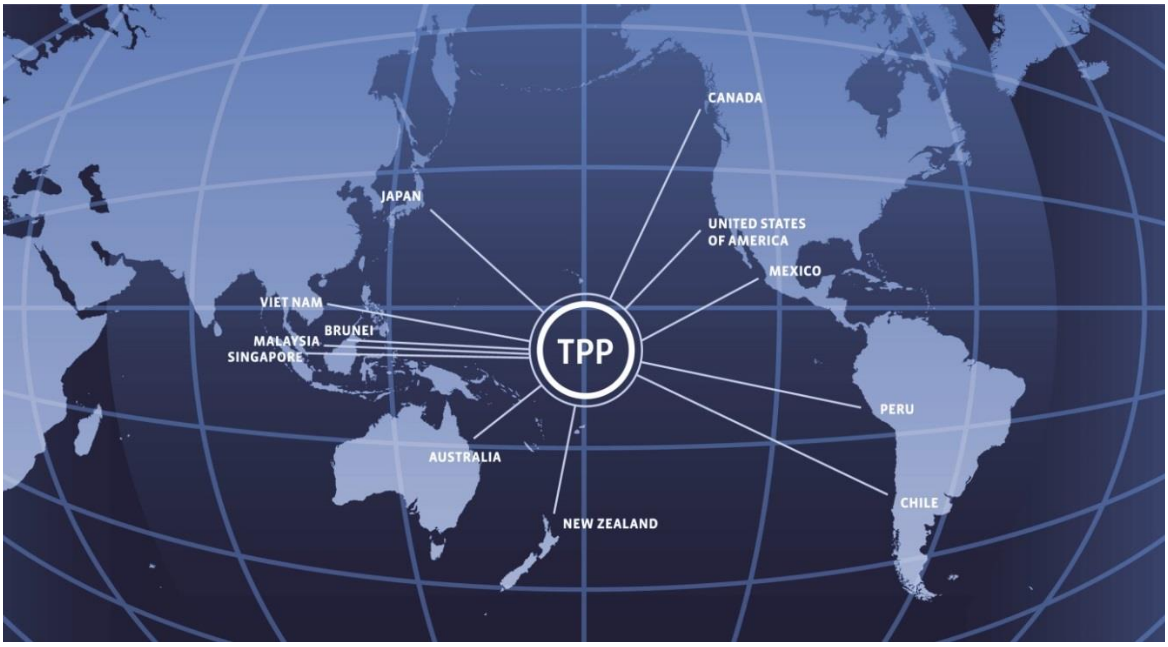
TPP: In brief



What is TPP?

The Trans-Pacific Partnership Agreement (TPP) is a free trade agreement between 12 Asia-Pacific countries that liberalises trade and sets consistent rules to make it easier to do business across the region. TPP is New Zealand's biggest FTA and the countries involved account for 36 per cent of the global economy.

TPP offers much better access to large and important markets for New Zealand's goods and services. The largest of these markets is the United States, which is responsible for over a quarter of all household consumption in the world.

TPP will create new trade opportunities, diversify New Zealand's export destinations and help firms do business overseas. Not being in TPP would put New Zealand at a competitive disadvantage compared to other countries.

Which countries are involved in TPP?

Twelve countries are in TPP: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam. TPP countries have a combined population of more than 800 million.

Currently, the other 11 countries in TPP account for over 40 per cent of New Zealand's overall exports – $20 billion of goods exports and $8 billion of services exports.

TPP is New Zealand's first FTA relationship with the United States, Japan, Canada, Mexico and Peru. Over $12 billion of goods and services are currently exported to these five countries. The United States is the biggest economy in the world and Japan is the third-biggest.

How does TPP benefit New Zealand?

Tariffs on New Zealand exports to TPP countries will be eliminated, apart from beef exports into Japan (where tariffs will reduce significantly) and a number of dairy exports into the United States, Japan, Mexico and Canada. On current trade volumes, this amounts to tariff savings of $259 million a year once TPP is fully implemented. New Zealand will, in turn, have to remove $20 million a year of tariffs on imports from TPP countries.

Tariff savings are the narrowest measure of the gains to New Zealand from TPP. Lower tariffs will lead to more trade with TPP countries. TPP also:

- reduces non-tariff barriers to trade that hold up or prevent export shipments.
- ensures fair access for New Zealand firms doing business in TPP countries and greater opportunities to bid for government procurement contracts.
- gives more confidence and certainty to New Zealand firms investing overseas.

