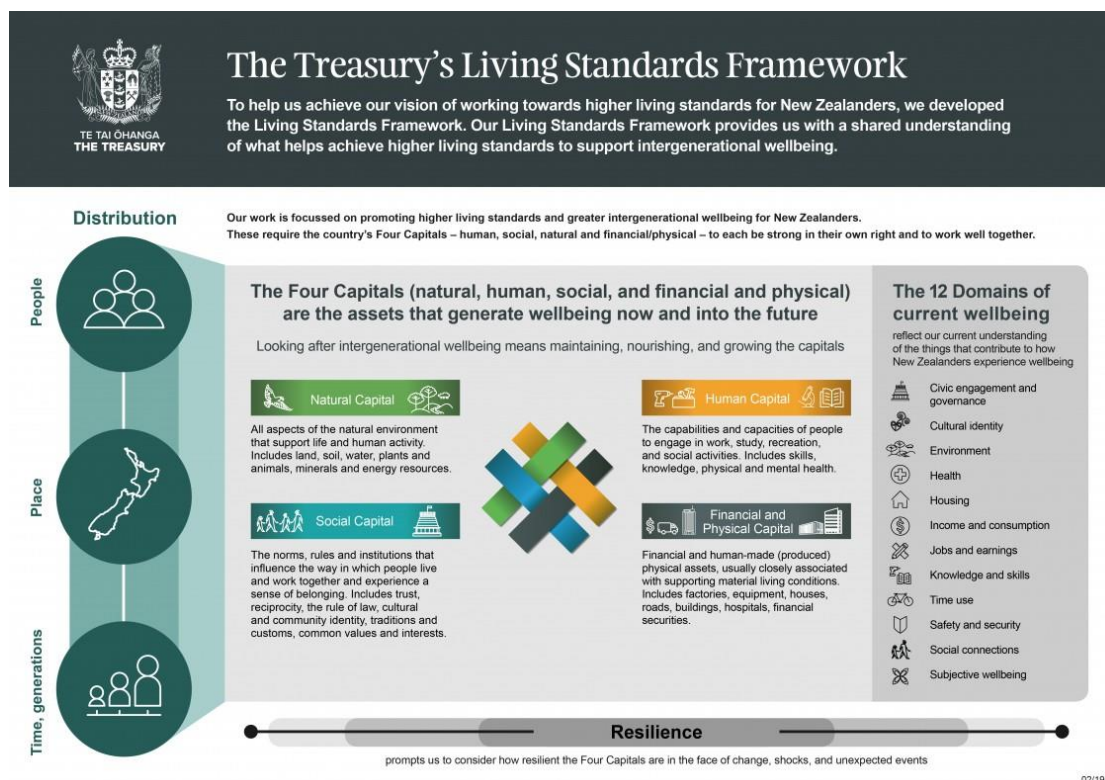
Trade Policy Objectives, Outcomes and Measures: Satisfying the Triple Bottom Line and te Tiriti/the Treaty

252. Meeting the Trade for All objectives will require a detailed understanding of the impact of trade in a broader range of areas. We need deeper knowledge of the way that trade influences New Zealand's productivity, environment and society.
253. In the first instance, and at a high level, TFAAB agreed that a trade agreement and trade policy should satisfy a triple bottom line approach – are trade policy and the agreements made under that policy meeting the economic, social and environmental needs of New Zealand – and are they consistent with the Crown meeting its Tiriti/Treaty obligations to Māori?
254. This a high level assessment, and will be subject to discussion over the relative weightings of the different impacts across the areas. In order to help make this assessment, a more detailed framework is needed.
255. The Treasury's Living Standards Framework (LSF), based on work done by the OECD, is intended to help successive governments assess the likely effects of their policy choices on

New Zealanders' living standards over time (see Figure 14). The LSF looks across the human, social, natural and financial/physical aspects of those things that affect our wellbeing – the 'four capitals'. It is a tool that emphasises the diversity of outcomes meaningful for New Zealanders, and helps to analyse, measure and compare those outcomes through a wide and evolving set of indicators. TFAAB expects that the LSF, along with other work on wellbeing measurements being done by other government agencies such as Stats NZ, in combination with the SDGs, would provide a suitable framework for assessing trade and its effects.

256. The LSF is still being worked on (e.g. for Te Ao Māori, children, and culture and identity), as are other wellbeing measures. TFAAB would expect that the design and use of the LSF and other measures would be consistent with the Crown meeting its obligations to Māori. This includes Māori input into the tailoring of the OECD template for New Zealand.
257. One of the advantages of using the LSF is that over time it will become a consistent template across Government. This will allow an integration of the evaluation of trade policy and the outcomes being sought by other government departments, including over productivity, inequality and sustainability.

Figure 14: The Treasury's Living Standards Framework



Source: New Zealand Treasury.

What Needs to Be Assessed and Measured

258. TFAAB would expect trade policy assessments to continue to cover the same ground as the existing NIAs. GDP remains an important measure. But more is needed. To be consistent with the Trade for All agenda, trade policy assessments should also address a wider range of measures and analysis, including:

- a. the linkages between trade and productivity
 - b. trade intensity measures
 - c. the relationship between the tradable and non-tradable sectors
 - d. possible firm level changes
 - e. sustainability measures, including global and local environmental impacts
 - f. the implications for future flexibility of government interventions that may be needed in the future
 - g. the impact on human rights, including privacy and labour rights
 - h. labour market changes
 - i. distributional outcomes
 - j. if relevant, health and education sector outcomes
 - k. impacts on tangata whenua, both from economic and cultural perspectives
 - l. the impact on trade in services, including tourism and education
 - m. impacts on different ethnic groups
 - n. the impact on different regions
 - o. impacts on women as employees and business owners
 - p. impacts and opportunities for SMEs
 - q. the extent to which a trade deal might lead to (or obstruct) increasing value chain capture by New Zealand companies, and obtain capture of credence attributes
 - r. supply chain implications and management
 - s. digital services measurement
 - t. implications for New Zealand's climate change commitments.
259. Such assessments might identify particular domestic sectors or regions that are more heavily exposed as a result of trade policy. This would assist governments to develop mitigation policies or help them take advantage of trade opportunities.

Trade Policy Assessment

260. Even with improvements in process, NIAs will always have limits. Whoever writes them, they will still be composed under strong time and political pressures. More fundamentally, they occur too late in the process to have significant impact on policy.
261. A broader assessment of the outcomes and effectiveness of trade policy as a whole is needed. This assessment should be carried out on a regular, perhaps five-yearly, basis. This would provide time and space for thoughtful and researched assessments to be made. Future negotiating mandates and NIAs would be better informed and include a wider and deeper set of considerations.
262. Importantly, regular trade policy assessments would provide some of the research and analysis that would inform options, engagement, and the negotiating mandate at the outset of each FTA negotiation.
263. The changes proposed in this report must be seen together: better engagement, better evaluation, and additional steps to spread the benefits and reduce the costs of trade.

Institutional Questions

264. There are a number of considerations about which institution is best placed to carry out a broader trade policy assessment role. It could be an existing organisation that is well placed to carry out this independent role, or a new one:
- a. MFAT has the advantages of an existing institutional trade economics and assessment capacity, and a close understanding within the organisation of the detailed links between trade negotiations and agreements, and what needs to be assessed. On the other hand, MFAT more than any other organisation feels the internal and external pressures to show the benefits of trade agreements and trade policy.
 - b. To a lesser extent this consideration also applies to MBIE and Treasury. Neither is divorced from input into trade negotiation mandates and the negotiations themselves. Stats NZ, for example, is another possibility, as it already has an independent mandate.
 - c. The Productivity Commission is the one public sector body in New Zealand that has the time, independence and ability to carry out such assessments. While it has a productivity focus, it is able to be requested to carry out assessments by the Government and has in the past carried out broader inquiries and research (urban planning, a low emissions economy, ethnic disparities in qualifications). It also works with a range of other international organisations, including its Australian counterpart. It should be able to develop the policy and research capacity across the range of sectors, and use the expertise of a wide range of government agencies.
265. TFAAB believes that an independent government organisation should carry out this broad assessment, based on a very clear expectation about the sort of engagement that should be carried out, including in partnership with Māori. It would need to develop the cultural competency to be able to engage with Māori.
266. The aim of this work is to encourage a virtuous circle between engagement, information gathering and analysis. A central part of this would be to provide independent and rigorous assessment of FTAs that would inform and encourage better engagement.

Chapter 4: Capability

Background

267. The Government has set a vision to build a 'productive, sustainable and inclusive' economy. This chapter will look at what these three terms should mean in practice for our trade policy.

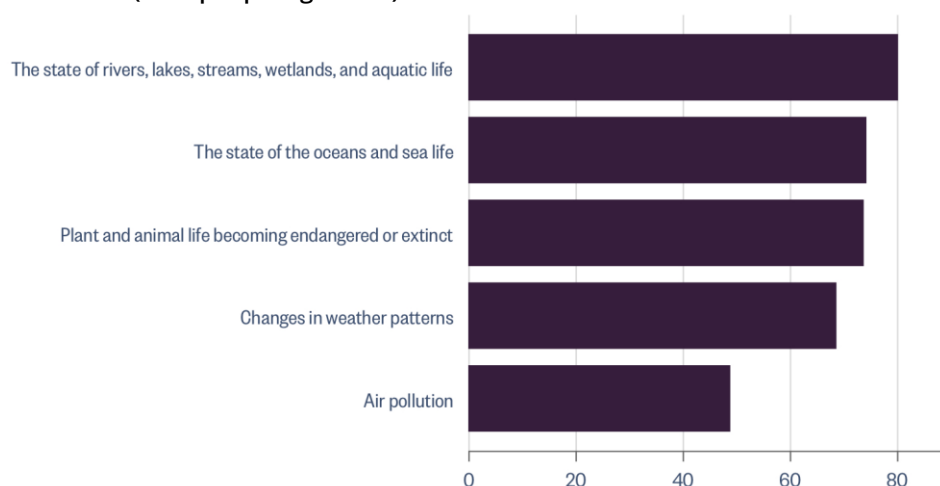
Productivity

268. Between the 1950s and the mid-1990s, New Zealand's per capita income went from around 5th in the OECD to around 23rd, a level at which it has more or less stayed in the subsequent two decades. New Zealanders work hard. The decline of our income has not come about because we are not working long enough hours; it is because of low labour productivity.
269. Successive New Zealand governments have tried to understand the causes of this low productivity and to address them.¹⁰⁴ Important parts of the puzzle have not been solved. But New Zealand Treasury's research has demonstrated clearly that small, high productivity economies rely heavily on international connections. Flows of people, capital, trade and ideas are crucial to productivity and economic growth.¹⁰⁵

Sustainability

270. MfE's summary of the key environmental issues for New Zealand paints a mixed picture of the country's performance. Our greenhouse gas emissions are continuing to grow, but stratospheric ozone levels have decreased. Both human settlements and agricultural production have increased since 1990. Native forest and vegetation has been decreasing both in absolute terms and relative to exotic forest cover. Soil health is deteriorating in some important respects. Trends in freshwater are mixed: nutrient levels in rivers, lakes and groundwater are increasing but there has been improvement in biological oxygen demand and visual clarity. Figure 15 shows the environmental issues of most concern to New Zealanders.
271. Whichever way one views the data, there is wide agreement that current levels of production are putting an unprecedented level of stress on New Zealand's natural environment. This is a matter of significant public concern.

