

## TPP and Māori Development

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- The Trans-Pacific Partnership (TPP) includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. Nothing in TPP will prevent the Crown from meeting its obligations to Māori.
- TPP will provide significant opportunities for Māori exporters and businesses, and help grow the Māori asset base further.

### **Overview**

The obligations in TPP have been designed to protect the ability of governments to make legitimate public policy, including in health, education, and protecting the environment. This ensures the Government will have continued flexibility to take measures that are in the interests of Māori.

TPP also includes a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. The “Treaty of Waitangi exception” in TPP specifically refers to Māori and the Treaty of Waitangi, and applies to the entire Agreement. This reflects the constitutional significance of the Treaty of Waitangi to New Zealand.

Free trade agreements such as TPP offer new trading opportunities and grow exports, which are critical to New Zealand’s continued growth and prosperity.

A significant amount of the Māori asset base is oriented towards primary sectors and our export economy. Free trade agreements such as TPP that grow exports provide significant potential to strengthen Māori economic wealth.

### **TPP and economic prosperity**

TPP is a free trade agreement (FTA) that provides opportunities for trade and investment between 12 Pacific-rim countries: New Zealand, Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States (US) and Viet Nam.

These 12 countries account for 36% of the global economy and over 40% of New Zealand’s exports (NZ\$20 billion in goods and NZ\$8 billion in services). TPP will be New Zealand’s first FTA with the US, Japan, Canada, Mexico, and Peru. Over NZ\$12 billion of New Zealand goods and services are currently exported to these five countries. This means that a significant proportion of New Zealand exports that weren’t covered by an FTA will now have new opportunities under TPP as a result of greater market access (for example, lower tariffs) in these markets.

Successive New Zealand Governments have pursued FTAs as a means of growing exports, which are critical to New Zealand’s continued growth and prosperity. Not being in TPP would significantly reduce the competitiveness of New Zealand exports. Our exports would be comparatively more expensive, as tariffs and other barriers would be eliminated on the exports of our competitors but not on New Zealand-made products.

The value of the Māori asset base is now over NZ\$40 billion<sup>1</sup>, a significant amount of which is oriented towards primary sectors and our export economy. Māori own between 10% and 40% of key primary sector assets including red meat, dairy, kiwifruit, forestry, and seafood. Over three-quarters of the output of these sectors is exported. For some, such as dairy and kiwifruit, this is closer to 95%. Tariff savings under TPP on current exports across these sectors are estimated to be more than \$200 million a year once TPP tariff commitments are fully phased in. There are a number of opportunities for Māori economic interests to benefit from TPP, particularly exporters in primary sectors.

Other countries will be able to join the agreement in the future. It provides a platform for wider, regional economic integration, and supports the foundation for a free trade agreement for the Asia Pacific.

### **Treaty of Waitangi and TPP**

All of New Zealand's FTAs, including TPP, ensure that the unique relationship between the Crown and Māori is provided for. TPP will not prevent the Crown from meeting its obligations to Māori.

The main obligations in TPP have been designed to ensure legitimate public policy is not undermined and that governments can continue to regulate in the public interest. This approach helps ensure that the Government is able to take measures that are in the interests of Māori.

A key feature of TPP is an exception that preserves the pre-eminence of the Treaty of Waitangi in New Zealand (Article 29.6 in Chapter 29 of the Agreement, see [www.tpp.mfat.govt.nz/text](http://www.tpp.mfat.govt.nz/text)). The Treaty of Waitangi exception has been included in all of New Zealand's FTAs since 2001. This reflects the constitutional significance of the Treaty of Waitangi to New Zealand.

#### **TPP Article 29.6: Treaty of Waitangi**

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

*2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this*

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<sup>1</sup> The "Māori Economy Report 2013", which Te Puni Kōkiri commissioned BERL to research and draft, states the Māori economy asset base was NZ\$42.6 billion in 2013. (Authors: Ganesh Nana, Masrur Khan, Hillmarè Schulze. The report was published in April 2015).

*Article. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement.*

The Treaty of Waitangi exception in TPP specifically refers to the Treaty of Waitangi, and applies to the entire Agreement. The exception ensures that successive governments retain flexibility to implement domestic policies that favour Māori without being obliged to offer equivalent treatment to overseas entities. The “chapeau” language at the beginning of paragraph 1 of the Treaty of Waitangi exception (Article 29.6) provides assurance to trading partners that the New Zealand Government will not seek to abuse the flexibility that has been provided to New Zealand in respect of the relationship between the Crown and Māori. Paragraph 2 ensures that New Zealand’s interpretation of the Treaty of Waitangi is not subject to the dispute settlement provisions of TPP.