The full benefit of TPP is estimated to be at least $2.7 billion a year extra in New Zealand's GDP by 2030.

TPP sets high standards in many areas. New Zealand is already an open, transparent and trade-friendly country, which means only a fraction of TPP's obligations will require changes to New Zealand's current practices.

The only significant cost comes from extending New Zealand's copyright period from 50 to 70 years. This cost – in terms of foregone savings on books, films, music and other works – increases gradually over 20 years and averages around $55 million a year over the very long term.

Other potentially far-reaching proposals raised earlier in the negotiations were not included in the final deal. Consumers will not pay more for subsidised medicines as a result of TPP and few additional costs are expected for the Government in the area of pharmaceuticals. There will also be no change to the PHARMAC model and a range of concerns around changes to copyright law have been allayed. As a result, TPP is overall a very positive agreement for New Zealand.

What happens next?

New Zealand supports the release of the text before it is signed by TPP governments but these arrangements are yet to be finalised.

TPP is expected to come into force within two years, once countries have completed their domestic legislative procedures.

TPP: More details

The following sections describe in greater detail the key elements of TPP

What tariffs will be reduced or eliminated?

As a result of TPP:

- tariffs on beef exports to Japan will reduce from 38.5 per cent to 9 per cent. Tariffs on beef exports to other TPP countries – including the United States, New Zealand's largest beef market – will be eliminated.

- New Zealand dairy exporters will have preferential access to new quotas into the United States, Japan, Canada and Mexico, in addition to tariff elimination on a number of products.

- tariffs on all other New Zealand exports to TPP countries – including fruit and vegetables, sheep meat, forestry products, seafood, wine and industrial products – will be eliminated.

Tariff savings will come almost entirely from New Zealand's new FTA partners – the United States, Japan, Canada, Mexico and Peru. TPP will eliminate tariffs on 93 per cent of New Zealand's exports to these five countries, once fully phased in.

TPP will also eliminate tariffs on exports to Viet Nam and Malaysia that are not already subject to tariff elimination under existing FTAs, for example on wine.

Full implementation of TPP will see total tariff savings of $259 million a year on New Zealand's goods exports, based on current export volumes (Table 1). Around half the tariff savings will be achieved when the agreement enters into force, while other tariff reductions will be subject to phase-out periods.

New Zealand will, in turn, have to remove its own tariffs on imports from TPP countries it doesn't currently have an FTA with. These are relatively low, however, and eliminating them involves foregoing revenue of only around $20 million a year once TPP is fully implemented.

Tariff savings significantly underestimate the benefits of TPP. Tariff liberalisation will open up new opportunities for New Zealand exporters across the TPP region and restore a level playing field in markets where competitors have enjoyed a tariff preference. This will help grow export volumes, particularly in countries with no previous FTA relationship with New Zealand.

By way of comparison, the annual tariff savings from New Zealand's FTA with China were initially estimated – on then-current volumes – at $115 million a year. Since then, however, New Zealand's annual exports to China have quadrupled to $10 billion and China is one of New Zealand's most important trading partners.

TPP: More details

Table 1. Estimated annual tariff savings from TPP, at the current level of exports

	NZ exports to TPP markets in 2014	Estimated annual tariff savings when fully implemented
Meat	$2.3 billion	$72 million
Dairy	$4.6 billion	$102 million
Fruit and vegetables	$1.2 billion	$26 million
Other agricultural goods	$1.6 billion	$18 million
Forestry	$1.5 billion	$9 million
Wine	$839 million	$10 million
Fish and fish products	$564 million	$8 million
Wool, leather and textiles	$621 million	$4 million
Manufactured goods	$7 billion	$10 million
Total	**$20.1 billion**	**$259 million**

More on outcomes for each sector can be found at www.tpp.mfat.govt.nz

What are the wider trade benefits from TPP?

In addition to tariff liberalisation, TPP also addresses other, non-tariff barriers to trade in goods, including by:

- requiring countries to ensure their customs procedures are applied in a way that is predictable, consistent and transparent
- ensuring that food safety and biosecurity measures do not create unjustified obstacles to trade, are based on scientific principles and are no more trade-restrictive than necessary
- eliminating agricultural export subsidies within the region.