Figure 15: Environmental issues people in New Zealand believe are a concern, 2018
(% of people aged 15+)



Source: Figure.nz and Stats NZ.

272. From a trade perspective, New Zealand's productivity and sustainability challenges both point in the same direction. The country needs to move its exports from 'volume to value'. We need to find ways to increase the returns to the national economy in a situation where our labour, in terms of working hours, is at close to full capacity, and our environment is already showing signs of strain.
273. In thinking about how New Zealand could move from volume to value, there are a number of sectors (e.g. tourism and education) where this is needed. TFAAB has identified broad priority areas where active government leadership could make trade policy more supportive of the vision. The Board identified two 'sweet spots' related to trade policy. The first concerns what are called 'credence attributes'; the second is the internationalisation of New Zealand's unique offering to the world: Te Ao Māori.

Credence Attributes

274. The phrases 'volume to value' and 'added value' are sometimes misunderstood. They conjure up images of more physical processing being done onshore and goods being sent in more processed forms.
275. In some cases, adding value may require extra processing. But New Zealand is situated far from its markets. It is not a coincidence that a large proportion of our exports have been in commodity form; it is a reflection of both New Zealand's geography and its comparative advantage.
276. Moving from volume to value, in dairy for example, does not necessarily imply that the country would be exporting more yoghurt and less milk powder. What it does mean is that all exports of milk, in whatever final form, would have embedded into them qualities that are valued by customers for which they are prepared to pay. These qualities are referred to as credence attributes – things that consumers are willing to pay for but cannot see.
277. Credence attributes may require assurances about the way that the product was produced but which cannot be detected in the product (e.g. that labour or environmental standards were met in their production). Or they may be qualities that are potentially measurable in the product but which the consumer does not have the means to verify personally (e.g. health claims).

278. Lincoln University's Agribusiness and Research Unit (AERU) has conducted extensive research on how New Zealand's export industries can use their credence attributes to maximise export returns. AERU has shown that consumers are prepared to pay for these attributes, but that the willingness to pay (WTP) varies by market (see Table 1).

Table 1: Willingness to pay for attribute as percentage of product price in China, India and the United Kingdom

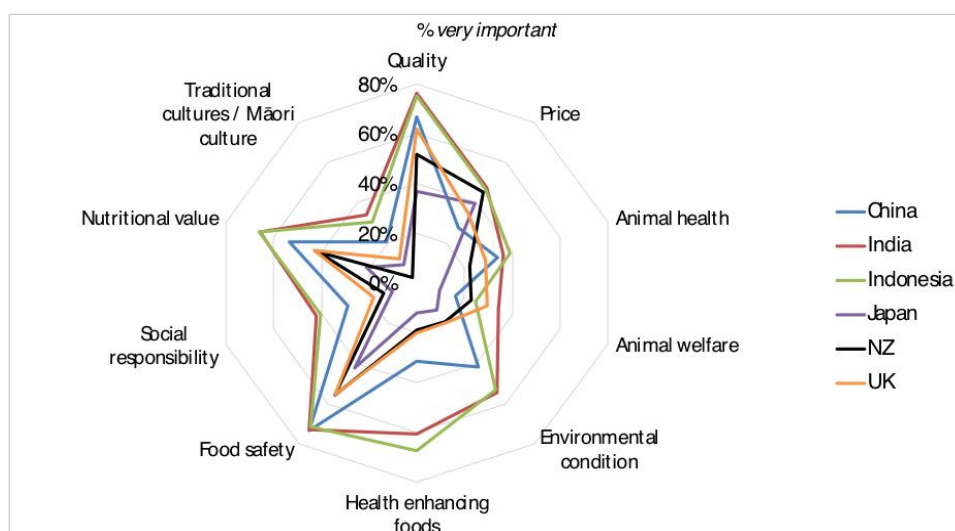
	China		India		UK	
	Dairy	Lamb	Dairy	Lamb	Dairy	Lamb
Safety	74%	44%	73%	77%	16%	18%
Welfare	26%	13%	42%	41%	17%	22%
Water	16%	12%	19%	26%	3%	7%
GHG	25%	14%	38%	39%	7%	7%
Biodiversity	22%	15%	27%	42%	6%	6%
Foreign Origin	26%	10%	-20%	-	-4%	-5%
NZ Origin	49%	24%	10%	21%	3%	6%

Notes: WTP derived using Krinsky and Robb method.

Source: AERU.

279. Figure 16 shows another take on the importance of different qualities in different markets. Freshness, quality, hygiene and use-by date are important in all markets, while reduced use of pesticides, environmental condition and traceability are important, especially in developing markets.

Figure 16: Maximising export returns – and New Zealand

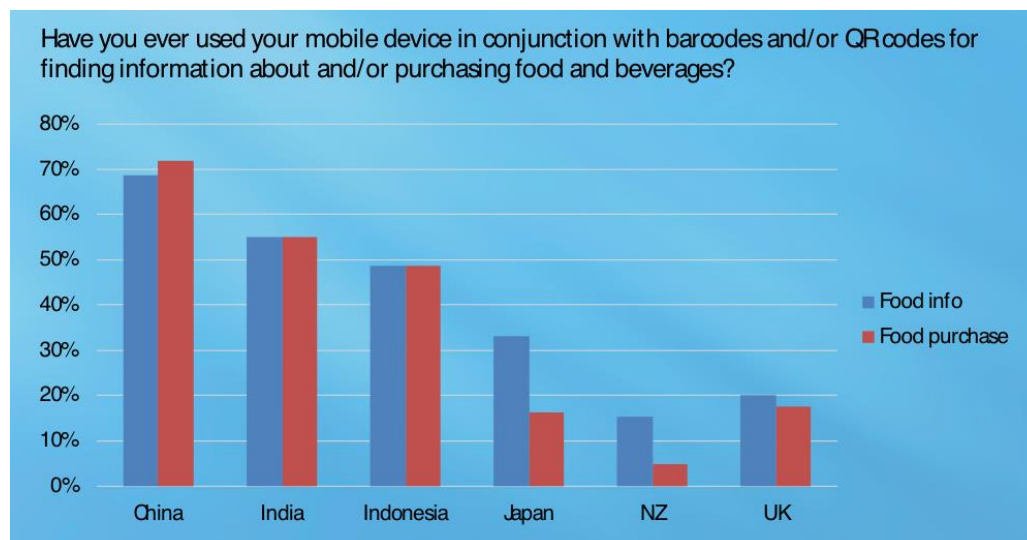


Source: AERU.

280. Environmental condition expectations also vary by market. Air and water quality are the most important, but variations exist between countries over matters such as organics (India, Indonesia and China), protecting endangered species (the United Kingdom and Indonesia), and wilderness protection (China).

281. For exporters this means the need for a keen understanding of each market, and the underpinning drivers of choice in each. As shown in Figure 17, it also implies being aware of the way that consumers access this credence information, and ensuring that they have the right channels to provide this information to consumers.

Figure 17: Technology and food purchases



Source: AERU.

Taking Te Ao Māori to the World

282. Many qualities contribute to New Zealand's international reputation: excellence in food production, high quality education systems, natural scenic beauty, to name just a few. But Te Ao Māori – the language, values and cultural practice of tangata whenua – stands alone as the unique part of our country's offering to the world.
283. There are varying estimates of the size of the Māori economy and asset base. In 2018, MBIE estimated that the value of the economy was nearly \$40 billion and that it was growing faster than the rest of the New Zealand economy. The Māori population is younger than the average for the rest of the country and also growing at a faster rate.
284. Māori businesses, like all others, have financial and economic imperatives that drive their goals and objectives. But some distinctive characteristics of Māori business have been observed, which include:¹⁰⁶
- a relatively strong but tightly centred asset base
 - real strengths in terms of sustainable business practices
 - a long-term, custodial view where possible short-term gains are traded off for longer-term stability
 - broad social networks that are likely to provide a smooth transition into similarly broad business networks over time.
285. In 2007, TPK synthesised more than a decade of research to develop the concept of a 'Māori edge'. This was, in essence, an expression of comparative advantage based on the historical experience and cultural practices of Māori. The key elements of the concept were summarised as:

- a. resilience and flexibility
 - b. inherent and acquired trading capacity
 - c. a culture well-suited to transactions in growing markets
 - d. curiosity and an increasing willingness to diversify
 - e. uniqueness and freshness
 - f. dual-world skills, including language.
286. These characteristics highlight the potential for New Zealand to benefit from encouraging and developing greater Māori leadership of our country's international engagement, economically, culturally and diplomatically. This opportunity has become ever-more apparent as the pattern of New Zealand's trade has broadened from its traditional Western partners to a more diverse range of countries.
287. Internationally, there is an emerging trend for partnerships between indigenous groups. This is an obvious area for New Zealand to explore with creativity and energy. Chapter 19 of the Agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation (ANZTEC) seeks to enhance the cultural and people to people links between Māori and the indigenous people of Chinese Taipei, as well as expand and facilitate trade. TFAAB agrees that opportunities for this type of cooperation should be explored in all FTAs where partners have significant indigenous populations. Provisions need to be backed up with adequate resourcing.
288. TFAAB considered what needs to be done differently to capitalise on these opportunities. We realise that obstacles to progress go deeply into areas related to the Tiriti/Treaty partnership that have much broader significance than just for trade. Realising the potential requires firsts and foremost a high degree of integrity and trust on all sides.
289. TFAAB identified three broad areas where improvement is needed:
- a. strengthening the Māori-Crown Partnership
 - b. dealing with some unfinished business
 - c. strengthening the Government's capability to reflect Te Ao Māori offshore, and to engage at home.