### **Intellectual Property**

TPP includes a number of provisions aimed at improving the treatment of traditional knowledge in intellectual property systems. These encourage information sharing between intellectual property offices on their practices for dealing with traditional knowledge, and require Parties to endeavour to ensure that quality patent examination practices are applied when applications for patents relate to traditional knowledge.

TPP also permits a Party to take measures to preserve, promote and respect traditional knowledge and traditional cultural expressions in a manner consistent with that Party’s international obligations.

TPP includes a requirement for other Parties to join an international treaty related to plant variety rights, the 1991 version of the International Convention for the Protection of New Varieties of Plants (UPOV 91). New Zealand is already Party to an earlier version of UPOV, but has not acceded to UPOV 91. The scope of plant variety rights in New Zealand was considered in Waitangi Tribunal report Ko Aotearoa Tēnei (WAI 262).

New Zealand secured specific flexibility in TPP to implement a plant variety rights system that gives effect to the requirements of UPOV 91 (instead of formally joining UPOV 91), while also allowing New Zealand to adopt any measure that it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi (and this is not subject to the dispute settlement provisions in TPP). New Zealand also has time to do this – up to three years after TPP has entered into force.

This New Zealand-specific text in TPP provides the Government with time and flexibility to conduct consultations and decide how to best meet the obligations in respect of UPOV 91, while taking into account the recommendations in WAI 262.

More information on the intellectual property outcomes in TPP can be found in the Intellectual Property Factsheet at [www.tpp.mfat.govt.nz](http://www.tpp.mfat.govt.nz).

### **Steps required before TPP can take effect in New Zealand**

New Zealand is planning to host the signing of the Trans-Pacific Partnership (TPP) in New Zealand on Thursday 4 February.

Signature marks the end of the TPP negotiating process. At signature, a treaty is agreed but not yet legally binding. TPP will not enter into force for New Zealand until domestic procedures have been completed, and this includes consideration by Parliament.

As with all New Zealand FTAs, once TPP is signed it will go through the Parliamentary treaty examination process. This process requires the final text of the agreement, together with a National Interest Analysis, to be presented to Parliament for examination by the Foreign Affairs, Defence and Trade Select Committee (FADTC). FADTC is likely to seek public comment, and hear submissions, during this process. It will release details of this process at a later date, once Parliamentary Treaty Examination has begun.

Legislative changes required in order to implement TPP will also need to go through normal Parliamentary procedures, including select committee scrutiny and passage through Parliament. The TPP agreement itself cannot be modified unilaterally by the Government or Parliament, but there will be some flexibility in the way various measures can be implemented through domestic legislation and regulation.

Only when these steps have been completed, and other countries have completed their own domestic approval procedures, will TPP be able to enter into force. TPP is expected to come into force within two years of signature, once countries have completed their domestic legislative procedures.

### **Further information**

In the period following the conclusion of negotiations, the Government released a significant amount of information (including 10 factsheets). The text of the Agreement was released by New Zealand on 5 November at [www.tpp.mfat.govt.nz](http://www.tpp.mfat.govt.nz).

In February and March 2016, MFAT will conduct Hui-ā-iwi in the Far North, Auckland, Rotorua, Christchurch and Wellington which will be focused on TPP. These will aim to explain the outcomes of the TPP negotiations, and provide an opportunity for attendees to share their concerns and questions which can then be responded to. Key Māori groups will be invited including members of the Iwi Leaders Forum, mandated Iwi organisations, Pan-tribal Māori organisations, and claimants in the current Waitangi Tribunal proceeding related to TPP. Other Māori groups with specialised interests, for example, Te Ohu Rata o Aotearoa (Māori Medical Practitioners) will also be invited to the Hui. The Hui will be open to anyone who has an interest in attending.

In the months following TPP signature, a series of roadshows in New Zealand's main centres and also in regional centres will take place (probably from mid to late March 2016). The nationwide roadshows will comprise detailed information sessions that provide information on TPP to the wider public, business, and other stakeholders.

Information about these events will be released closer to the time at [www.tpp.mfat.govt.nz/events](http://www.tpp.mfat.govt.nz/events).