For exporters, these changes will mean, for example, less time waiting for goods to clear customs, lower compliance costs and more predictability around other countries' processes.

TPP also reduces barriers to trade in services. Where obligations apply under TPP, they ensure market access and non-discriminatory treatment for New Zealand services providers, including providers of professional, business, education, environmental, transportation and distribution services. New Zealand's exports of services to TPP countries currently total $8 billion a year.

In addition, New Zealand businesses will be able to compete for government procurement contracts in TPP countries on an equal footing with domestic suppliers. This will open up greater opportunities to bid for contracts, particularly in Malaysia, Mexico, Peru and Viet Nam. No changes to New Zealand's own government procurement rules will be required.

How does TPP support overseas investment?

TPP protects investors from foreign governments acting in a grossly unfair or unjust way towards them, discriminating against them on the basis of nationality, or expropriating assets without compensation.

These sorts of provisions are common in international agreements, and New Zealand has included them in a number of FTAs and investment agreements. They give New Zealand investors more confidence and certainty when doing business overseas, and bolster New Zealand's attractiveness as a stable investment destination.

Existing regulations inconsistent with TPP obligations are carved out of the agreement. New Zealand will therefore continue to screen foreign purchases of sensitive land, including farmland, through the Overseas Investment Office and require that these meet a "benefit to New Zealand" test.

New Zealand also requires foreigners who make investments in significant business assets to meet business experience and good character tests. Under TPP, the threshold above which an investor must get this approval will increase from $100 million to $200 million.[1]

The non-discrimination provisions in TPP would prevent the Government banning TPP nationals from buying property in New Zealand. New Zealand retains the ability, however, to impose some types of new, discriminatory taxes on property.

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[1] The one exception is for Australian investors, as a higher screening threshold already applies under the CER Investment Protocol.

Some provisions in the TPP investment chapter – including the higher, $200 million screening threshold – will also flow through to New Zealand's FTAs with China, Chinese Taipei and Korea, in which there are "most favoured nation" provisions.

How are investment disputes settled in TPP?

TPP contains investor-state dispute settlement (ISDS) provisions. If an investor believed a TPP government had breached its investment obligations, and attempts at resolution had failed, it could take the matter to arbitration and try to get compensation.

Arbitration would happen under rules administered by respected international bodies. Proceedings would be open and transparent and the arbitrators would be independent. Costs could be awarded against an investor bringing an unsuccessful claim, and cases with no merit would be weeded out before going to full arbitration.

Some people are concerned that ISDS provisions give foreign investors the right to seek compensation from the New Zealand Government, simply for introducing laws or policies they claim have hurt their investments. This is not correct. To succeed, an ISDS case has to show an actual breach of the TPP investment obligations and the hurdle for this is high.

If the New Zealand Government acts in good faith, for legitimate public policy reasons, follows a proper process and doesn't discriminate on the basis of nationality, then the risk of an ISDS case being taken – let alone being successful – is very low. New Zealand has had ISDS provisions in international agreements, including the China FTA, going back 27 years and no case has ever been taken against it.

TPP also contains a provision that allows the Government to rule out ISDS challenges over tobacco control measures.

TPP includes a process for disputes between governments – on any issue, not just investment – to be resolved by arbitration, if all other attempts have failed. New Zealand has occasionally made use of such processes – for example, in overturning Australia's 90-year ban on importing apples from New Zealand.

What changes will be made to intellectual property laws?

TPP harmonises intellectual property rules across the 12 countries which has required compromise from all parties.

New Zealand currently has a 50-year copyright period.[2] However, half the TPP countries, and almost all OECD countries, have a 70-year period for copyright works. TPP requires New Zealand to move to 70 years as well, but allows for a transition to do this over time.

This change could benefit New Zealand artists in some cases, but the benefits are likely to be modest. Extending the copyright period also means New Zealand consumers and businesses will forego savings they otherwise would have made from books, music and films coming off copyright earlier.

The net cost of extending New Zealand's copyright term from 50 to 70 years will be small to begin with and increases gradually over 20 years, reaching a relatively constant level after that. Over the very long term, including the initial 20-year period, the average annual cost is estimated to be around $55 million.

New Zealand will also provide greater rights to performers of copyright works such as musicians and actors.