Strengthening the Māori-Crown Partnership in Trade

290. Trade agreements and negotiations engage a wide range of Māori interests, including in areas of extreme cultural and economic sensitivity around intellectual property. Addressing such issues requires high levels of mutual trust and confidence. The Waitangi Tribunal has indicated that the Government's processes for engagement with Māori as its partner under te Tiriti/the Treaty in treaty-making-generally, and in the development of its trade agreements specifically, need to improve.
291. The manner in which the Crown engages Māori on trade needs to evolve in line with growing expectations of power-sharing and a more equal relationship. This starts with MFAT committing, at the highest level, to a relationship with Māori in a manner that fulfils the principles of te Tiriti/the Treaty and provides a fuller implementation of its existing Māori Engagement Strategy.
292. Engagement must begin early on – before key policies have been determined, when co-creation of policy is still possible. The relationship needs to be an iterative one, in

which officials go back to Māori and explain how their views have influenced policy. MFAT should find a way to communicate to Māori annually on progress on trade deals, what engagement with Māori has taken place, and how Māori views have affected policy.¹⁰⁷ In this way, a body of knowledge about indigenous perspectives on trade can be built that can be transferred from consideration of one FTA to another.

293. Careful consideration is always needed as to when engagement with Māori needs to be focused on bodies, such as the Federation of Māori Authorities, and when it needs to be more general. MFAT's small Māori Policy Unit manages a developed set of relationships with many of the organisations representing Māori interests, including TPK and the Federation of Māori Authorities and other groups representative of Māori, and Māori traders and exporters. It would be desirable to expand and deepen this network, including with organisations representing urban Māori. This would require greater resourcing.
294. MFAT is working to improve its engagement with Māori. The Taumata (para. 209) is a step in the right direction. Given the significance of the initiative, the terms of reference agreed between MFAT and the Taumata should be publicly available and be reviewed for their effectiveness on an ongoing basis within the next 2–3 years. MFAT also has a Māori internship programme. This could be strengthened by encouraging greater Māori participation in its design. The Taumata is well placed to provide guidance on this.
295. Improved engagement will have practical benefits, enhance MFAT's ability to connect with Māori businesses, ensure Māori are adequately represented in trade missions and trade agreement negotiations, and make the most of export opportunities in emerging and developing country markets.
296. Greater Māori engagement will, however, require greater resources. Many Māori organisations already face burnout from the volume of consultation in which they are asked to engage. Although citizens are not, in general, paid for their contributions to democracy, many argue that this is the wrong analogy, and that Māori should be seen as contributing specific expertise in tikanga and Te Ao Māori.¹⁰⁸ Payment for such advice could be seen as analogous to the similar spending on other matters.¹⁰⁹ Government officials have in the past contemplated and rejected such steps on the grounds of political difficulty and the financial commitment such a precedent would create.¹¹⁰ Nonetheless, it appears to be both necessary and justified, and there already precedents in place within Government.

Dealing with Some Unfinished Business

297. Māori concern over their intellectual property rights is no new issue. The Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples in June 1993 provided an internationally recognised framework for considering indigenous rights, but did not get wide recognition in New Zealand. It is almost 30 years since Māori launched a claim for protection of their intellectual and cultural property rights through the Waitangi Tribunal (Wai 262). The absence of a resolution to this claim has, among many other problems, created uncertainty for our trade negotiating positions.
298. A major conference on 2018 on Māori intellectual property, Ngā Taonga Tuku Iho, was provided with examples from other countries where indigenous peoples and governments had adopted practical measures to enable greater protection of indigenous cultural heritage, showing that new and additional mechanisms are possible and achievable. The communique from this conference set these out.¹¹¹

299. Recently the Government has released a proposal outlining how it proposes to respond to the Tribunal's recommendations. Three ministerial groups, including one for the protection of taonga internationally, have been formed.
300. Since a significant proportion of such misuse occurs overseas – often without infringing any specific laws in the country where it is occurring – there is a role for our diplomats to support Māori efforts to protect their taonga. This has been occurring informally already.
301. In 2011, the Waitangi Tribunal recommended that the Government establish a new commission whose purposes would include protection of Māori cultural works against unauthorised commercial use. Such a commission could provide a valuable forum to enable Māori to engage the mana and influence of the Crown, through its offshore posts, to support their efforts to protect taonga offshore. But even in the absence of such a commission, there is no reason why an interim process could not be established to achieve much the same result.
302. New Zealand has sought to protect Māori interests more generally, and fulfil its obligations to Māori under te Tiriti/the Treaty, by negotiating the inclusion of the Treaty of Waitangi exception in each of its FTAs. The adequacy of the exception was questioned by Māori in respect of the recent TPP and led to claims before the Waitangi Tribunal concerning its effectiveness, as well as the Government's obligations to Māori when negotiating FTAs more generally (the Wai 2522 claim).
303. The Waitangi Tribunal disagreed with the Government's economically focused description of Māori interests under FTAs, which it described as 'reductionist'.¹¹² It nonetheless determined that the Treaty of Waitangi exception would provide 'reasonable' protection of Māori interests. However, while the Tribunal endorsed the exception's reasonableness, it also concluded that there are flaws in its drafting, and encouraged the claimants and the Government to enter into constructive dialogue on the future of its text. There may be risks associated with reopening the text in future negotiations, including that the current version may be read narrowly. On the other hand, a wider and general exception for measures necessary to fulfil legal obligations to indigenous peoples has been included in the trade agreement between the United States, Mexico and Canada (USMCA, signed but not ratified, art 32.5). It will be important that the proposed dialogue take into account wider developments.
304. MFAT will need to continue to closely follow, and participate in, the arguments in front of the Waitangi Tribunal about Māori engagement and to implement any recommendations arising.

Strengthening the Government's Capability to Reflect Te Ao Māori Offshore

305. New Zealand's network of diplomatic and trade posts is a national taonga in its own right. It has an important role in shaping the way the world sees our country.
306. TFAAB endorses a vision for our posts as Te Aka Aorere, which as wananga a-rohe offer:
 - a. manaakitanga, because this is the natural obligation of an offshore post towards its own citizens
 - b. mana, because host governments bestow this on our posts. This is accepted with humility and, in turn, the mana of the post is enhanced when it is shared with talented New Zealanders who have a reciprocal contribution to make in another country
 - c. mōhiotanga, because New Zealand's offshore staff are hardworking, well-informed and well placed to share valuable knowledge.

307. New Zealand has had, and continues to have, many distinguished Māori diplomats. But MFAT, like many government departments, has not been able to recruit or retain Māori staff at a number proportionate to the population. It has been making progress in this area, however. This year has seen its largest increase in Māori staff since 2014. At present it has significant numbers of Māori at mid/senior levels but is light on junior staff. There are no Māori in its senior leadership team.
308. The challenge is not simply about numbers. MFAT needs more staff with deep knowledge of te reo Māori and tikanga Māori. Its performance assessment frameworks need to put an emphasis on valuing cultural competency that would create the incentives for improvement in this area.
309. New Zealand's posts are blessed with some great resources in the form of korowai, whakairo and other taonga. Better use of these resources could be made by ensuring that all offshore staff are trained to be able to articulate their stories and meaning.

'Sweet Spot' Conclusion

310. The two sweet spots outline above together suggest a number of things:
- a. Whether we are talking about tikanga Māori or food quality, integrity, backed up by robust systems of verification, must be at the heart of everything we do.
 - b. Nothing exported from New Zealand should be low cost. We need a vision for New Zealand trade policy that moves from commodity production and tourist numbers to capturing more of the value chain. New Zealand should be exporting products with high embedded value – economic, environmental, social and cultural.
 - c. In the primary sector a move to agritech – manufacturing, biotech and digital-based technology companies creating novel product, service and value chain solutions for the primary sector (agriculture, horticulture, aquaculture and fishing) – with the aim of improving yield, efficiency, profitability, sustainability and quality. Education export and tourism should also aim to both capture more in the value chain and target higher spenders.
 - d. We need to identify some of the obstacles to this vision – lack of clear leadership; R&D fragmentation and short-term focus – and develop new business models that recognise value chains and value capture.
 - e. Trade policy and agreements need to be in sync with the vision and position New Zealand for the future while making sure that we can pay the bills in the present. We expect negotiators to maximise returns for what we have now while also making sure we have flexibility and opportunities in the future.
 - f. The increasing importance of trade in services, and the digital economy, needs to be recognised in trade policy architecture.
 - g. New Zealand's trade policy settings need to capture the benefits that we can get from globalisation while maintaining control over the things that we care about, especially New Zealand-specific unique features such as culture, land and water.

Inclusiveness and Superdiversity

311. Diversity has many dimensions: TFAAB has chosen to focus on three that are highly relevant to trade: ethnicity, gender and region. Diversity can be a source of strength or friction. TFAAB's view is that the best way to think about diversity is to focus on positive opportunities and try to address obstacles that stand in the way of realising them.

Ethnic Diversity

312. New Zealand is becoming increasingly ethnically superdiverse, with 27% of the population born outside New Zealand and non-Europeans making up a larger proportion of the population.¹¹³ This is especially the case in Auckland where almost 50% of the population are Māori, Asian or Pacific peoples.¹¹⁴
313. The latest Census figures show that the ethnic diversity of New Zealand has deepened into something that could accurately be described as superdiversity.¹¹⁵ According to the 2018 Census, 4.5% of New Zealanders were born in England, 2.9% in China and 2.5% in India. Over 20% of those identifying as Asian were born in New Zealand.

Table 2: Proportions of ethnic groups in New Zealand, 2013 vs 2018 (%)

	2018	2013
Māori	16.5	14.9
Asian	15.1	11.8
Pacific	8.1	7.4
Middle Eastern/Latin American or African	1.5	1.2
NZ European	70.2	74

Source: Stats NZ.

314. Our increasing diversity is highly relevant to New Zealand's trade policy challenges. It offers ways of addressing some enduring weaknesses in our trade performance, which include:
- a lack of familiarity with many of the countries we export to
 - a lack of cultural and, especially, language skills.¹¹⁶
315. There are also advantages from diversity, including the people to people connections (families and wider networks) with people from their countries of birth that superdiverse New Zealanders can have. At the same time, there are a number of obstacles to New Zealand trade policy being more inclusive. These include:
- Wellington-centred departments can lack knowledge about the changes that have occurred to New Zealand's demographics, and the variety of communities, cultures and languages that exist in New Zealand.
 - Many communities are 'hard to reach' through conventional ways of engaging over trade policy. This means that these communities will have less input into trade policies, and opportunities to use contacts and cultural knowledge in overseas markets will be lost.
 - This 'hard to reach' aspect may be complicated by some communities and cultures not being used to being involved in engagement by Government over policy.

- d. Language can be a barrier to inclusion, with parts of many communities having limited English and conventional engagement methods not overcoming this.
 - e. Engagement also needs to acknowledge that superdiverse New Zealanders may have different viewpoints, and ensure that those are taken account of.
 - f. Some cultures and communities are not represented at the levels or types of businesses that engage with the Government.
316. There is ample scope for MFAT and other government agencies involved in trade policy and implementation to improve this. More broadly, there are changes that should be made in the immigration and education sectors that would help these communities engage better with the Government, but there are also some trade-specific steps that could involve:
- a. Developing knowledge of, and then a policy for engaging with, hard to reach communities. As noted in Chapter 3, this would involve applying a 'superdiversity lens' to all engagement processes and developing a depth and sophistication of understanding about the nature of diverse communities in New Zealand, and the ways that they can best be engaged.
 - b. Taking steps to overcome language barriers. This goes beyond the greater use of interpreters and includes the use of ethnic media (including social media).
317. The need for better thinking about New Zealand's superdiversity also applies to the way that government departments (and in the context of this report those with responsibility for international relationships), attract, develop and use staff. This not only includes MFAT but also NZTE, MBIE, education agencies, and MPI. There are opportunities for those agencies to develop a greater understanding of different countries and markets, and a greater competence to engage in those countries, with a more diverse workforce. This includes allowing New Zealand to develop a deeper understanding of our trade partner cultures, and establishing relationships that align with those cultures (e.g. a relational rather than transactional approach). Trade for All will earn more trust and credibility with the growing number of diverse New Zealanders if those devising the policy and doing the negotiations and the consultations reflect them.
318. As part of its 10-year Diversity and Inclusion Strategy, MFAT has set itself a goal that by 2028 the percentage of Māori, Pasifika, Asian and other ethnic minority staff will be within +/-3% of national averages. There are good reasons for this – it challenges unconscious biases, provides a broader cultural and linguistic base, and improves engagement skills. That is a useful start, but more needs to be done. The Strategy also discusses improving the capability of staff to work in a diverse and inclusive workplace. A challenge for MFAT will be to allow new staff to reflect that diversity and not be 'smothered' by the existing culture.

Gender

319. The challenges that limit women's economic participation generally are well known. But women do not currently participate in the tradable sector to the same extent that they participate in the rest of the economy. Close to 40% of the world's SMEs are women-owned businesses; according to one estimate only 15% of exporting firms are led by women. In New Zealand, women comprise 40% of employment in the tradable sector but 57% of the non-tradable sector.

320. Empowering women to realise their economic potential through better access to opportunities in trade matters. It affects equity because jobs in the tradable sector pay better than in the non-tradable sector. And it affects productivity because the more women are involved in trade, the more economies grow.
321. Most of the barriers to women's participation in trade originate in domestic conditions that, in themselves, have little to do with trade. But these barriers are highly relevant to trade because until they are effectively addressed our trade performance will continue to suffer.
322. The needs of Māori women and superdiverse women must also be considered. They often face a double disadvantage getting employment, getting onto delegations, and breaking into trade networks. They often lack connections, sometimes exacerbated by not speaking English well.
323. The need to address trade and gender has been reflected in trade agreements. In 2017 the WTO issued the Buenos Aires Declaration on Women and Trade. Gender provisions are an increasing feature of FTAs. Generally they have been used to reaffirm existing commitments. But increasingly they also create cooperation mechanisms to promote equal opportunity and, in some cases, legal obligations that can reinforce international standards at the domestic level.
324. The International Trade Centre has identified eight areas where gender provisions in FTAs could enhance the participation of women in trade:
- a. protecting the rights of women as workers
 - b. working conditions
 - c. non-discrimination
 - d. access to social services
 - e. advancing the position of self-employed women
 - f. better access to resources and training
 - g. protecting the rights of women as consumers
 - h. advancing the interests of women as traders.¹¹⁷
325. In August 2019, MFAT and TPK organised a hui of women business leaders to identify opportunities to overcome obstacles to their participation as women in international trade. Many of the obstacles identified were not in themselves gender-specific; they apply to all SMEs. But, bearing in mind that women are more involved in SMEs than in other businesses, they add up to a pattern of exclusion that impacts unevenly across gender lines. Key findings were:
- a. Women are having greater difficulty accessing finance. Part of this is explained by the preponderance of women in SMEs but there is also evidence of gender bias.
 - b. Women are also having difficulty accessing information, networks and business support necessary for success.
 - c. New Zealand's reputation as the first country in which women gained the vote ought to be an advantage and part of our brand that we could make better use of when promoting New Zealand and women-led export business.

- d. Women are underrepresented in business leadership and governance roles. International research has identified the need for women to have role models, mentoring and exposure to access to succeed.
 - e. Women are underrepresented in business delegations that travel offshore.
 - f. Government agencies are difficult to navigate for SMEs especially in relations to export requirements.
 - g. Cultural appropriation was viewed as a significant risk to Māori women exporters and there was a feeling that the Government should do more to resolve the concerns at the heart of Wai 262.
 - h. There was a need for assistance in identifying trusted offshore partners.
 - i. Women in rural communities or running home-based businesses experience isolation. More could be done to build coalitions and support networks.
 - j. The digital economy is a potentially a key enabler of women in trade. But SMEs face big challenges, especially around intellectual property protection.
 - k. There are opportunities to improve women's access to procurement opportunities inside multinational companies and global value chains should be a particular focus.
326. Trade policy has traditionally been a heavily male-dominated career path. The WTO Secretariat has never had a female Director-General; there are currently no women in its top three tiers of management. New Zealand supports work underway to improve the organisation's gender balance and inclusiveness. The country's own credibility on the subject, however, could be stronger. Women are in many important roles in trade policy but have yet to occupy the two most senior: Deputy Secretary for Trade and Permanent Representative to the WTO.

SMEs in Trade

327. Growing the tradable sector is important for New Zealand's trading future. While the performance of the few large New Zealand export countries is obviously essential, facilitating better internationalisation of SMEs is at the heart of many productivity and inclusivity benefits.
328. The shape of the New Zealand economy means that solutions for New Zealand may differ from other countries. New Zealand is a country of small businesses – 97% of New Zealand companies employ less than 20 people, but contribute 28% of New Zealand's GDP. These businesses are young (33% have existed for 5 years or fewer), tend to pay lower than large businesses (an average of \$45,000 compared to \$52,000 in 2015), and have a poorer chance of survival (54% don't last 6 years). Larger businesses (20 employees or more) number about 15,000, and around 26–30% of them export in some form.¹¹⁸ Many SMEs find difficulty building up capital and financing, and developing the market contacts and expertise to export.

Are SMES That Export, or Want to Export, Well Enough Supported?

329. In ExportNZ's view, exporters that fall into NZTE's Focus 700 group or the 'build' group of exporters get very good support from NZTE. The group that gets relatively little help are smaller exporters that may or may not be 'export ready' but are willing to start out. We think more could be done for this group to increase their chances of success, or alternatively to help them realise they are not yet ready for export and they need to focus on growing their business and their resources more before they go down that path.

330. To a large extent, the issues of improving regional trade and economic development, and increasing the trade performance of SMEs, are linked. The discussion of each of these therefore needs to be read together.
331. ExportNZ can and does support this group with various capability building and networking events, but it doesn't have the boots on the ground in overseas markets, which is where NZTE and to a certain extent MFAT come into their own. Additional things that could be done to help firms better understand international markets are listed below.
- a. Support for market research seems like a no-brainer. Currently NZTE 'start' customers are not entitled to market research support, only 'build' and 'focus' customers.
 - b. In-market immersion programmes provide deeper understanding of markets. Currently this service is offered to build and focus customers only. NZTE used to have a programme called 'Path to Market' which was a market reconnaissance exercise. It seems to us that it makes sense to undertake this kind of market research in a market before an emerging exporter invests more heavily in more intensive activities such as a trade show.
 - c. Help finding trusted partners in market. This always rates highly in ExportNZ's surveys as to what kind of assistance exporters want, and new and small exporters do not currently get these introductions.
 - d. Attending trade shows with other New Zealand companies also rates highly in surveys. Exporters would need to be able to fund their own attendance at a trade show, because if they cannot afford to do that they will probably be unable to fund international market development. The Path to Market kind of support would be a lower cost way to explore market opportunities.
 - e. Some of ExportNZ's members are fans of trade missions to get traction in overseas markets. This is likely to depend on the kind of product being sold, the degree of difficulty getting into a market, and the government/business crossovers in the market concerned.
332. TFAAB also thinks that there is more that NZTE could consider doing to reach these smaller firms. This should include:
- a. a focus on firms or clusters of small firms through the use of advanced digital techniques, for example market finders, export readiness assessments, more market research, and better international events access.
 - b. accelerating personalised 'light touch' customer services to a broader range of small export ready firms, which provide knowledge in an accessible way.
333. There are constraints to how effective further steps can be – there is a 30% failure rate in NZTE's Focus 700 firms. Smaller firms will have even greater challenges. Capability building needs to be careful not to lure firms into export markets only for them to overreach themselves and be burned or fail.
334. Another significant NZTE role is to facilitate investment in New Zealand. It could consider investing more in 'greenfields' investment, seeking investment opportunities in New Zealand. This would require NZTE to research potential sectors, develop opportunities, and create prospectuses showcasing New Zealand to the world for the right sort of investor.

335. Another small but significant part of the current SME story turns on the use of tariff preferences under the country's existing FTAs. Obviously, if a company does not use them, the effort expended in securing them has been that much diminished. There has been, however, a significant uptick in those companies making use of them, according to exchanges data looked at for China, Chinese Taipei, Thailand and the Republic of Korea (see Table 3).
336. As Table 3 shows, exports utilisation preference is the dominant category, but varies significantly as a share of total exports across countries.¹¹⁹ For example, in 2015, 47% of New Zealand's exports to China received preference, compared with 77% in Chinese Taipei. This reflects the fact that around 27% of exports were not eligible for a preference in China. The data also suggests that the value of exports not using available FTA preferences is low, both by value and share, among all the jurisdictions studied.

Table 3: Preference utilisation rates in selected Asian Countries, 2007–2016 (%)

	2007		2008	2009	2010	2013	2014	2015	2016
China	–		–	39	50	73	92	96	NA
Chinese-Taipei	–		–	–	–	–	97	98	NA
Thailand	64		64	65	65	78	63	83	NA
Republic of Korea									88*

Source: MFAT.