Apart from these two changes, TPP does not affect what is or isn't subject to copyright. New Zealand will maintain its current copyright exceptions and will not be prohibited from adopting new ones in the future. In addition, New Zealand will not be prevented from undertaking a review of its copyright laws.

New Zealand has, however, agreed to extend its existing laws on technological protection measures (TPMs), which control access to digital content like music, TV programmes, films and software. Circumventing TPMs will be prohibited but exceptions will apply to ensure that people can still circumvent them where there is no copyright issue (for example, playing region-coded DVDs purchased from overseas) or where there is an existing copyright exception (for example, converting a book to braille).

New Zealand will not need to change its laws on parallel importing or require internet service providers to terminate accounts for internet copyright infringements. In addition, TPP will not affect current New Zealand law on software patents or require methods of medical treatment to be patentable.

[2] This means that copyright in music recordings and films continues for 50 years after they were made. Copyright in books, screenplays, music, lyrics and artistic works continues for 50 years after the death of the author.

TPP: More details

What does TPP mean for medicines?

Consumers will not pay more for subsidised medicines as a result of TPP. Most prescription medicines are fully subsidised and, with few exceptions, New Zealanders pay no more than $5. TPP does not change this in any way.

Few additional costs are expected for the Government as well.

Under TPP there is no change to New Zealand’s standard 20-year patent period, but countries will have to extend the term of a particular pharmaceutical patent if there are unreasonable delays in examining the patent or getting regulatory approval. New Zealand’s processes are efficient, however, so very few patent term extensions are expected, based on current practice, and only in exceptional circumstances.

TPP countries have agreed to provide effective market protection for biologic medicines, through data exclusivity and other measures. New Zealand’s existing policy settings and practices will be adequate to meet these provisions.

As a result of TPP, PHARMAC will make some administrative changes to increase transparency. These include setting a timeframe for considering funding applications. This timeframe is up to New Zealand to determine, and can be extended.

New Zealand will also establish a specific review process for funding applications that PHARMAC has declined. New Zealand will design its own review mechanism, which can be internal within PHARMAC.

These changes are expected to involve up to $4.5 million in one-off establishment costs for PHARMAC and up to $2.2 million a year in operating costs. The new processes do not change the PHARMAC model or its ability to prioritise its spending and negotiate with suppliers.

A number of earlier, far-reaching proposals relating to medicines and to PHARMAC were knocked back during the TPP negotiations and are not part of the final agreement.

Does TPP undermine New Zealand’s sovereignty?

No. TPP is an international treaty that New Zealand has freely entered into and could withdraw from in the future.

New Zealand signs many treaties, conventions and agreements where, among other things, it makes undertakings to other countries, agrees to change domestic laws and agrees to be bound by international rules. Over the past 10 years, for example, Parliamentary select committees have formally examined 109 international treaties signed by New Zealand.

The Government intends to sign TPP because – like other treaties – it is in New Zealand's best interests.

How does TPP relate to the Treaty of Waitangi?

TPP includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand and nothing in TPP will prevent the Crown from meeting its obligations to Maori.

New Zealand's interpretation of the Treaty of Waitangi is not subject to the dispute settlement provisions of TPP.

Can the membership of TPP change in the future?

Other countries will be able to join the agreement in the future and some in the region have already expressed an interest. TPP may therefore lead to wider regional economic integration. This makes it even more important that New Zealand is involved from the outset. There is also a process for countries to withdraw from TPP if they wish to.

What are the next steps?

The TPP text needs to be legally verified, which involves confirming the exact technical drafting. New Zealand supports the release of the text before it is signed by TPP governments but arrangements are yet to be finalised. In the meantime, the Ministry of Foreign Affairs and Trade will begin to release detailed fact sheets on the different aspects of TPP within the next few days.

As with all New Zealand FTAs, TPP must go through the Parliamentary treaty examination process. The final text of the agreement, together with a National Interest Analysis, will be presented to Parliament for examination by the Foreign Affairs, Defence and Trade Select Committee.

After that, the legislative changes required in order to implement TPP will go through normal Parliamentary procedures, including select committee scrutiny. The TPP agreement itself cannot be modified unilaterally by New Zealand, but there is some flexibility in the way various measures can be implemented through domestic legislation and regulation.

TPP is expected to come into force within two years, once countries have completed their domestic legislative procedures.