Note: * = provisional rate.

Creative Sector Example

337. The creative sector¹²⁰ is an illuminating case study of the challenges faced by New Zealand SMEs more broadly. The potential of the sector is undoubted; by some definitions it is contributing as much as \$17 billion to New Zealand's annual GDP. It also contributes strongly to international perceptions of New Zealand. And the potential to use cloud-based and data-based technologies and structures to overcome the limitations of distance is obvious.
338. The sector has identified the need to focus on international opportunities to spread the peaks and troughs of project-based work and to diversify opportunities. But it has a 'missing middle': there are a few large successful exporters, a lot of start-ups, but not much in between.
339. Using international opportunities to develop more mid-level companies in an opportunity for the sector. The impediments are:
- lack of local knowledge and in-market capability
 - the extra costs of building relationships because of New Zealand's remoteness from markets
 - market-specific factors (e.g. transfer of money in some markets, bandwidth capacity in others)
 - lack of business capability, including improving the pipeline of students entering the workforce (both nationally and internationally), and raising skills and knowledge, especially around intellectual property protection.
340. A persistent feeling in the sector is that existing structures of support are strongly oriented towards New Zealand's traditional export strengths in physical goods, and that the potential of their industries is too easily overlooked. Equally, many in the sector are not aware of the support that is available or how to access it. There is a need to raise awareness on all sides.

341. A range of policies should be used to improve the situation, including:
- a. sector development plans with high level buy-in, such as the 10-year plan for the screen sector that has been agreed and is supported by the Prime Minister
 - b. clustering, such as occurring around the screen industry in Wellington
 - c. creating opportunities for larger and more successful enterprises to share knowledge and contacts with up and coming companies.

Regions

342. There is huge variation in levels of income and productivity across New Zealand. Wellington and Auckland have far more complex economies and higher levels of human capital per capita (the estimate of lifetime income based on age, education and other factors) than the rest of the country. But there are still large differences in prosperity between relatively wealthy regions like Canterbury and Waikato when compared to Northland and the East Coast of the North Island. This is reflected in average income, employment and levels of tertiary education
343. Some regions benefit more from trade than others. Most regional participation in trade is through our large value chains – primary produce (agriculture, horticulture, forestry, fishing) or tourism. While there are employment benefits, average incomes still may not be high. Value creation in both primary exporting and tourism is still a priority. Better and wealthier regions will go some way towards reducing inequality (and resolving long-standing social problems).
344. The Government is applying considerable resource through the Provincial Growth Fund towards regional growth. TFAAB would expect the policies underlying this resource use to answer the following questions, which are important from a trade perspective:
- a. What role does fibre and connectivity play in regional development, and are improvements needed?
 - b. For each region, what are the critical transport links and do they function effectively?
 - c. What are the particular barriers in each region that prevent development and trade opportunities?
 - d. Are there tailored immigration solutions needed to resolve the specific labour market issues that each region faces?
 - e. What are the challenges and opportunities (e.g. new plant types) provided by climate change?
 - f. How can technology assistance and R&D help each region?
345. In thinking about regional development and trade, we need to ‘reverse the lens’ – rather than think about how regional development can help trade, we should focus on what trade can do for regional development, and how to help regions develop trade. In some regions there will be export opportunities that might not make a large difference from a national economic perspective but still be regionally significant for that community.
346. As we noted in the discussion on SMEs, the biggest constraint is that we don’t have many companies who are ready to export, and who by themselves may be too small to explore and develop export opportunities. This problem is likely to be exacerbated in regions compared to large urban areas.

347. Supporting the capability development of pre-export companies is important. One way of supporting such firms in regions is through the development of clusters of like firms that can pool resources to undertake the financial, governance and market exploration and development activities that are needed to enter export markets successfully. ExportNZ currently plays a role in this, but this could be supplemented by regional economic development agencies if they increased their skills, and coordinated activities with ExportNZ.
348. Related to this, there is a need to identify the barriers to, and support the development of, micro-exporting. This includes through support in trade agreements, providing shared platforms, and through integrating with clusters in regions.

The Pacific and Trade

349. New Zealand's trading interests in the South Pacific are different in context from its trading interests with the rest of the world, for a number of reasons:
 - a. New Zealand has 'Realm' responsibilities for the self-governing territories in the Cook Islands and Niue, and in the non-self-governing territory of Tokelau.
 - b. There are unique cultural dimensions in the relationship between New Zealand and the South Pacific island nations.
 - c. The political and cultural weight of the New Zealand Pacific communities and diaspora gives bilateral relations with their countries of origin a different character.
 - d. The nature of the economic relationship is different given the importance that remittances play in some island economies, the nature of the New Zealand aid and development relationship with the Pacific, and the importance of a stable and prosperous Pacific to New Zealand in a strategic environment that is increasingly less benign.
350. What this means in part is that a strict separation of trade policy from aid and development policy in the Pacific is not possible. They need to be considered in an integrated way. Political and democratic stability in the Pacific will be helped by greater prosperity and economic independence.
351. The work being done by TFAAB coincides with a major transition and rebalancing of the relationships with the Pacific. Alongside a continued use of the SDGs, two key frameworks are influencing the future of the development relationship with the Pacific: the Pacific Reset and 'localisation'.
352. Localisation is a global development trend to devolve decision-making and resources to in-country partners so that communities can lead and implement their own development. This has implications for the way that New Zealand development and trade policy in the Pacific works.
353. MFAT is piloting a new funding mechanism for engaging with NGOs for their role in aid. 'Partnering for Impact' involves negotiated co-investment partnerships with NGOs, Manaaki (a fund for NGOs to work with in-country partners to support the most vulnerable and marginalised), and a mechanism to support and coordinate self-reliance building of civil society partners in the Pacific.

354. The results of this pilot will need to be assessed, and there are some key issues that need greater clarity:
- a. How does New Zealand help build capacity of Pacific partners to absorb more funding and implement their own development?
 - b. How will organisations that help deliver development resources to the Pacific need to change, and what skills will they need?
355. The Pacific Reset policy announced last year has two key drivers:
- a. The Pacific Islands region is confronted by a broad array of challenges it is not, in some cases, well equipped to tackle.
 - b. The Pacific has become an increasingly contested strategic space, under which New Zealand has to work harder to maintain our positive influence.
356. New Zealand's engagement with the Pacific under the Pacific Reset policy is characterised by five principles covering understanding, friendship, mutual benefit, collective ambition, and sustainability. Other elements of New Zealand's refreshed approach to the Pacific include:
- a. a renewed focus on leadership diplomacy with the Pacific, to ensure that New Zealand and the Pacific's political leaders have the connections required to chart a common cause in the region
 - b. close cooperation with Australia and the Pacific's other major partners so that we are working to complementary ends
 - c. a larger and refocused Pacific development programme.
357. There are different perspectives on the effectiveness of the Pacific Reset. While there has been an increase in both diplomatic leadership and development funding, there are a number of improvements that could be made that would overcome obstacles to a more successful initiative:
- a. Engagement with the Pacific diaspora community needs to improve – there has been a lack of deep engagement and a substantive and practical plan for engagement needs to be developed with and shared with key stakeholders. This will require MFAT to listen to the Pacific diaspora community.
 - b. Faster action and some clear successful actions on the ground are needed. Using a partnership approach with NGOs, the Pacific diaspora, companies operating in the Pacific and the Pacific Island communities themselves could generate some clear and quick 'wins'. There are positive examples of cooperation (e.g. the Health Corridors initiative), but more needs to be done.
 - c. There needs to be more public education, not just in relation to the Pacific Reset, but aid/trade in the Pacific. Combined with being able to tell some success stories, this will help retain and build the 'social licence' for trade programmes.
 - d. The Government needs to support the work that Māori organisations such as the Federation of Māori Authorities is doing in working alongside Pacific governments to look at trade and development opportunities.
 - e. There is a warranted focus on the SDGs and the impact of climate change on Pacific island economies. But equal attention needs to be paid to the main concerns of Pacific people – the combination of employment, health and education and the way that climate change directly affects the lives of people and their community.

358. From a strict trade policy perspective, the PACER Plus trade and development agreement was concluded in 2017. It will extend existing South Pacific trade agreements and states that its main objective is to encourage economic development in the South Pacific.
359. While 11 countries signed the agreement (but not Fiji and Papua New Guinea), it has not yet been ratified. There has been criticism that PACER Plus removes from Pacific Island nations the ability to regulate to pursue their own development goals.
360. PACER Plus is not without contention, and not all members of TFAAB support it, but there is willingness to see that it is implemented well and in a way that is Pacific-led and supports development goals. Implementation needs to be designed with the Pacific islands and the diaspora communities, and should also involve NGOs and companies working in the Pacific, consistent with SDG 17. The New Zealand Government should commit to working with Pacific partners to address the limitations with and implementation of the PACER Plus agreement.
361. One focus of this implementation could be to work with Pacific communities to make sure that more businesses are export ready, particularly for the Australian and New Zealand markets. This could involve working with groups and networks of Pacific Island businesses/Chambers of Commerce to prepare Pacific companies for exporting.
362. As noted above, remittances are important for Pacific Island countries. The Government needs to ensure that immigration policies reflect both the relationship that New Zealand has with the Pacific, and the role that remittances play. This should also include working with Pacific leadership in New Zealand to find efficient and cheap ways to send cash donations during emergencies, using the same mechanisms people use for remittances. This will allow people in New Zealand to make direct contributions to families, potentially increasing willingness to contribute.

Tourism

363. TNZ is a key contributor to the New Zealand economy, not only for the direct benefits from tourists in New Zealand but also because consumers who have visited New Zealand are far more likely to purchase New Zealand-made products in their home markets, and to believe in New Zealand brands.
364. The sector is not without challenges. These include the distance from many of our key markets for tourists, the attractiveness of New Zealand as a destination linked to perceptions of our environment, and the concern that in the future climate change may affect the extent to which people are prepared to travel by air.
365. The New Zealand tourist market is heavily reliant on overseas carriers, with two-thirds of tourists visiting New Zealand using foreign carriers. New Zealand's availability of airfreight capacity for high value exports is also heavily reliant on international tourist demand. Both of these factors mean that maintaining an open and transparent 'open skies' or liberal air services licensing regime is critical. The Ministry of Transport, as the lead negotiator of air services agreements, needs to ensure that the way these agreements are negotiated is far more transparent. The recommendations made about trade policy engagement should also apply to air services agreements.
366. New Zealand's distance from tourist markets means that there will be concerns over the degree to which tourists contribute to climate change. Aviation currently contributes 2% of

global CO₂ emissions (although that is forecast to grow), and 11% of global transport emissions (shipping is also 11%, with personal transport at 40%). Globally, airlines have developed an emissions management programme under the International Air Transport Association. The International Civil Aviation Organization has a sustainable fuels programme that has an aspiration of replacing a significant proportion of aviation fuels with sustainable fuels by 2050. A major current challenge is that fossil fuels remain cheaper under current pricing and regulatory conditions. The pathway for a lower carbon aviation industry is close. The Airports Council International has developed a roadmap under the global carbon accreditation, reduction and offset programme.

367. In New Zealand, Auckland and Christchurch Airports have established their own sustainability programmes which place them in the top 10% of airports in the world. In the case of Christchurch Airport, investment in CO₂ reduction programmes has since 2014 seen a 90% reduction in scope 1 (direct) emissions against 2025 baseline levels.
368. TNZ has just started a joint research project with Air New Zealand and Auckland and Christchurch airports on New Zealand tourism and climate change, opportunities and threats. While there is little global evidence of 'flight shaming', without new fuel or aircraft technologies being developed and coming to market it is a realistic future risk.

Infrastructure for Trade

369. A trading nation requires excellent infrastructure. In New Zealand's case this generally means transport infrastructure (ports, airports, roads, rail, shipping, land transport and air services) and communication services. Digital infrastructure will become increasingly important in the future.
370. More generally, infrastructure either enables or inhibits social, economic and environmental progress and opportunities. The Government established the New Zealand Infrastructure Commission in response to a number of challenges facing infrastructure in New Zealand. These include a lack of integrated investment decisions within and across central and local government; a lack of visibility, pipeline and scale in New Zealand projects; an overriding focus on building new assets, rather than the outcomes we are trying to achieve and our ability to deliver on them; and central and local government procurement capability is at times lacking.
371. From a trade perspective, infrastructure vulnerabilities were exposed during the 2008 financial crisis when shipping services to New Zealand were at risk. In addition, the resilience of much of our infrastructure has yet to be tested and will inevitably come under pressure from natural disasters and the effects of climate change. New Zealand has an infrastructure deficit and no clear bipartisan master plan for ensuring the country's infrastructure meets the needs of New Zealanders now and into the future.
372. TFAAB has approached this issue from three interrelated perspectives: 'in-country' (roads, rail, energy systems), 'at the edge' (ports, airports, freight and people facilitation services), and 'out-of-country' (shipping and air services). There are also two dimensions to this issue: what the current position is, and what will be needed for the future.

In-country

373. The greatest concern at the moment applies both to the present and to the future. Much New Zealand infrastructure is in 'catch-up' mode because of a lack of master planning

and funding. The Infrastructure Commission needs to be aggressive in planning for the future, and in helping to align infrastructure decisions and funding with the long-term plan. Further, New Zealand needs to be open-minded about funding models to accelerate infrastructure investment.

374. If the Infrastructure Commission works as intended, it will achieve more than just a catch-up with current infrastructure deficits. It will need to plan so that we understand the future service levels required and have the infrastructure in place to meet it. Two other matters are important for the future:
- a. E-commerce and the digital economy are a key economic and social infrastructure issue for the future. The Commission will need to work to position New Zealand within a digital world.
 - b. Climate change will be a major challenge that will need to be confronted in infrastructure planning and pricing. Evolutions in transport, waste management, energy and water management will need to occur as the New Zealand economy decarbonises.

At the Edge

375. New Zealand's international ports and airports are for the most part majority-owned by local authorities and in a commercial form (the exceptions being Auckland and Wellington Airports which are majority privately owned¹²¹). Most of them have long-term infrastructure plans.
376. For those port and airport companies that are wholly owned by local government, there are some concerns that their long-term planning is not is not always evident, and that short-term cash generation can override a long-term investment approach. Productivity and technology evolution and their interaction with infrastructure are seen to be low priorities by most infrastructure operators.
377. There are also considerable issues in the interface between in-country infrastructure and ports and airports. For example, alternatives to road access to Auckland and Wellington Airports do not exist, and potential solutions are mired in planning, financing and implementation difficulties. The ports at Auckland and Tauranga suffer from road congestion, and some ports (e.g. Lyttelton and Port Chalmers) do not have satisfactory alternative inland transport arrangements in the event that their main routes are affected.
378. There are a number of challenges for the future. TFAAB expects that some consolidation of port services will be needed, which may enable economies of scale. This relies on an aligned interface with the in-country infrastructure plan and with the way that New Zealand wants to respond to international trends towards larger ship sizes and fewer port calls. The Infrastructure Commission will have significant challenges in planning for and advising on:
- a. how to align national and regional trade and transport needs with the future structure of a New Zealand ports sector that is owned by local government
 - b. how those needs are aligned to road and rail services and coastal shipping.
379. The other major future challenge is the way that this infrastructure manages climate change issues, from two perspectives. First, some airports and most seaport infrastructure is exposed to sea level rise over the coming decades, and major funding will be needed to future-proof infrastructure. Second, decarbonisation of aviation and shipping will involve considerable challenges and changes to those sectors. Emissions reduction is not only important because

the transport sector is the major source of emissions of CO₂; there is growing resistance from tourists and foreign students concerned about the emissions from their travel. The way that those sectors change will have considerable implications for existing infrastructure. Again, the Commission will need to consider this in its infrastructure planning.

380. Finally, climate change will have a considerable impact on weather patterns across New Zealand, and will result in changes to the pattern of primary production. One potential offsetting climate change adaptation is the use of water storage infrastructure for urban and rural use. Water storage is contentious for a number of reasons, including its impact on in-stream environmental values and the way that water storage and irrigation schemes are linked to groundwater and surface water quality degradation. While some form of water storage will be needed in the future, it will need to be done within clear and enforceable environmental limits.

Out-of-country

381. TFAAB has not identified any major issues at present, although historically both international shipping and aviation have been marked by practices that have been exempt from traditional competition law (e.g. the shipping conference/consortia system and aviation code-share arrangements). While the exemption from the Commerce Act for shipping was removed in 2017, it has been replaced by a partial and qualified exemption¹²² that will need to be reviewed periodically. Sections 27–30 of the Commerce Act do not apply to international air services and the economic judgement and compliance regime associated with this exemption lies with the Minister and Ministry of Transport. They are neither transparent nor subject to the sort of clear economic scrutiny that the Commerce Commission would bring.¹²³
382. It is important for New Zealand's trade and tourism competitiveness that shippers and travellers are able to access competitive services, and important for regional development that international-facing services are available from a wider set of ports or airports than just Auckland, for example. The implications of the impacts of the mix of competition law and infrastructure provision will need to be kept under review.
383. In the future, there are a number of interrelated trends that need to be managed well. There is a risk that larger ships and New Zealand's small scale could mean that New Zealand will miss out on large direct shipping services to our main markets. This would have costs for New Zealand, including increased handling costs and increased costs of longer transit times to market. Shipping and air services will change as the result of efforts in those sectors to mitigate climate change, and as energy sources change. There will be a need to juggle a number of matters to get the best outcome in the national interest – inland transport links, port consolidation, regional development, and competition policy.

Export Education

384. International export education is New Zealand's fourth largest export earner. In 2018 the Government released a new strategy for the sector that focuses on three goals: delivering an excellent education and student experience, achieving sustainable growth, and developing global citizens.
385. The future of this sector in New Zealand is one of sustainable growth, but to do so it must ensure quality and seek to grow value rather than volume, with a particular 'New Zealand experience'. In New Zealand, social licence for international education is important. There are

two angles to this. First, many people do not understand its economic significance and that the international education sector supports 43,000 jobs and brings in considerable revenue for New Zealand. The other angle is that the quality of education and the surrounding experience must be high quality and positive. There are indications that this is not always the case. There have been cases of education providers being substandard, and many students come to New Zealand and pay for a qualification so they can qualify for work rights or residency.¹²⁴ The potential for exploitation is high, as is the potential for brand damage to New Zealand export education and to the quality providers that exist.

- 386. New Zealand government agencies involved (predominantly ENZ, TEC, NZQA and INZ) have started to address the issue, but need to do more.
- 387. It is currently difficult for New Zealand education firms to set up overseas. New Zealand has been slow off the mark with offshore delivery of education, and there are many challenges. There is potential for greater education export, but it needs a concerted 'NZ Inc' push and investment. There is a need to lift profile and offer high quality.
- 388. This NZ Inc approach is vital – universities, polytechnics, the Ministry of Education, MFAT, and NZTE all need to work together better. Research is needed on how online platforms and offshore provision can work better.
- 389. Alumni represent an important part of NZ Inc. They can provide links to trade, tourism and international education opportunities, provide insights into local markets, and help provide a cultural bridge from New Zealand to other countries. To do this, they need to be communicated with and retain contact with New Zealand. We do not manage alumni as well as we could.

Opportunities for E-commerce in Trade

- 390. Online activity represents the major area of growth, whether in terms of advanced robotics, blockchain or the Internet. All have the potential to streamline business efficiency for global importers and exporters, reducing costs, increasing productivity, and driving economies over the next decade. In 2007, only 21% of the world's population had access to the Internet. As of 2018, more than 51% of people, even in remote areas, were online.¹²⁵ With more consumers gaining access to virtual marketplaces, and an emerging global middle class, most nations are experiencing growth in related trade volumes.
- 391. As New Zealand businesses trade internationally they will need to operate digitally. To help businesses maximise international trade opportunities, we should consider how we help them trade in a digital world. SMEs that have mobile-friendly websites that can take payments automatically open their businesses to a global market. Even traditional primary producers access larger markets and increase their opportunities for growth via better digital infrastructure, supply chain connections, more efficient border processes, and better marketing. Digital capabilities are therefore essential for increasing our export returns.
- 392. Businesses need to manage transactions, border paperwork, supply chain interactions, and often sales and marketing digitally. Digital operations of course need to manage the risk cybercrime. With the increasing sophistication of cybercriminals, there is increasing risk for New Zealand businesses of being hacked or breached. In particular, there is a growing focus on the human factor, targeting individuals to click on links. The impact of these attacks can open up demands for ransom and disrupt business.

393. There are several simple recommended steps that all businesses should undertake to reduce their risk. These are published by CERT NZ, however there is still low market awareness. As the Government works to support the growth of international trade, it should in parallel invest in activities that help New Zealand businesses, in particular SMEs, improve their cybersecurity awareness and capabilities. We should not encourage the exposure of our businesses to higher risk without helping them understand and protect against that risk.

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Appendix 1: Trade for All Principles

The following key principles have been agreed by the Government for Trade for All:

- The creation of a genuine conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Māori, consistent with their role as a Treaty partner;
- A focus on creating new and more sustainable economic opportunities for New Zealanders of all incomes and backgrounds;
- Support for the international rules-based system and New Zealand's contribution to its modernisation;
- Support for multilateral negotiations as a first-best option for New Zealand, followed by open plurilateral negotiations;
- Enhancing New Zealand's economic integration with the Asia-Pacific region, and economic connections to other regions, including through regional and bilateral FTAs;
- Support for trade policy to contribute to maximising the opportunities and minimising the risks associated with global issues, including:
 - Environmental issues including climate change
 - Protecting New Zealanders' health and wellbeing
 - Labour rights
 - Gender equity
 - The rights of indigenous peoples
 - SME participation in international markets
 - Inclusive regional economic growth, poverty reduction and sustainable job creation
 - Protecting traditional knowledge
 - Preserving the right of governments to regulate in the public interest, including for national land markets, taxation of multinational businesses and public services
- The development of specific directives for future trade policies and negotiations to operationalise Trade for All.

Appendix 2: Trade for All Advisory Board Terms of Reference

Background

Since the entry of the United Kingdom into the European Common Market in 1973, New Zealand governments have had to take a more active approach to negotiating access to international markets for our country's exports. For most of that time, public opinion about trade has been broadly supportive of the overall approach and negotiated outcomes achieved.

More recently, however, public concern about negative outcomes of globalisation has grown and, with it, reservations about the balance in trade agreements between market access for our exporters, and national sovereignty and policy space for our regulators. Public expectations about the availability of official information and access to decision-making have also changed markedly over the same period.

These concerns were evident throughout the negotiation of the Trans-Pacific Partnership and were reflected in the new Government's determination to secure five key changes in the outcome New Zealand negotiated for what became the Comprehensive Progressive Trans-Pacific Partnership.

With these concerns in mind, the Government has directed officials to develop a progressive and inclusive 'Trade for All' agenda. Its intention is to generate a forward-looking and wide-ranging conversation among key stakeholders and the general public about the role of trade in New Zealand's economic policy, as well as specific directives for future trade policy and new trade negotiations.

The Trade for All Advisory Board

Two important strands for the development of the Progressive and Inclusive Trade for All agenda are already in place:

- Policy work is being done by officials, led by the Ministry of Foreign Affairs and Trade (MFAT), to develop a new trade agenda.
- Ongoing outreach work is being led by the Minister for Trade and Export Growth and MFAT officials on existing trade agreements and negotiations.

In addition to these two strands of work, the Government has established the Trade for All Advisory Board (TFAAB), which is to be supported by but independent of MFAT, in order to examine key issues in more depth than is possible at the regular consultations.

David Pine, a former diplomat with extensive trade experience, has been appointed to convene and chair the TFAAB. The Chair is responsible for:

- Consulting with key organisations in the private and public sectors on the work of the TFAAB
- Ensuring that the TFAAB produces a report to the Minister for Trade and Export Growth with specific recommendations for the effective implementation of the principles that the Government has outlined.

TFAAB's membership has been selected to cover many perspectives. There is strong representation from Māori as the Crown's Treaty Partner. Its membership covers a wide range of perspectives: urban and regional; labour and business owners; large exporters and small and medium enterprises; environmental groups and groups with other social concerns, including about gender as it relates to economic opportunity. The Board has access to a wide range of expertise based on practical experience and academic knowledge.

TFAAB's sole task is to produce, in the second half of 2019, a report with analysis and practical, implementable recommendations to support and give effect to the key principles for trade policy that the Government has published (see below). It will dissolve after the report is produced.

TFAAB will determine which specific topics it wishes to study in depth. It will determine its own processes and be free to constitute informal working groups, reference groups and hear from any experts it sees fit.

TFAAB will ensure transparency in its processes and will regularly report publicly on its activities and findings.

TFAAB will be supported by a secretariat of officials from MFAT.

Timeframe

1. The Chair was appointed in July 2018.
2. The Chair's recommendations for the TFAAB will be considered at APH on Wednesday 7 November and then by Cabinet on Monday 12 November.
3. The TFAAB will have its first meeting in December 2018 and will meet approximately once per month from February 2019. The report will be produced in the second half of 2019.
4. These dates may be varied with the consent of the Minister for Trade and Export Growth.

Key Principles

- The Government has agreed on eight principles for the Progressive and Inclusive Trade for All consultations, including the Peer to Peer Group.
- The creation of a genuine and enduring conversation with the public and key stakeholders around the future direction of New Zealand's trade and inward investment policy;
- An ongoing process of consultation with Māori, consistent with their role as a Treaty Partner;
- A focus on creating new and more sustainable economic opportunities for New Zealanders of all incomes and backgrounds;
- Support for the international rules-based system;
- Support for multilateral negotiations as a first-best option for New Zealand, followed by open plurilateral negotiations;
- Enhancing New Zealand's economic connections to other regions, including through regional and bilateral FTAs;
- Support for trade policy to contribute to maximising the opportunities and minimising the risks associated with global issues including:

- Environmental issues including climate change;
- Labour rights;
- Gender equity;
- The rights of indigenous peoples;
- SME participation in international markets;
- Inclusive regional growth, poverty reduction and sustainable job creation;
- Protecting traditional knowledge;
- Preserving the right of governments to regulate in the public interest, including for national land markets, taxation of multinational businesses and public services;
- The development of specific directives for future trade policies and negotiations to operationalise the Progressive and Inclusive Trade for All Agenda.

Appendix 3: Trade for All Advisory Board Membership

David Pine (Chair)	Chair, Trade for All Advisory Board
Catherine Beard	Executive Director, Export New Zealand and Manufacturing New Zealand.
Mai Chen	Managing Partner, Chen Palmer Partners
Ken Clark	Chair, New Zealand Chief Medical Officers Group
Barry Coates	Founder and CEO, Mindful Money
Vic Crone	Chief Executive, Callaghan Innovation
Molly Harriss Olson	Chief Executive Officer, Fairtrade Australia and New Zealand
Sam Huggard	Secretary of the New Zealand Council of Trade Unions Te Kauae Kaimahi
Lain Jager	Chairman, Primary Sector Council
Malcolm Johns	Chief Executive, Christchurch International Airport
Amokura Kawharu	Associate Professor, Faculty of Law, Auckland University
Raf Manji	Chair of Finance Committee, Christchurch City Council
Hone McGregor	Director, Wakatū Corporation
Katie Milne	National President, Federated Farmers
Josie Pagani	Executive Director, Council for International Development
Caren Rangi	Independent Director
Gary Taylor	Executive Director, Environmental Defence Society
Simon Tucker	Director, Global Stakeholder Affairs, Fonterra
Craig Tuhoro	Managing Director, Global Metal Solutions
Pania Tyson-Nathan	Chief Executive Officer, NZ Māori Tourism
Leeann Watson	Chief Executive, Canterbury Employers' Chamber of Commerce
Michael Whitehead	Founder and CEO, WhereScape

Appendix 4: Summary of Trade for All Feedback

The following hyperlink is to a summary of the Trade for All feedback that was received by the Board.
<https://www.mfat.govt.nz/assets/Uploads/Trade-for-All-Summary-of-Feedback.pdf>

The following hyperlink provides a set of the submissions on Trade for All, for which permission has been given to publish.

<https://www.mfat.govt.nz/assets/Uploads/Trade-For-All-Submissions.zip>

Notes

- ¹ The WTO is the intergovernmental organisation that regulates international trade. It was founded under the Marrakesh Agreement in 1994 and began operation on 1 January 1995 with a membership of 123 countries. This has since grown to 164. It acts as a negotiating forum for agreements and oversees the implementation, administration and operation of these. It also provides a forum for settling disputes.
- ² FTA is used as a shorthand in this report for a wide variety of modern economic and partnership agreements between countries and groups of countries, including free trade agreements and economic partnerships.
- ³ A tariff is a tax or duty paid on a particular class of imports or exports.
- ⁴ In addition to the three areas identified above, TFAAB is also recommending that the Government's Framework for Trade and Labour be reviewed.
- ⁵ More information on the Taumata can be found in para. 209.
- ⁶ See Ministry for Women, 2019.
- ⁷ TFAAB concluded its deliberations prior to the recent announcements about the Regional Comprehensive Economic Partnership and the upgrade of the China FTA.
- ⁸ The Government's key principles are set out in Appendix 1. TFAAB's terms of reference are set out in Appendix 2.
- ⁹ NZTE estimates that 43% of its tech sector customers are experiencing export growth of greater than 40%.
- ¹⁰ See, e.g., Frankel et al., 1999; Pavcnik, 2002; Alcalá and Ciccone, 2004; Bloom et al., 2016.
- ¹¹ Data provided to TFAAB by Stats NZ.
- ¹² For example, New Zealand was a founding member of the Cairns Group of Fair Trading Nations, a group of 19 countries which argues for greater liberalisation on agricultural trade.
- ¹³ The United States is currently blocking appointments to the WTO Appellate Body due to concerns around the way that it operates. By December this year, the Appellate Body will no longer have a quorum, threatening the viability of the WTO enforcement system.
- ¹⁴ See World Economic Forum, 2017 ; Krugman, 2019.
- ¹⁵ Public Voice, 2018.
- ¹⁶ See Rodrik, 2017.
- ¹⁷ In 1947, the GATT had 23 members; today the WTO has 164 members and a further 23 observers.
- ¹⁸ See Rodrik, 2017.
- ¹⁹ Trade agreements, including in the WTO, recognise this through the use of 'special and differential' provisions. These include longer time periods for implementing commitments.
- ²⁰ For example, in the United States the share of income of the top 1% rose from 11% in 1980 to 20% in 2014; see the Alvaredo et al., 2018.
- ²¹ See New Zealand's Framework for Trade and Labour (2001): 'Developing countries should not be denied legitimate comparative advantage of lower labour costs but this advantage should not be secured by deliberately neglecting fundamental labour principles.' See also Rodrik, 2017.
- ²² E.g., Article 205 of the New Zealand-China FTA.
- ²³ Public Citizen, 2015, notes that 'repeatedly the WTO Appellate Body has reversed WTO panels' findings that measures countries sought to defend under GATT Article XX did not meet the necessity test'. See also Howse, 2016.
- ²⁴ WTO, n.d.-a.
- ²⁵ For more information on standstill and ratchet clauses, see the Trade Explained, n.d.
- ²⁶ See, for example, Choaf, 2013; Côté, 2015; Van Harten Scott, 2015; Bonnitche et al., 2017.
- ²⁷ See New, 2014; Lenchuca et al., 2015.
- ²⁸ Nearly all domestic support measures considered to distort production and trade (with some exceptions) fall into the amber box, which is defined in Article 6 of the WTO Agriculture Agreement. These include measures to support prices, or subsidies directly related to production quantities. These supports are subject to limits.
- ²⁹ See Boston, 2017.

- ³⁰ For example, the Land and Water Forum brought different parties together to undertake a wide-ranging process that set out a direction for water policy to meet multiple aims.
- ³¹ Gallagher, 2016.
- ³² See Working Group on Trade, Investment and Climate Policy, 2016.
- ³³ The International Maritime Organization estimates that, by volume, 90% of the world's trade is shipped by sea. The Ministry of Transport estimates that the figure is 98% for New Zealand.
- ³⁴ See Grossman and Krueger, 1993, 13–56.
- ³⁵ Abdulai and Ramcke, 2009.
- ³⁶ See, e.g., Saunders et al., 2009, which shows how, due to different production systems, New Zealand lamb consumed in Europe used 50% of the energy production for dairy and 25% of that for lamb that was locally produced even after transportation was accounted for.
- ³⁷ See MfE, 2019; New Zealand Productivity Commission, 2018.
- ³⁸ Zedillo et al., 2000.
- ³⁹ In this report we considered the challenges to the WTO, including its dispute settlement system, and the importance of strengthening both. The following analysis assumes that current challenges to the functioning of the WTO's Appellate Body will be met.
- ⁴⁰ See MFAT, n.d.-d.
- ⁴¹ See WTO, n.d.-b.
- ⁴² The other country is Mexico.
- ⁴³ In most definitions e-commerce covers the sale and purchase of goods and services through the use of internet platforms. Digital trade covers this as well as the transmission of information and data across borders.
- ⁴⁴ Lund, 2019.
- ⁴⁵ The GATS has four 'modes of supply'. Mode 1, Cross-Border Trade, is the most relevant to this discussion.
- ⁴⁶ European Commission Directorate-General for Trade, 2019.
- ⁴⁷ MFAT, 'Briefing for Incoming Associate Minister for Trade and Export Growth', July 2019.
- ⁴⁸ See 'Chips with Everything', 2019.
- ⁴⁹ India has chosen not to participate in the WTO e-commerce negotiations at this stage.
- ⁵⁰ Stephenson, 2019.
- ⁵¹ See OECD Data, 2019.
- ⁵² New Zealand has ranked number 1 among 190 countries for ease of doing business in the World Bank annual ratings for the last four years.
- ⁵³ The OECD has found that labour productivity of foreign-owned companies in New Zealand is almost twice as large as that of locally owned companies.
- ⁵⁴ See Luxon, 2019.
- ⁵⁵ UNCTAD, 2013.
- ⁵⁶ Stoll et al., 2017.
- ⁵⁷ ILO, 2017b.
- ⁵⁸ ILO, 2017a.
- ⁵⁹ ILO, 2017b.
- ⁶⁰ Akerlof et al., 2002; Pollock, 2009.
- ⁶¹ Yu, 2009.
- ⁶² While there have been some examples of New Zealand companies successfully bidding for procurement contracts overseas, no comprehensive data are available. This gap needs to be addressed before a proper assessment can be conducted of whether membership of the GPA is of net benefit to New Zealand.
- ⁶³ See MBIE, 2018.
- ⁶⁴ See MBIE, 2019.
- ⁶⁵ As articulated in, e.g., Durie, 1985.
- ⁶⁶ See Richard, 1977.
- ⁶⁷ Rashbrooke, 2018, 286–287.
- ⁶⁸ See, for example, Shah, 2007.

- ⁶⁹ Chwalisz, 2017.
- ⁷⁰ For a fuller discussion of this and related terms, see Rashbrooke, 2017a.
- ⁷¹ See, e.g., Pateman, 2012.
- ⁷² Landemore, 2012.
- ⁷³ See MFAT, 2019b.
- ⁷⁴ See MFAT, n.d.-b.
- ⁷⁵ See MFAT, n.d.-c.
- ⁷⁶ A second public submissions process closed in mid-August 2018.
- ⁷⁷ See MFAT, n.d.-a.
- ⁷⁸ See MFAT, 2018b.
- ⁷⁹ See MFAT, 2018a.
- ⁸⁰ Though viewers appear to be in short supply; see www.youtube.com/watch?time_continue
- ⁸¹ The Committee may also pass an agreement on to another committee to examine.
- ⁸² See Hansard, 20 March 2018, https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20180320_20180320_20
- ⁸³ See Devlin, 2018.
- ⁸⁴ See MFAT, 2019a.
- ⁸⁵ The goal here derives from TFAAB's terms of reference (see Appendix 2). The quote comes from one of the parties interviewed during the preparation of this chapter.
- ⁸⁶ A series of nine podcasts, including with international institutes, can be found at <https://www.nzherald.co.nz/on-the-map/news/headlines.cfm?cid=1504759>
- ⁸⁷ See Open Government Partnership, 2018.
- ⁸⁸ See, for example, Chen, 2015.
- ⁸⁹ Rashbrooke, 2018, 286–287.
- ⁹⁰ Many have, in contrast, been used in wider New Zealand society, and principles of participation and deliberation are embedded in many Māori decision-making practices.
- ⁹¹ Rashbrooke, 2018, 282–284.
- ⁹² New Zealand International Business Forum, submission to the MFAT Trade for All consultation, September 2018, 7.
- ⁹³ Rashbrooke, 2017b.
- ⁹⁴ MBIE official, personal communication, July 2019.
- ⁹⁵ Business representative, personal communication, May 2019.
- ⁹⁶ See Coates, 2016, but also New Zealand International Business Forum, submission, 7.
- ⁹⁷ Parliament of the Commonwealth of Australia, 2016.
- ⁹⁸ Business representative, personal communication, July 2019.
- ⁹⁹ As is practised in the EU; see Rashbrooke, 2017a, 20.
- ¹⁰⁰ This has not always been the case. NIAs have been carried out before formal negotiation started in order to show the potential benefits of the agreement. Such was the case with the Trans-Pacific Strategic Economic Partnership (P4) that came into force in 2006 and the New Zealand-Thailand Closer Economic Partnership of 2014.
- ¹⁰¹ CPTTP NIA, p. 3; NZ-Korea FTA NIA, p. 7; NZ-China FTA NIA, p. 2.
- ¹⁰² The contemporary structure for NIAs involves the following main items:
- reasons for becoming a Party to the agreement
 - advantages and disadvantages to New Zealand, covering the range of sectors and activities that the agreement applies to
 - a detailed description of the legal obligations that would be imposed, any reservations to the agreement, and dispute settlement procedures
 - a brief description of legislative changes required
 - economic, social, cultural and environmental costs and effects of the agreement
 - the costs of complying with the agreement
 - a description of the consultation process used.

- ¹⁰³ GDP is a useful indicator of a nation's economic performance, and it is the most commonly used measure of wellbeing. The major advantage of GDP per capita as an indicator of standard of living is that it is measured frequently, widely and consistently, allowing for broad intercountry comparisons. GDP does not include several factors that influence the standard of living. In particular, it fails to account for:
- externalities
 - non-market transactions
 - non-monetary economy
 - quality improvements and inclusion of new products
 - sustainability of growth
 - wealth distribution.
- ¹⁰⁴ See Makhoul, 2013.
- ¹⁰⁵ New Zealand Treasury, 2009.
- ¹⁰⁶ TPK, 2007.
- ¹⁰⁷ This would have parallels with the requirement that the Minister of Māori Affairs annually report on progress in the implementation of recommendations made to the Crown by the Waitangi Tribunal. See Treaty of Waitangi Act, section 81.
- ¹⁰⁸ This point was made repeatedly by people representing both Māori and Pākehā organisations who were interviewed for this report.
- ¹⁰⁹ As one TPK official noted: 'The government spends \$25 million a year on scientific advice, but expects whānau to contribute their expertise for nothing', personal communication, May 2019.
- ¹¹⁰ Government official, personal communication, July 2019.
- ¹¹¹ See the conference communique: Mahuta, 2018.
- ¹¹² See Waitangi Tribunal, 2016, 2.2.3, 5.1.6 and 5.2.3.
- ¹¹³ See Stats NZ, 2019.
- ¹¹⁴ Chen, 2015.
- ¹¹⁵ Superdiversity is 'distinguished by a dynamic interplay of variables among an increased number of new, small and scattered, multiple-origin, transnationally connected, socio-economically differentiated and legally stratified immigrants who have arrived over the last decade' (Vertovec, 2007). Superdiverse cities have been defined as those where migrants comprise more than 25% of the resident population, or where more than 100 nationalities are represented (Chen, 2015, 32).
- ¹¹⁶ A recent report has recommended prioritising incentives to attract and retain fluent speakers of te reo, first language speakers of other languages and language graduates. See Auckland Languages Strategy Working Group, 2018.
- ¹¹⁷ International Trade Centre, 2019.
- ¹¹⁸ See MBIE, 2017.
- ¹¹⁹ This utilisation rate should be understood within the broader context of the overall distribution of exports, including exports entering duty free, and exports which are not eligible for preference. Exports entering duty free on a 'most favoured nation' basis are significant, in particular for exports to China (24% of exports, NZ\$2.1 billion). Exports utilising preference is the dominant category, but varies significantly as a share of total exports across countries. For example, in 2015, 47% of our exports to China received preference, compared with 77% in Chinese Taipei. This reflects the fact that around 27% of exports were not eligible for a preference in China. The value of exports not utilising available FTA preferences is low, both by value and share, among all countries studied.
- ¹²⁰ A recent report by ExportNZ identifies seven divisions of the creative sector: Screen; Architectural & Design; Engineering; Manufacturing and Production; Visual Arts; Music and Media. See Grant and Gurevitch, 2019.
- ¹²¹ Auckland International Airport Ltd is 22.4% owned by Auckland Council, with the remainder being privately held. Wellington International Airport Ltd is 66% owned by Infratil Ltd, with the remainder owned by the Wellington City Council. Note also that three port companies (at Tauranga, Napier and Bluff), while at least 51% beneficially owned by local authorities, are listed companies.
- ¹²² Commerce Act, sections 44A and 44B.
- ¹²³ Sections 27–30 of the Commerce Act deal with practices substantially lessening competition and cartel provision.
- ¹²⁴ See Towle, 2019.
- ¹²⁵ International Telecommunications Union, 2019.

